

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 27, 2018

Application Number: Proposed Amendments to the Darien Zoning Map (COZM #2-2018) and Proposed Amendments to Darien Zoning Regulations (COZR #6-2018) put forth by Baywater Housing Partners, LLC.

Names and Address of:
Applicant(s): Baywater Housing Partners, LLC
1019 Boston Post Road
Darien, CT 06820

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

Activity Being Applied For: Proposal to amend the Darien Zoning Map and Zoning Regulations to create a new Special Needs/Senior Housing Overlay Zone (new Section 450 of the Regulations) to allow the creation of affordable housing for persons with special needs and/or senior citizens. The proposed regulations would apply in residential zones (R-2, R-1, R-1/2, R-1/3, R-1/5) on lots that are at least 175 percent of the minimum lot area, but not less than three-quarter acre (38,115 square feet). Maximum density would be twelve dwelling units located within two or more buildings, with not more than six units per building.

Date of Public Hearings: July 17, 2018 (opened and immediately continued to July 31, 2018), July 31, 2018, continued to August 28, 2018, September 11, 2018, and October 2, 2018.

Deliberations held on: October 23, 2018 & October 30, 2018, November 13, 2018 & November 27, 2018

Time and Place: 8:00 p.m. Auditorium (July 17 & 31 hearings), Room 206 (August 28 & October 2 hearings, October 30 deliberations), Room 119 (September 11 public hearing and October 23 and November 13 deliberations) Town Hall

Publication of Hearing Notices:

Dates: July 5 & 12, 2018

Newspaper: Darien Times

Date of Action: November 27, 2018

ZONING MAP AMENDMENT:

ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 16, 2018 AT 12:15 P.M.

ZONING REGULATION AMENDMENT:

ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 16, 2018 AT 12:15 P.M.

Scheduled Date of Publication of Action:
December 6, 2018

Newspaper: Darien Times

PLANNING & ZONING COMMISSION
ADOPTED RESOLUTION
PROPOSED AMENDMENTS TO THE DARIEN ZONING MAP (COZM #2-2018),
PROPOSED AMENDMENTS TO DARIEN ZONING REGULATIONS (COZR #6-2018)
PUT FORTH BY BAYWATER HOUSING PARTNERS, LLC.
NOVEMBER 27, 2018
PAGE 2

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

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

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

1. The submitted subject application, put forth by Baywater Housing Partners, LLC, consists of a proposal to amend the Darien Zoning Map and Zoning Regulations to create a new Special Needs/Senior Housing Overlay Zone to allow the creation of affordable housing for persons with special needs and/or senior citizens. As originally proposed by the applicant, the regulations would apply in certain residential zones (R-2, R-1, R-1/2, R-1/3, and R-1/5) on lots that are at least 150 percent of the minimum lot area, but not less than three-quarter acre (38,115 square feet). The originally proposed maximum density would be twelve dwelling units located within two or more buildings, with not more than six units per building.

BACKGROUND

2. At the public hearings on this matter, numerous questions and concerns were raised regarding the proposal by the Commission and other interested parties. During the public hearing process, the application was modified by the applicant in an effort to address various concerns. The original zoning regulation amendment proposal had a May 23, 2018 date, and subsequent modifications to the regulations submitted for the record and discussed at the public hearing had an August 17, 2018, and a September 20, 2018 dates.
3. One of the significant changes to the applicant's proposal is that the Commission is only allowing for special needs persons, and is eliminating the option for senior housing. It is likely that the senior housing element would be more intense relative to traffic and parking, and thus, the Commission finds that it would not be appropriate to allow this option in the applicant's proposal to be included in the adopted regulations. At the public hearing, the applicant indicated a preference for special needs housing, thus, the Commission will amend the applicant's proposal accordingly.
4. The special permit requirement within this new proposed regulation will enable the Planning and Zoning Commission to consider the impacts of any future proposed development within this new overlay zone on neighboring properties, including intensity of use, traffic, noise, and adequacy of available utilities, among other potential impacts.
5. The affordable restrictions are based on sections 583 and 584 of the Zoning Regulations, which define "Affordable Requirements" and "Below Market Rate Dwelling Unit." To qualify for occupancy, the maximum income of occupants must be less than or equal to the lesser of eighty (80) percent of the State Median Income. The Commission notes that the applicant put forth a forty (40) percent requirement, but the Commission finds that eighty (80) percent is more appropriate in this circumstance, to allow the widest opportunity for special needs persons. The

