

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
August 28, 2018

Application Number: Proposed Amendment of the Darien Zoning Regulations COZR #4-2018
put forth by the Darien Planning & Zoning Commission

Names and Address of: Darien Planning & Zoning Commission
Applicant(s): 2 Renshaw Road
Darien, CT 06820

Activity Being Applied For: Proposal to amend Sections 210, 656, 903, 904, and 905 of the Regulations by: establishing a new definition of “Finished Space” and amending the existing definition of “Story” in Section 210; amend Section 656 to clarify standards related to “Open Space” and “Finished Space” and to require the filing of an easement to finalize the provision of public plaza or mall space prior to the commencement of construction; amend Section 903 to clarify that “Finished Space” in a basement or attic in the CBD Zone does not require public open space or plaza or mall space, but that finished basement or attic space must meet on-site parking requirements; amend Sections 903.2, 904 and 905 to clarify that finished basement or attic space is treated similar to first or second floor space and requires on-site parking.

Dates of Public Hearing: June 26, 2018 immediately continued to July 24, 2018
and concluded on July 31, 2018

Deliberations held on: August 28, 2018

Time and Place: July 24th 8:00 P.M. in Room 119, July 31st 8:00 in Auditorium, both in Town Hall

Publication of Hearing Notices
Dates: June 14 & 21, 2018 and
July 12 & 19, 2018

Newspaper: Darien Times

Date of Action: August 28, 2018

Action: ADOPTED WITH MODIFICATIONS
WITH AN EFFECTIVE DATE OF
SUNDAY, SEPTEMBER 23, 2018 AT 12:15
P.M.

Scheduled Date of Publication of Action:
September 6, 2018

Newspaper: Darien Times

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

- the proposed zoning regulation amendment must be consistent with the 2016 Town Plan of Conservation & Development for the Commission to adopt the amendment.

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

1. The submitted subject application, put forth by the Planning & Zoning Commission, consists of a proposal to amend Sections 210, 656, 903, 904, and 905 of the Regulations by:

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- a) establishing a new definition of “Finished Space” and amending the existing definition of “Story” in Section 210;
- b) amend Section 656 to clarify standards related to “Open Space” and “Finished Space” and to require the filing of an easement to finalize the provision of public plaza or mall space prior to the commencement of construction, and to specify the duration of the public use easement;
- c) amend Section 903.2 to clarify that “Finished Space” in a basement or attic in the CBD Zone does not require public open space or plaza or mall space, but that finished basement or attic space must meet on-site parking requirements; and
- d) amend sections 904 and 905 to clarify that finished basement or attic space is treated similar to first or second floor space with respect to required on-site parking, and that prior approvals of Joint Parking or exemption of on-site parking under Section 1057 are not automatically applicable to creation of finished basement space unless the Commission determines that there is sufficient parking to accommodate such finished space.

BACKGROUND

2. For more than forty years, the Darien Zoning Regulations have limited buildings in the CBD Zone (downtown Darien) to 2 stories and 28 feet in height. An incentive within Section 656(e) of the Regulations allows downtown property owners and developers to create additional square footage within a third story through the creation of a publicly accessible plaza/mall/open space on the property. Through the years, several developments in downtown have taken advantage of the incentive provision, including, but not limited to, the Darien Sport Shop and 1020 Boston Post Road.
3. On January 23, 2018, an application was submitted to the Planning & Zoning Commission to eliminate the requirement of the previously approved and required publicly accessible plaza behind the Brooks Brothers building. The requested amendment of Business Site Plan #124-F was to eliminate the basement within the building as being classified as a third story, because of the actual amount of finished space in the basement used by the tenant was alleged to be less than the amount of finished basement square footage that the applicant requested and that the Commission had approved. The plaza had been required because the applicant requested, and the Commission approved a building of more than two stories in accordance with Section 656(e) of the Darien Zoning Regulations. The requested 2018 amendment sought to eliminate Conditions ‘L’ and ‘M’ of that 2006 Commission approval which had approved activities in the basement and required the establishment of the publicly accessible plaza space on the subject property. The Commission did not act upon or approve that request. That application was subsequently withdrawn by the applicant.
4. Since the time of the applicant’s withdrawal of their application, the Commission asked staff to give guidance on two issues:
 - Whether finished basement space in a two story downtown (CBD Zone) building would count as a third story, thereby requiring a public plaza; and
 - Appropriate parking ratios for finished space in basements in commercial buildings in the CBD Zone.

