

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
January 6, 2009

Application Number: Proposed Amendments to the Darien Zoning Regulations

Application Put Forth by the Darien Planning and Zoning Commission

Activity Being Applied For: Proposed amendments to the Darien Zoning Regulations to establish a new Section entitled "Inclusionary Zoning". This Section of the Regulations would, for certain developments, require the construction of affordable housing either on or off-site, and/or a fee in-lieu of construction.

Date of Public Hearing: June 3, 2008 continued to December 2, 2008

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices

Dates: May 22 & 29, 2008

November 20 & 26, 2008

Newspaper: Darien News-Review

Date of Action: January 6, 2009

Action: AMENDMENT TO THE ZONING REGULATIONS ADOPTED, WITH AN
EFFECTIVE DATE OF SUNDAY, MAY 31, 2009 AT TWELVE NOON.

Scheduled Date of Publication of Action:

January 15, 2009

Newspaper: Darien News-Review

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

1. The Commission proposes to amend the Darien Zoning Regulations by adopting inclusionary zoning as specifically authorized by Section 8-2i of the Connecticut General Statutes.
2. A prior application for inclusionary housing put forth by the Commission had a public hearing in December 2007, was withdrawn on February 5, 2008. The subject application was presented and discussed at a public hearing on June 3 and that hearing was continued to December 2.
3. This Zoning Regulation amendment proposal was referred to adjacent municipalities, the Southwestern Regional Planning Agency (SWRPA), and the State of Connecticut Department of Environmental Protection (DEP). SWRPA sent comments dated April 30, 2008, recommending approval of the application. In an e-mail dated May 16, 2008, the DEP had no comments on the application.
4. The Darien Board of Selectmen sent comments dated 3 June 2008, noting that they voted 3-1-1 in support of the proposed Inclusionary Zoning Regulations put forth by the Planning and Zoning Commission.
5. At the public hearing, it was noted that the threshold is for the regulation to apply to projects which create additional multi-family dwelling units (with units under Section 405e. being

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exempt), and subdivisions or re-subdivisions of five or more buildings lots. In recent years, there have only been eight of those subdivisions of five or more building lots.

6. One important feature of the proposal is that the Planning & Zoning Commission has the sole discretion to determine whether the unit(s) will be built on-site, off-site, whether a fee in-lieu will be paid, or some combination thereof. It was suggested during the public hearing by Mr. Finke, a Commission member, that in various locations where the proposed Regulations indicate that the Commission may approve or may not approve, he suggested that the Commission might add language after each “may” to include “at the absolute discretion of the Commission”. He also suggested adding language “and still maintains the architectural elements and character of the neighborhood.” These changes were included in this resolution within Sections 585, 588a, 588d, 588e, and 588f.
7. The Inclusionary Zoning Regulation refers to Section 8-30g-8 of the Regulations of Connecticut State Agencies. These are not the Connecticut General Statutes, but rather, regulations implemented by the Department of Economic and Community Development (DECD). It is acknowledged that these regulations may change and/or be amended from time to time. It is the intent of these Zoning Regulations to be fully consistent with an amended Regulations of Connecticut State Agencies adopted by DECD within Section 8-30-g-8.
8. The Commission notes that Section 588e. specifically refers to the Area Median Family Income. As of February 2008, that amount for Darien is \$117,800. This is an amount which will vary, and the U.S. Department of Housing and Urban Development (HUD) is expected to update this number annually. The Commission notes that as new numbers are published, those updated numbers shall be used for the calculations in Section 588e. The numbers contained within the Zoning Regulation has been included as an example. Current, more updated information shall be used by applicants, when and where available. A note has been added to Section 588e reflecting this requirement.
9. The effective date of these Regulations is May 31, 2009. Section 8-2h of the Connecticut General Statutes addresses the issue of zoning applications filed prior to a change in the Zoning Regulations, and notes that an application filed with the planning and zoning commission shall not be required to comply with any change in the zoning regulations taking effect after the filing of such application.
10. The Commission hereby finds that the proposed Amendment of the Darien Zoning Regulations is fully consistent with the 2006 Town Plan of Conservation & Development, as amended.

NOW THEREFORE BE IT RESOLVED that ***Proposed Amendment to the Darien Zoning Regulations*** is hereby ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, MAY 31, 2009 AT TWELVE NOON, as revised herein:

The approved wording is as follows:
New wording in bold, deletions in strikeout:

SECTION 580. INCLUSIONARY ZONING

581. Background and Purposes

These regulations are intended to encourage the development of below market rate dwelling units within the Town of Darien, consistent with Section 8-2(i) of the General Statutes of Connecticut.

582. Applicability

Inclusionary Zoning Regulations shall apply to all zones that allow dwelling units as a principal or special permit use.

583. Below Market Rate Requirements

Developments resulting in the creation of additional multi-family dwelling units shall designate a minimum of twelve percent (12%) of the total number of dwelling units as below market rate. For the purpose of this regulation, the term multi-family is defined as a single property with two or more dwelling units, whether attached or detached. Dwelling units constructed pursuant to Section 405e. are exempt from the requirements of this regulation.