PLANNING & ZONING COMMISSION
ADOPTED RESOLUTION
PROPOSED AMENDMENTS TO THE DARIEN ZONING MAP (COZM #2-2018),
PROPOSED AMENDMENTS TO DARIEN ZONING REGULATIONS (COZR #6-2018)
PUT FORTH BY BAYWATER HOUSING PARTNERS, LLC.
NOVEMBER 27, 2018
PAGE 3

property owner will be responsible for certifying the eligibility of occupants and relaying that information to the Town.

6. The Commission finds that to qualify for occupancy, persons must have an intellectual disability, as defined in Section 1-1g of the Connecticut General Statutes. “Intellectual disability” is defined as such:
 - (a) Except as otherwise provided by statute, “intellectual disability” means a significant limitation in intellectual functioning existing concurrently with deficits in adaptive behavior that originated during the developmental period before eighteen years of age.
 - (b) As used in subsection (a) of Section 1-1g, “significant limitation in intellectual functioning” means an intelligence quotient more than two standard deviations below the mean as measured by tests of general intellectual functioning that are individualized, standardized and clinically and culturally appropriate to the individual; and “adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group as measured by tests that are individualized, standardized and clinically and culturally appropriate to the individual.
7. The Commission finds that special needs housing is often managed by a non-profit that is in the business of providing housing services for intellectually disabled persons.

ZONING AREA AND BULK REQUIREMENTS

8. The originally submitted application included a minimum lot area of 150 percent of the minimum lot area in the underlying zone. During the public hearing process, the Commission believed that an increase in this number to 175 percent would be warranted. As put forth by the applicant, the increase in the minimum lot area to 175 percent of the minimum lot area in the underlying zone, and not less than 38,115 square feet, will reduce the impact of two structures on lots within residential zones. The amendment is intended to limit the application of the overlay zone to oversized lots.
9. The maximum height of 2-1/2 stories and 30 feet is based on the existing maximum height in all residence zones. The Commission believes that it is appropriate for all structures in this overlay zone be no larger than allowed in the underlying zoning district.
10. The maximum 20 percent building coverage is based on the existing building coverage in all residence zones. The Commission believes that it is appropriate for all properties in this overlay zone to have no more than 20 percent building coverage, which is the same as that allowed in the underlying zoning district.
11. The minimum distance between structures is intended to ensure sufficient access for emergency equipment and personnel in the event of a fire or medical emergency where direct access to the location emergency is between two buildings.

PLANNING & ZONING COMMISSION
ADOPTED RESOLUTION
PROPOSED AMENDMENTS TO THE DARIEN ZONING MAP (COZM #2-2018),
PROPOSED AMENDMENTS TO DARIEN ZONING REGULATIONS (COZR #6-2018)
PUT FORTH BY BAYWATER HOUSING PARTNERS, LLC.
NOVEMBER 27, 2018
PAGE 4