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5. As part of subsequent general meeting discussions by the Planning & Zoning Commission on February 13, 2018 and April 3, 2018, staff and the Commission confirmed that it would be helpful to clarify existing regulation language relative to existing definitions in the Regulations. It would also be helpful to clarify and include long-time existing policies regarding public plazas, number of stories, and finished space or square footage, and to create new definitions and standards, if appropriate.
6. The proposal herein contains eight amendments—lettered A through H. They are on pages 5-8 of this Resolution.
7. There was no discussion relative to public plaza requirements in the Noroton Heights Redevelopment (NHR) Zone or the Central Business District-Corbin Subarea (CBD-CS)—any changes to the public plaza requirements would only apply only to the Central Business District (CBD) Zone.

CLARIFICATIONS

8. Related to these matters, the Commission believes that amending the definition of “Story” and establishing a new definition of “Finished Space” in the Section 210 of the Regulations would assist in clarifying long-time policy of the Commission and Department, and to allow applicants and property owners to better understand existing interpretations (Proposed Amendments A and B).
9. Historically, the Town has allowed two story buildings in the CBD Zone, and the regulation amendment clarifies that a third story in the CBD zone could be a basement, attic, or a third floor above ground.
10. The purpose of these regulation amendments is to better clarify existing Planning & Zoning Department policy regarding the interpretation of what counts as “finished space”, by adding a new definition to Section 210.
11. As part of this regulation amendment, the Commission is not modifying any previously approved site plans or developments or the requirement to implement those past approvals. The Commission is requiring that any new (non-previously approved) finished basement space in a two-story building in the CBD Zone that is now “parking exempt” because it is only approved for storage use or because it is part of a shared parking agreement among multiple properties previously approved by the Commission, must receive approval by the Planning & Zoning Commission prior to finishing and/or using that basement space as finished area.

AMENDMENT OF PUBLIC PLAZA REQUIREMENTS IN THE CBD ZONE

12. The Commission believes that it would be appropriate to amend Section 656e, which allows for increased building height in the CBD Zone if an area of public open space is created and maintained by the owner as a plaza or mall space. These amendments will:
 - a) Clarify that applicants may provide additional public open space plaza or mall space area (Proposed Amendment C);

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- b) Clarify existing policy by noting that public plaza or mall spaces shall be formalized by way of easement in the Darien Land Records (Proposed Amendment E)
 - c) Clarify existing policy by noting that plaza easements shall be filed in the Darien Land Records prior to commencement of construction and shall remain in effect until modified or abolished by the Commission for due cause (Proposed Amendment E)
 - d) Finished basements in the CBD do not require open space/plaza, but must meet on-site parking requirements (Proposed Amendments D and F).
13. While developing this proposal, the Commission discussed the possibility of establishing a separate open space standard/requirement for finished basement space in the CBD Zone. That idea was not put forth as part of this application. The Commission did decide to NOT require open/space plaza for finished space in the basement. The existing plaza requirement will only apply for a third story above grade.