Single-family subdivisions or re-subdivisions resulting in a total of five or more building lots shall designate a minimum of twelve percent (12%) of the total number of dwelling units as below market rate. All other single family subdivisions are exempt from the requirements of this regulation.

The below market rate requirement shall be satisfied by: providing below market rate dwelling units on the subject property; providing below market rate dwelling units elsewhere within the Town of Darien; or paying a fee in lieu; or providing some combination thereof.

At least half of the below market rate (BMR) dwelling units shall be affordable to households with an income equal to or less than 80 percent of the State Median Income for the State of Connecticut and the remainder of the below market rate dwelling units shall be affordable to households with an income equal to or less than 110 percent of the Area Median Income for the Standard Metropolitan Statistical Area encompassing Darien. If an odd number of below market rate units is being constructed, the higher number of units shall be constructed at the 80 percent number. For example, if the requirement is to construct one BMR unit, then it shall be at the 80 percent number. Household incomes are published by the United States Census Bureau and periodically updated by the U.S. Department of Housing and Urban Development (HUD). Income levels are to be adjusted for household size per HUD requirements.

584. Below Market Rate Dwelling Unit

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A below market rate (BMR) dwelling unit is defined as a dwelling unit occupied by an income-eligible household as described in the Section 583 where the maximum sales price or rent shall be restricted for forty years or the life of the unit, which ever is longer, using the methodology for maximum housing payment calculations outlined in Section 8-30g-8 of the Regulations of Connecticut State Agencies.

585. Incentives

Developments subject to the provisions of Section 580, except for single-family subdivisions, may, at the absolute discretion of the Commission, be eligible for an increase in permitted density up to 50 percent greater than the allowed density provided at least 25 percent of such incentive units are designated as below market rate and the Commission determines that such incentives do not adversely affect the health, safety and welfare of the public in general, and the immediate neighborhood. In such cases, the Commission may, at the absolute discretion of the Commission, allow any or all of the following waivers, provided the Commission finds that such waiver encourages the development of below market rate housing and is consistent with the surrounding neighborhood:

- a. Recreational or open space requirements may be reduced.
- b. Minimum yard requirements may be reduced.
- c. Maximum building coverage requirements may be increased.
- d. Parking requirements may be reduced.
- e. Height may be increased to allow three stories.

In no case shall the Commission approve a waiver described in a. through e. above, resulting in a requirement that deviates by more than 25% from the originating regulation.

586. Priority Population

The below market rate dwelling units shall be offered for sale or rent to income-eligible households in accordance with the following priority designations:

- a. Individuals or families who live and work in the Town of Darien who provide volunteer emergency/life saving services for residents of the Town.
- b. Individuals or families who are employed by the Town of Darien or Darien Public School system.
- c. Individuals or families who live and work in the Town of Darien.
- d. Individuals or families who live in the Town of Darien.
- e. Individuals or families who work in the Town of Darien.
- f. Individuals or families who previously lived for a minimum of one (1) year in the Town and wish to return.
- g. All other individuals or families.

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587. Program Administration

Prior to the issuance of any Certificate of Occupancy, any application under Section 580 shall identify the non-profit entity or property manager who will be responsible for program administration. The program administrator is subject to the approval of the Commission or its designated representative. The program administrator shall:

- a. Annually review and certify to the Commission the annual income of households residing in below market rate dwelling units in accordance with a procedure established in advance and approved by the Commission.**
- b. Maintain a list of eligible households in each category, as described in Section 586, who have applied for participation in the program. Applicants within each category shall be selected by lottery, conducted in accordance with a procedure established in advance of said lottery and approved by the Commission, or its designated representative.**
- c. Annually certify to the Commission that the selected household actually resides in the below market rate dwelling unit.**
- d. Certify to the Commission that below market rate dwelling units sold or re-sold do not exceed the maximum purchase price as calculated in a manner consistent with the methodology for maximum housing payment calculations in set-aside developments outlined in Section 8-30g-8 of the Regulations of Connecticut State Agencies, as adjusted for family size.**
- e. Certify to the Commission that below market rate dwelling units for rent shall not exceed the maximum monthly rent as calculated in a manner consistent with the methodology for maximum housing payment calculations in set-aside developments outlined in Section 8-30g-8 of the Regulations of Connecticut State Agencies, as adjusted for family size.**

588. Additional Standards

- a. On-Site: Below market rate dwelling units shall be reasonably dispersed throughout the development and shall contain, on average, the same number of bedrooms and shall be indistinguishable from market rate units with respect to the exterior finishes, including landscaping, but interiors may include standard finishes and need not be of 'luxury' quality. Those units shall be designed and located to maintain the architectural elements and character of the neighborhood.**

(1) Example: Nine lot subdivision:

The total number of on-site units proposed is nine (9).

The number of BMR dwelling units required: $9 \times 12\% = 1.08$.