12. An off-street parking requirement of one space per bedroom accounts for the likelihood that not all residents of special needs housing will have their own vehicles.
13. The single-driveway provision will reduce the number of curb cuts, reduce the amount of existing screening that is removed for multiple curb cuts, and maximize the perimeter areas that are available for dense landscaping and natural screening. The additional, emergency driveway will provide a secondary means of ingress and egress if the primary driveway is blocked. On corner lots, this provision would enable the primary and emergency driveways to be located on different streets, so that there can be access if the primary street access is blocked.
14. The minimum yard areas are intended to be used for screening abutting properties, and to focus the developed site area toward the center of the site. This is similar in concept to conservation developments, which concentrate development in order to designate conservation areas to protect environmental features.
15. Limiting the number of units per building and the number of buildings is intended to avoid large buildings that look like apartment houses. This is intended to encourage development of houses that are generally consistent with single-family development in the residential zones.
16. Connecticut General Statute § 8-3e requires that community residences that houses six or fewer persons with intellectual disability and necessary staff persons or other conditions be treated as single-family residences for zoning purposes. Allowing two six-unit buildings, on lots that are significantly larger than required in the underlying zone, will create housing opportunities for special needs individuals without causing a material increase in neighborhood density.
17. As noted herein, this overlay zone provides for increased density, and thus, the inclusionary zoning regulations should not apply to these types of developments. The exception for subsections (a) through (f) of section 585 is necessary to prevent the reduction of minimum open space and yards, and increases in maximum building coverage and building height. All on-site units must be designated as deed-restricted affordable housing within this new zone.
18. The requirement for public water and sewer of sufficient capacity is consistent with the Commission's adoption of the Active Senior Residential Overlay Zone, adopted in 2014, which included such a requirement to ensure the health and welfare of residents of the neighborhood.
19. The underlying zoning regulations in the applicable R-/5, R-1/3, R-1/2, R-1 and R-2 zones that are not modified by the Special Needs Housing Overlay Zone herein, shall apply to developments under the overlay zone regulations.
20. The area and bulk requirements will allow up to two dwellings, each containing a maximum of six units. Additional accessory structures, such as sheds, may be permitted.
21. The addition of a maximum occupancy provides for occupancy by married couples, while limiting overall occupancy to six persons per building. The exclusion of non-resident staff

PLANNING & ZONING COMMISSION
ADOPTED RESOLUTION
PROPOSED AMENDMENTS TO THE DARIEN ZONING MAP (COZM #2-2018),
PROPOSED AMENDMENTS TO DARIEN ZONING REGULATIONS (COZR #6-2018)
PUT FORTH BY BAYWATER HOUSING PARTNERS, LLC.
NOVEMBER 27, 2018
PAGE 5

persons in the occupancy count is similar to the statutory provision for group homes, which allows up to six residents exclusive of staff.

22. WestCOG sent an e-mail dated June 13, 2018, which was read aloud at the public hearing, which notes that *“The opinion of WestCOG staff is that the proposal is of local interest and with minimal intermunicipal impact. Therefore, it is not being forwarded to adjacent municipalities and the regional staff is making no comment.”*

CONSISTENCY WITH THE 2016 TOWN PLAN OF CONSERVATION & DEVELOPMENT.

23. The Commission finds that the proposal is consistent with the 2016 Town Plan of Conservation & Development (the POCD or “Town Plan”), following consideration of the following points:
- a. Continue to Diversify Darien’s Housing Portfolio (pp. 103 of Plan):
 - i. The Planning & Zoning Commission generally views a variety of housing options as an enhancement to Darien.
 - ii. Darien should continue to encourage a broad range of housing in appropriate locations. In recent years, the Commission has taken steps to promote more housing diversity including “The Cottage” (housing for developmentally disabled young adults).
 - b. Continue to Diversify Darien’s Housing Portfolio (pp. 106 of Plan):
 - i. Continue to consider ways to address the housing needs of an aging population.
 - ii. Continue to consider ways to provide for housing that is more affordable.
 - iii. Continue to participate in efforts to create supportive housing for developmentally disabled people.
 - iv. Review zoning provisions and locations for multi-family housing to ensure they are appropriate for the future.
 - v. When and where appropriate, seek to place deed restrictions on housing units that are accessory to Special Permit uses in order to count such units as “affordable housing” for as long as they exist.

PLANNING & ZONING COMMISSION
ADOPTED RESOLUTION
PROPOSED AMENDMENTS TO THE DARIEN ZONING MAP (COZM #2-2018),
PROPOSED AMENDMENTS TO DARIEN ZONING REGULATIONS (COZR #6-2018)
PUT FORTH BY BAYWATER HOUSING PARTNERS, LLC.
NOVEMBER 27, 2018
PAGE 6

NOW THEREFORE BE IT RESOLVED that Amendment to the Darien Zoning Map (COZM #2-2018), is hereby adopted as follows:

*---the addition of a new overlay zone called “SPECIAL NEEDS HOUSING OVERLAY ZONE”. To be added as the last in a list of Zoning Overlay Zones on the Zoning Map
SN SPECIAL NEEDS HOUSING OVERLAY ZONE*

The overlay zone will be over the property at 26 East Lane, shown on Assessor’s Map #32 as Lot #23.