PARKING RATIOS FOR FINISHED SPACE IN BASEMENTS IN COMMERCIAL BUILDINGS

14. In Darien, the parking requirement for finished basement space is counted relative to its specific use to which it is associated. If the finished basement is used in conjunction with a retail use, the parking requirement for the finished basement is the same as for the retail use. If the finished basement is used in conjunction with a restaurant use, the parking requirement for the basement is the same as for a restaurant. If the basement is unfinished and only used as unfinished storage space, there is no parking requirement for that basement square footage.
15. The February 8, 2018 memo from the Planning & Zoning Department noted possible amendments to Section 904, which would clarify and codify the Town's long-time policy that parking is based upon gross floor area of all space but excludes unfinished attics and/or basements that are only used as mechanical space and/or storage space.
16. The long-time existing policy of requiring on-site parking for any finished space in an attic or basement in a commercial zone (including the CBD Zone) is also better elaborated pursuant to this proposal with proposed changes to Sections 903, 904, and 905 of the Regulations. (Proposed Amendments F, G, and H)
17. Formal site plan and special permit review and approval by the Planning and Zoning Commission will be subsequently required to develop any properties within the CBD Zone under the zoning regulation amendment. At that time, the Commission will review specific site plan issues including, but not limited to parking and traffic.
18. At the July 24, 2018 Public Hearing and in written communications to the Commission, several concerns were raised by the public. They recommended that: the public use easement should terminate with the termination of the site plan; that the easement should not be filed until after the construction has been completed and just prior to the occupancy of the building; and that prior approval(s) should automatically exempt finished basement space from parking requirements. The Commission disagrees with those recommendations, but agreed to add clarifying language to the proposed amendment regarding the duration of the easement

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(Amendment E) and parking requirement for finished space in the basement (Amendments G and H). These changes were discussed at the July 31, 2018 continuation of the Public Hearing. There were no comments from the public at the July 31st hearing. Based upon the evidence submitted, the Planning & Zoning Commission finds that the proposed changes are appropriate and consistent with the CBD Zone.

CONSISTENCY WITH THE 2016 TOWN PLAN OF CONSERVATION & DEVELOPMENT.

19. The proposal is consistent with the 2016 Town Plan of Conservation & Development (the POCD or “Town Plan”), since it clarifies long-time Department policy. Three points from the Town Plan:

- Page 76 #6—“Revisit parking requirements and establish standards appropriate for a mixed-use downtown area”
- Page 112 #1—“Keep future commercial development consistent with the existing small-town New England character of Darien”
- Page 169—“Update Zoning Regulations to implement strategies, policies, and action steps in the POCD”

NOW THEREFORE BE IT RESOLVED that Amendment to Darien Zoning Regulations (COZR #4-2018), is hereby adopted as follows:

Proposed Zoning Regulation amendments (Sections 210, 656, 903, 904, 905) and associated related changes to the inside cover page, Table of Contents and Appendix ‘C’ of the Regulations.

New wording in bold

Deleted wording in strikeout

Proposed Amendment A:

Establish a new definition of “Finished Space” in Section 210 of the Regulations (and include it in alphabetical order within Section 210):

Finished Space: A portion of the floor area is considered Finished Space if:

- **it is habitable floor area; and/or**
- **used, or could be used, for any purpose other than accessory storage, vehicular parking, or housing of mechanical equipment (such as facilities for heating, plumbing, electrical, water, waste disposal and the like) attached to and required to serve the building; and/or**
- **two or more of the interior surfaces (floors, ceilings, and walls) are covered with, or partially covered with, paint, sheetrock, plaster, paneling, hardwood, tile or any other similar surface covering.**

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Proposed Amendment B:

Amend the existing definition of “Story” in Section 210 of the Regulations:

Story: That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it. A basement shall be counted as a story if its ceiling is more than five feet above the elevation from which the height of the building is measured, or if floor area in excess of 50 percent of the floor area directly above it used for any purpose other than accessory storage, vehicular parking, or housing of mechanical equipment (such as facilities for heating, plumbing, electrical, water, waste disposal and the like) attached to and required to serve the building. An attic shall be counted as a story if the finished and habitable portions of the attic are greater than 50 percent of the square footage of the floor immediately below the attic. (See Subsection 225 for illustration.)

In residential zones, if the finished portion of the attic or basement is less than 50 percent compared to the area of the adjacent floor, then it shall be considered a ½ story.

In non-residential zones, any finished space in a basement or third floor/attic counts as a story, even though it may be less than 50 percent of the floor above it or below it.

Proposed Amendment C:

Clarify that additional public open space can be proposed by an applicant and/or required by the Planning & Zoning Commission by modifying Section 656 Note e3.