The number of units required to be affordable to households at 80% of State Median Income: $50\% \times 1.08 = .54$.

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The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times 1.08 = .54$.

Since only one unit is required (the 1.08 rounds down to 1.0), that unit shall be at the 80% level, and no unit is needed for the 110% level. The remaining .08 units would have to be fulfilled via fee in lieu at the 110% level standard

$$0.08 \times \$117,800 \times 225\% = \$21,204.$$

(2) Example: Nine multi-family units to be constructed:

The total number of on-site units proposed is nine (9).

The number of BMR dwelling units required: $9 \times 12\% = 1.08$.

The number of units required to be affordable to households at 80% of State Median Income: $50\% \times 1.08 = .54$.

The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times 1.08 = .54$.

Since only one unit is required (the 1.08 rounds down to 1.0), that unit shall be at the 80% level, and no unit is needed for the 110% level.

The Commission could grant up to 4 additional units as a bonus (1/2 of 9 rounded down), provided that these units meet a 25% affordability standard (Section 585).

Now there are 13 units

The number of BMR dwelling units required: $9 \times 12\% = 1.08$.

25% of the 4 bonus units will need to be affordable = 1.00.

Now, there are two required affordable units, one at the 80% level, and one at the 110% level, with the remainder being a fee-in-lieu calculated as:

The number of units required to be affordable to households at 80% of State Median Income: $50\% \times .08 = .04$

The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times .08 = .04$

The Area Median Income for a family of four is \$117,800 (2008).

The cash contribution is calculated as follows:

$$0.04 \times \$117,800 \times 300\% = \$14,136$$

$$0.04 \times \$117,800 \times 225\% = \$10,602$$

The total fee in lieu payment is: \$24,738

b. Phasing: Below market rate dwelling units shall be developed simultaneously with or prior to the development of the other units on a pro rata basis.

c. Deed Restrictions: In order to maintain below market rate dwelling units for forty years or the life of the unit, whichever is longer, the following restrictions shall apply:

(1) Below market rate dwelling units for sale shall be restricted by title to require that, in the event of any resale by the owner or any successor, the resale price shall not exceed the then maximum sales price for said dwelling unit, as determined in accordance with Subsection 587d above

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or the sum of the original purchase price and the cost of any documented fixed improvements made by the owner, whichever is greater.

- (2) Below market rate dwelling units for rent shall be restricted by title to require that the rents for said units shall not exceed the maximum rent as determined annually in accordance with Subsection 587e above.
- d. **Alternative Sites:** The Commission may, at its absolute discretion, approve the construction or rehabilitation of the required below market rate dwelling units on another site in Darien, provided that such off-site below market dwelling units shall be maintained for forty years or the life of the unit, whichever is longer, in the same manner as on-site units. The Commission may condition the issuance of certificates of occupancy for the development project with the completion of the off-site below market rate dwelling units or establish other reasonable performance conditions necessary to insure that the off-site units will be built in a timely manner.
- e. **Payment of a Fee:** The Commission, at its absolute discretion, may require the applicant to pay a fee in lieu of constructing some, or all, of the required below market rate housing units. Such fee shall take the form of a one time cash contribution to a Town of Darien housing trust fund, or other Commission approved non-profit or for-profit organization dedicated to below market rate housing initiatives. Said funds shall be paid prior to the issuance of the first Zoning Permit. Units created with such funds shall be designated as below market rate in the same manner as required in Section 584. The cash contribution provided for each dwelling unit, or fraction thereof, shall be as follows:
- (1) Units affordable to households earning 80 percent of the State Median Income for the State of Connecticut require a cash contribution equal to 300% of the Area Median Income for a family of four.
 - (2) Units affordable to households earning 110 percent of the Area Median Income for the Standard Metropolitan Statistical Area encompassing Darien require a cash contribution equal to 225% of the Area Median Income for a family of four.
 - (3) Example: cash contribution based on 2008 data:
The total number of on-site units proposed is five (5).
The number of BMR dwelling units required: $5 \times 12\% = 0.6$.
The number of units required to be affordable to households at 80% of State Median Income: $50\% \times 0.6 = 0.3$.
The number of units required to be affordable to households at 110% of Area Median Income: $50\% \times 0.6 = 0.3$.
The Area Median Income for a family of four is \$117,800 (2008).
The cash contribution is calculated as follows:

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$0.3 \times \$117,800 \times 300\% = \$106,020$

$0.3 \times \$117,800 \times 225\% = \$79,515$

The total fee in lieu payment is \$185,535.

(Note: As of the adoption of this Regulation, the 2008 Area Median Income data was the most recent available. As time changes, this data will change. The most recent data from HUD at the time the application is filed shall be used for this calculation).

- f. Where the contribution is targeted to assist an identified off-site project providing below market rate dwelling units, the Commission may, at its absolute discretion, condition the issuance of certificates of occupancy for the development project with the completion of the off-site below market rate dwelling units or establish other reasonable performance conditions necessary to insure that the off-site units will be built in a timely manner.**