This is the property described in the submitted application materials and shown in Volume 1610 Page 348 of the Darien Land Records, and as shown on the submitted survey entitled, “Zoning Location and Topographic Survey 26 East Lane prepared for Baywater Housing Partners, LLC”, by William W. Seymour & Associates, dated March 18, 2018 and last revised May 16, 2018.

Similar to the establishment of the “Active Senior Residential Overlay Zone” adopted by the Commission in 2014, which became Section 430 *et. seq.* of the Darien Zoning Regulations, this newly created overlay zone will not be shown on the Zoning Map, but rather, whether this new Special Needs Housing Overlay Zone is applicable to a property in Darien will be determined by the new regulations as noted on the following pages.

PLANNING & ZONING COMMISSION
ADOPTED RESOLUTION
PROPOSED AMENDMENTS TO THE DARIEN ZONING MAP (COZM #2-2018),
PROPOSED AMENDMENTS TO DARIEN ZONING REGULATIONS (COZR #6-2018)
PUT FORTH BY BAYWATER HOUSING PARTNERS, LLC.
NOVEMBER 27, 2018
PAGE 7

NOW THEREFORE BE IT RESOLVED that Amendment to Darien Zoning Regulations (COZR #6-2018) is hereby adopted as follows:

Proposed Zoning Regulation amendments (new Section 450) and associated related changes to the inside cover page, Table of Contents and Appendix 'C' of the Regulations. (new wording shown below in bold)

SECTION 450. SPECIAL NEEDS HOUSING OVERLAY ZONE

451. Background and Purposes

Housing for persons with special needs are important elements of residential development within the Town. Such housing enables persons with special needs to live in Darien and contribute to the community through employment and other opportunities. The Special Needs Housing Overlay Zone allows the development of such homes, by allowing increased density on parcels in residential zones that are a minimum of 175 percent of the minimum lot area in the underlying zone, but not less than 0.875 acre. Such developments shall be designed to be consistent with the residential character of the surrounding area. All residential units in this overlay zone shall be restricted to persons with intellectual disabilities (special needs) whose income qualifies them for affordable housing.

452. Uses Requiring Special Permits

- a. Developments under this Section 450 shall be permitted by special permit only, and in the R-1/5, R-1/3, R-1/2, R-1 and R-2 Zones.

453. Site Requirements--Basic Services

At a minimum, the site must be:

- a. In the R-1/5, R-1/3, R-1/2, R-1 and R-2 Zones;
- b. Of at least 175 percent of the required minimum lot size for the zone in which it is located; and
- c. Served by public water and public sanitary sewer of sufficient capacity to serve the development.

454. Special Needs and Affordable Restrictions

- a. All dwellings allowed under this Section 450 shall be occupied by persons who meet all of the following eligibility requirements:
 1. Income eligible persons as described in Sections 583 and 584 of the Zoning Regulations, where the maximum sales price or rent shall be restricted for forty years or the life of the unit, whichever is longer, using the methodology for maximum housing payment calculations outlined in

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ADOPTED RESOLUTION
PROPOSED AMENDMENTS TO THE DARIEN ZONING MAP (COZM #2-2018),
PROPOSED AMENDMENTS TO DARIEN ZONING REGULATIONS (COZR #6-2018)
PUT FORTH BY BAYWATER HOUSING PARTNERS, LLC.
NOVEMBER 27, 2018
PAGE 8

Section 8-30g-8 of the Regulations of Connecticut State Agencies, based on maximum income less than or equal to the lesser of eighty (80) percent of the State Median Income.

