

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
October 5, 2010

Application Number: Proposed Amendment to Zoning Map (COZM #1-2010) and Proposed Amendment to Zoning Regulations (COZR #2-2010)

Application Put Forth by: Thomas E. Golden Realty, Co., 169 Noroton Avenue LLC, & Noroton Heights Shopping Center Inc., representing properties 22 through 346 Heights Road; 72 Edgerton Street, and Edgerton Street (Map #75 Lot #30); and 273 West Avenue.

Activity Being Applied For: Proposing to amend the Zoning Regulations to establish a new overlay zone—and to amend the Zoning Map by “landing” that Overlay zone on the subject properties; and to create a new Section of the Zoning Regulations and to modify existing Sections 311 (Zone Classifications), 905 (Joint Parking) and 907 (Parking Structures) of the Zoning Regulations.

Property is located at: The subject properties are located on the north side of Heights Road, consisting of approximately 18 acres, and are shown on Assessor’s Map #74 as Lots #8 through #20; and Assessor’s Map #75 as Lots #1-#4 and #22-30, all now within the DC (commercial) Zone.

Date of Public Hearing: June 15, 2010 continued to July 27, 2010
Deliberations held on September 7, 2010 in room 119

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

Publication of Hearing Notices

Dates: June 3 & 10, 2010
July 16 & 23, 2010

Newspaper: Darien News

Date of Action: October 5, 2010

Action:

AMENDMENTS TO THE ZONING REGULATIONS ARE GRANTED IN PART WITH MODIFICATIONS AND DENIED IN PART. THE NEW “NOROTON HEIGHTS REDEVELOPMENT ZONE” IS HEREBY ADOPTED, WITH AN EFFECTIVE DATE OF SUNDAY, OCTOBER 24, 2010 AT TWELVE NOON.

ADOPTED--AMENDMENTS TO THE ZONING MAP, WITH AN EFFECTIVE DATE OF SUNDAY, OCTOBER 24, 2010 AT TWELVE NOON.

Scheduled Date of Publication of Action:
October 15, 2010

Newspaper: Darien News

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

Proposed Amendments to the Zoning Regulations

1. The Commission notes that a similar prior application submitted by Mr. Golden’s company was withdrawn in August 2009. This new application has been submitted by a number of property owners within the Noroton Heights commercial area.

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2. The Commission understands that the subject application is designed to encourage redevelopment of Noroton Heights. It is noted that while the submitted application included sketch plans, no formal application is being made for redevelopment at this time. A subsequent application(s) would need to be made for any redevelopment in the Noroton Heights commercial area
3. It was noted at the public hearing that the Noroton Heights commercial area is distinct. The “eastern portion” extends from Edgerton Street eastward to Noroton Avenue (excluding some properties which front on Noroton Avenue and are in the Service Business Zone), and its northern frontage is on West Avenue. The “western portion” consists of various properties extending westward from Edgerton Street to Hollow Tree Ridge Road, and some of those properties also have their northern frontage on West Avenue. There are also residential properties fronting on West Avenue and Hollow Tree Ridge Road that are adjacent to the western portion of the commercial area. These residential properties are not part of the existing or proposed commercial area.
4. The applicant notes that this proposal to create an overlay zone will not eliminate the existing underlying DC zone and thus will not affect existing properties within the Designed Commercial (DC) zone in Noroton Heights or any other properties within other DC zones in Darien. This overlay zone provides an alternate means to develop or redevelop properties within the Noroton Heights commercial area, if a property owner decides to do so.
5. At the public hearing, the Commission noted existing and potential issues with traffic, drainage and stormwater in the vicinity. They also heard from neighbors, who mentioned potential impacts of future development.
6. The Noroton Heights DC zone is the secondary commercial retail area within Darien. The Commission believes that, in general, it should not equal or exceed the density or bulk of the CBD Zone. This can be assured through the limits on building coverage, building height, and developed site area that are already set forth in the Noroton Heights DC zone regulations and as proposed for the overlay zone. There are also physical differences between the CBD zone and the DC zone. The CBD zone is relatively flat; the Noroton Heights DC zone slopes downward from its northern edge on West Avenue to its center. The CBD zone allows for on-street parking, and contains municipal parking lots as well as railroad parking lots adjacent and near to its centrally located railroad station. The Noroton Heights DC zone does not include municipal parking lots, and the proposed overlay zone does not provide for on-street parking. The train station parking lot in Noroton Heights is not conducive to evening or weekend use by patrons of Noroton Heights businesses because it is across the street and to the south of the Noroton Heights commercial area on Heights Road. The topographic and parking differences between the CBD zone and the Noroton Heights DC zone are important factors to be considered in connection with establishing a new overlay zone.
7. The application consists of three separate but related regulation amendments: 1) creation of a new Section of the Darien Zoning Regulations establishing a new overlay zone for the Noroton

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Heights commercial area; 2) amendments of Section 905 “Joint Parking”; and 3) amendments of Section 907 “Parking Structures”.