Modify Section 656 Note e3.

3. A 2.5 to 1 ratio shall be utilized in determining maximum gross floor area to be permitted for each square foot of **public** open space developed as a plaza or mall.
Additional public open space developed as a plaza or mall may be approved by the Planning & Zoning Commission.

Proposed Amendment D:

Clarify that “Finished Space” in a basement in the CBD Zone does not require public open space or plaza or mall space, but must meet on-site parking requirements.

Create a new Section 656 Note e4.

4. **For the purpose of this section, any Finished Space in a basement shall not require associated public open space or plaza or mall space. However, Finished Space in basements must comply with the parking requirements in Section 900 et. seq.**

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Proposed Amendment E:

Specifically note in the Regulations that an easement shall be filed in the Darien Land Records to finalize the provision of any public plaza or mall space. It shall be filed prior to commencement of construction, and that easement shall remain in effect until modified or abolished by the Commission.

Create a new Section 656 Note e5.

- 5. For the purposes of this section, all public open space or plaza or mall space shall be formalized by way of easement to be filed in the Darien Land Records prior to the commencement of construction of the project. The easement for public access and use shall run with the land and shall remain in effect until affirmatively modified or abolished by the Planning & Zoning Commission for due cause such as: termination of the site plan approval and elimination of the extra story; substitution by additional or better public access space; or other appropriate reason as determined by the Commission.**

Proposed Amendment F:

Clarify in Section 903.2 that “Finished Space” in a basement or attic in the CBD Zone does not require public open space or plaza or mall space, but that finished basement or attic space must meet on-site parking requirements, relative to its proposed use.

Modify Section 903.2 of the Regulations

903.2. Dedication to Town

Required off-street parking facilities which, after development, shall be later dedicated to and accepted by the Town, shall be deemed to continue to satisfy the parking requirements for the uses or structures for which they were originally provided. **Any subsequent Finished Space (not previously approved) created in a basement or attic must provide additional on-site parking consistent with the requirements of Section 904 and for the specific use(s) being proposed.**

Proposed Amendment G:

Clarify in Section 904 that “Finished Space” in a basement in the CBD Zone does not require public open space or plaza or mall space, but must meet on-site parking requirements, and to clarify that finished basement or attic space is treated similar to first or second floor space from a parking standpoint.

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Modify Section 904 of the Regulations:

To clarify that finished basement or attic space is treated similar to first or second floor space from a parking standpoint.

904. Off-Street Parking Spaces

Except as provided by Section 1000 and Subsection 1057, with respect to additional requirements as a condition for issuance of a Special Permit, the minimum off-street motor vehicle parking facilities shall be provided as follows **in the chart below (square footage includes Finished Space on any floor, including attics and/or basements):**

And add to the end of Section 904 (after the chart)

Where the applicant or property owner has a previously approved site plan (prior to July 1, 2018), any new (not previously approved) finished basement space in a building that has dedicated public parking pursuant to Section 1057 or is subject to a Joint Parking agreement under Section 905 previously approved by the Commission, must provide additional on-site parking consistent with the requirements of Section 904 and for the specific use(s) being proposed. The exemption from the requirement of on-site parking or reduction of the amount of shared or Joint Parking shall not be applicable for the creation of finished space in the basement unless the Planning & Zoning Commission specifically finds that the parking is sufficient to accommodate additional finished space in the basement.

Proposed Amendment H:

Modify Section 905 of the Regulations, by adding a new 905d.

To clarify that finished basement space is treated similar to first or second floor space from a parking standpoint.

- d. Any finished basement space shall provide its own separate and distinct on-site parking, and shall not be exempt under Section 1057, nor be allowed to have reduced parking pursuant to any Joint Parking arrangement in effect prior to July 1, 2018 unless the Planning & Zoning Commission specifically finds that the parking is sufficient to accommodate additional finished space in the basement.**

These amendments to the Darien Zoning Regulations shall become effective at 12:15 P.M on September 23, 2018