2. Such persons have an intellectual disability, as defined in Section 1-1g of the Connecticut General Statutes.
 - b. Prior to the issuance of a Certificate of Occupancy (CO), a restrictive covenant or declaration identifying the current owner(s) of each dwelling unit and describing the restrictions 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.
 - c. Housing for persons eligible under these regulations, including selection of residents, shall be managed by a non-profit organization in the business of providing housing services to persons with intellectual disabilities in the State of Connecticut.
 - d. The property owner shall be responsible for certifying the eligibility of occupants and relaying that information to the Town. The Town of Darien Department of Human Services shall confirm eligibility for occupancy with Section 1-1g of the Connecticut General Statutes with respect to whether a person has an intellectual disability. The Planning & Zoning Department staff shall confirm eligibility with respect to income.

455. 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 | 175% of the minimum lot area in the underlying zone, but not less than 38,115 square feet |
| 2. Minimum Lot Width | 100 feet |
| 3. Minimum Street Frontage | 50 feet |
| 4. Minimum Lot Depth | 100 feet |
| 5. Minimum Front Yard | Note a |
| 6. Minimum Side Yard – one side | Note a |
| 7. Minimum Side Yard – total of two sides | Note a |
| 8. Minimum Rear Yard | Note a |
| 9. Accessory Structures: | Note a |
| 9a. Minimum Distance from Front Lot Line | |
| 9b. Minimum Distance from Side Lot Line | |

PLANNING & ZONING COMMISSION
ADOPTED RESOLUTION
PROPOSED AMENDMENTS TO THE DARIEN ZONING MAP (COZM #2-2018),
PROPOSED AMENDMENTS TO DARIEN ZONING REGULATIONS (COZR #6-2018)
PUT FORTH BY BAYWATER HOUSING PARTNERS, LLC.
NOVEMBER 27, 2018
PAGE 9

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|---|--|
| 9c. Minimum Distance from Rear Lot Line | |
| 10. Maximum Height in Stories above grade | 2-1/2 stories |
| 11. Maximum Height in Feet | 30 feet |
| 12. Maximum Building Coverage | 20% |
| 13. Minimum Distance Between Residential Buildings | 30 feet |
| 14. Maximum Floor Area of Each Dwelling Unit | 1,000 square feet |
| 15. Maximum Number of Dwelling Units (with or without separate kitchens) | 6 units per building |
| 16. Maximum Number of Residents | 6 residents per building (Note b) |
| 17. Maximum Number of Residential Buildings | 2 per lot (Note c) |

Notes:

- a. Minimum yards are as required in the underlying zone.
- b. Non-resident staff persons shall not be included in the maximum number of residents.
- c. The number of residential buildings may not exceed one (1) structure if only one building is on the site or combined sites in the pre-development condition.

456. Parking Requirements

One off-street parking space per bedroom shall be required. Handicap parking spaces shall count toward the minimum parking requirement. Parking spaces may be located within required front or side yards provided that such parking shall be adequately screened from abutting residential properties.

457. Special Controls

- a. One 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.
- d. A maximum of two, six-unit buildings shall be permitted.
- e. The inclusionary zoning incentives set forth in Subsections (a) through (f) of Section 585 shall not apply to Special Needs developments under this Section 450.
- f. Special needs units created pursuant to this Section 450 shall be counted toward any affordable housing requirements set forth in any other section of the Zoning Regulations.

PLANNING & ZONING COMMISSION
ADOPTED RESOLUTION
PROPOSED AMENDMENTS TO THE DARIEN ZONING MAP (COZM #2-2018),
PROPOSED AMENDMENTS TO DARIEN ZONING REGULATIONS (COZR #6-2018)
PUT FORTH BY BAYWATER HOUSING PARTNERS, LLC.
NOVEMBER 27, 2018
PAGE 10

458. Program Administration

- a. The administration of the affordable units shall comply fully with Sections 586 and 587 of the Darien Zoning Regulations.**
- b. Housing for persons eligible under subsection 454(a), including selection of residents, shall be managed by a non-profit organization in the business of providing housing services to persons with intellectual disabilities in the State of Connecticut.**

459. Consistency with Other Regulations

To the extent not modified by this Section 450, all other zoning regulations governing development within the underlying zone shall apply to developments under this Section 450.

These amendments to the Darien Zoning Regulations shall become effective at 12:15 P.M. on Sunday, December 16, 2018.