8. The applicant specifically designed the overlay zone so that future development proposals using that overlay zone will require a Special Permit from the Planning & Zoning Commission. This gives the Planning and Zoning Commission more discretion when reviewing and acting upon a future application than when its role is solely one of site plan review. At the second public hearing, the applicants’ representative submitted a revised proposal, giving the Commission an alternative on some of the proposed area and bulk requirements.
9. Other information considered in this application includes various letters from the general public; a July 27, 2010 memo from Jeremy Ginsberg outlining the differences between the existing DC zoning and the proposed regulations; a memo from the Architectural Review Board (ARB) dated July 21, 2010; a June 8, 2010 e-mail outlining the comments from the Southwestern Regional Planning Agency (SWRPA) referrals committee; a June 30, 2010 memo from the Darien Public Works Department; and a June 11, 2010 e-mail from State of CT Department of Environmental Protection (DEP). The DEP e-mail noted that they have reviewed the proposal and found no inconsistencies with the Connecticut Coastal Management Act.
10. The Commission fully agrees with the ARB’s July 21, 2010 memo. In that memo, the ARB notes that “...Offering a re-development plan of mixed uses would certainly create a lively addition to Noroton Height[s]. The effect of any new development on those currently living on West Avenue must be deemed of highest importance. The architectural design must be thoughtful and sensitive to the residential character of West Avenue...” The Commission agrees with ARB that any Commercial Design Guidelines which are in place shall be used by applicants when considering development proposals in the Noroton Heights commercial area, and strongly encourages the early involvement of ARB in connection with any development or re-development project there.
11. The June 30, 2010 memo from DPW notes that the subject area is served by public sewer. It also notes that future redevelopment would have to comply with the Planning and Zoning Commission’s recently adopted zoning regulations regarding stormwater management. Because of the importance of stormwater management, the Commission has specifically included wording within the Background and Purposes section to mention that issue. All future redevelopment within this proposed zone or within the existing DC zone, will have to comply with the recently adopted Section 880 of the Zoning Regulations, entitled, Stormwater Management. This would include, but not be limited to, the preparation of a stormwater management plan and report along with hydrologic evaluation and the required certification and maintenance agreements.
12. The Commission believes that the Noroton Heights commercial area is appropriate for redevelopment and that any project proposed for the area must address traffic and drainage and pedestrian safety issues that are now notable in the area. The Commission believes that redevelopment is best reviewed comprehensively, rather than on a parcel-by-parcel basis. When formal redevelopment applications are submitted by property owners, the Commission will be concerned about the particular development and how it fits within the area. Similarly, any

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proposals will have to address stormwater management, since the Commission is likely to scrutinize that aspect closely.

13. At the public hearings, the Commission noted their sensitivity to all future redevelopment fitting in architecturally. Piecemeal redevelopment would not be as desirable as large, comprehensive redevelopment, which could then be coordinated from not only an architectural standpoint, but also relative to traffic, parking, infrastructure, and stormwater management.
14. Relative to the proposed area and bulk requirements, the Commission agrees that a zero side yard setback is appropriate, allowing for buildings to be closer relative to each other, likely resulting in a more pedestrian-friendly zone. Front yard setbacks will need to vary, depending on whether the property is adjacent to Heights Road or Edgerton Street (which are more commercial in nature), or West Avenue or Hollow Tree Ridge Road (which are adjacent to and/or across the street from residential properties). The area and bulk requirements will need to address these important differences. The Commission has herein reduced the minimum lot size to ½ acre, giving additional flexibility to smaller lots. The front landscape depth required will be six feet. The Commission believes that no building should be closer than six feet to the front property line in this zone, and that each building shall have at least a six foot front landscaped depth in front of it. “Model block”-style sidewalks shall be constructed along the road frontage for each development.
15. The proposed change in maximum building coverage would allow the existing 20% allowed per Section 636 in the DC Zone to be increased to up to 35% in the proposed overlay zone. The Commission finds this acceptable, and would allow more commercial development, while still having the maximum coverage be less than that allowed within the CBD Zone.
16. The Commission believes that the provision now in subsection 656e of the Zoning Regulations (within the CBD zone regulations) would be appropriate for this new overlay zone. This subsection allows building heights to be increased if additional open space is provided. Currently, there are no open space plazas within the Noroton Heights commercial area, while there are at least three in the CBD zone. New open space plazas would be necessary features for buildings exceeding two stories or 30 feet.
17. As noted above, the development sketches submitted with this application were hypothetical concept sketches only. No site plan or development is approved at this time. This resolution only addresses regulation and map changes which could lead to further development. The Commission notes that an applicant may request additional regulation changes in connection with a future development proposal to accommodate that development.
18. The proposed amendments to Section 905, Joint Parking, as proposed by the applicant, would limit the amount of parking that could be “shared” or “waived”. The Commission believes that this Section should continue to be administered on a case-by-case basis, giving the Commission full discretion over the tenants and how the parking is shared. So far, this provision has been successfully used in the CBD Zone--downtown Darien--where multiple tenants on adjacent parcels are able to share a joint parking lot. The Commission believes that it would be appropriate to modify Section 905 to reflect the fact that there is no on-street parking within the

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overlay district, and there are no municipal parking lots within the Noroton Heights commercial area. Thus, there is no capacity for “overflow” if the developed site does not provide sufficient parking. Therefore, a maximum waiver provision which would apply to this new zoning district would be appropriate under these circumstances. If circumstances change in the future, amendments to this section could be appropriate.

19. Section 907 is entitled, “Parking Structures”. There have been no projects approved by the Commission under this section since 1995. The Commission believes that modifications to this Section of the Regulations are consistent with the Town Plan of Conservation & Development. On Plan page A9-9, “*The general goal is for safe pedestrian access throughout the area, and a circulation system which encourages shopping in a variety of stores.*”
20. The Commission believes that a new overlay zone for the Noroton Heights commercial area is appropriate, and consistent with the Town Plan of Conservation & Development. Portions of the Town Plan of Conservation & Development which would apply were included in the applicant’s May 2010 Application Narrative and include the following:
- The policy on page 9-2 which reads as follows:
Continue the commitment to upgrading all of the commercial districts within Town, including, but not limited to, Noroton Heights and downtown Darien to better serve the needs of the Town.
- The recommendations on pages 9-4 and 9-5 which read as follows:
- *9. Encourage coordination between property owners/developers to minimize curb cuts, and encourage cohesive development in all commercial zones. Parcel assemblage is beneficial in downtown (the CBD Zone) and in Noroton Heights (the DC Zone) to meet these desires.*
 - *10. In large commercial districts, such as Noroton Heights and Downtown, one-stop shopping should be strongly encouraged. Shoppers should be encouraged to park once, and visit numerous businesses in the area.*
 - *15. In the Noroton Heights and downtown commercial areas (the DC and CBD Zones), the Planning & Zoning Commission should consider revising the Zoning Regulations to allow a full third floor especially if it would provide some form of housing, with the exception that such a third floor be set back off the road.*
21. This approval names the applicant’s proposed new overlay zone the “Noroton Heights Redevelopment Zone”. This will avoid any confusion with the MU Zone (municipal use zone) adopted by the Commission a few years ago. Also, by removing the term “mixed use”, it would no longer imply that any redevelopment must include mixed use, albeit such redevelopment can be expected to be viewed as a favored approach.
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NOW THEREFORE BE IT RESOLVED that ***Proposed Amendments of the Darien Zoning Regulations*** regarding a new item within subsection 311; a new Section 680 *et. seq.*; and amendments of Sections 905 of the Darien Zoning Regulations are hereby MODIFIED AND ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, OCTOBER 24, 2010 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 these Sections is as follows:

New wording in bold, deletions in strikeout:

Modify Section 311, and insert the following in the list of zoning districts after MU Municipal Use Zone (Floating Zone):

NHR Noroton Heights Redevelopment Zone (Overlay Zone).

Insert a new Section 680 as follows:

SECTION 680. NOROTON HEIGHTS REDEVELOPMENT ZONE (NHR)

681. Background and Purposes

The Noroton Heights Redevelopment Zone is an overlay zone intended to maintain the existing retail foundation of the Noroton Heights commercial district while encouraging the development of business and professional offices and dwelling units, including affordable units, in recognition of the zone's proximity to mass transit and Interstate 95. Business and professional offices will also be permitted. These regulations are intended to encourage development that promotes safe pedestrian access to businesses by residents within the zone and from adjacent residential neighborhoods. At the sole discretion of the Commission, increased building height may be permitted to encourage the use of architectural design features such as peaked roofs and dormers to soften the appearance from adjacent residential properties. The intent is to strengthen the viability of retail business in the Noroton Heights commercial district, to offer a broader range of housing and office space with convenient access to transportation, to foster pedestrian activity as fully as is practicable, and to reduce reliance on individual motor vehicles to access the retail businesses.

All uses within this zone are Special Permit uses. It is imperative to properly manage and enhance stormwater management in this zone. No development or redevelopment will be permitted if it will result in stormwater impacts on adjacent properties or adjacent streets. Any development or redevelopment must address drainage, traffic and pedestrian safety issues in the area.

682. Permitted Principal Uses

The following uses shall be permitted subject to approval of a Zoning Permit in accordance with Subsection 1102:

None.

683. Permitted Accessory Uses

The following accessory uses shall be permitted subject to approval of a Zoning Permit in accordance with Subsection 1102:

- a. Signs, as permitted in Section 920.
- b. Any building or use customarily incidental to a permitted use.
- c. Off-street parking and loading facilities in accordance with Section 900.

684. Principal Uses Requiring Special Permits

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

- a. Commercial sales and services.
- b. Business and professional offices.
- c. Public and semi-public uses.
- d. Protected Town Landmarks.
- e. Restaurants.
- f. The sale of prepared foods whether intended for consumption on or off the premises.
- g. Dwelling units.
- h. Indoor recreation facilities.
- i. Financial services on the first floor

685. Area and Bulk Requirements

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

1. Minimum Lot Area	1/2 acre
2. Minimum Lot Width	150
3. Minimum Lot Frontage	150
4. Minimum Lot Depth	150

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5. Minimum Front Yard	6 (See Note a)
6. Minimum Side Yard	None (See Note b)
7. Minimum Rear Yard	25
8. Maximum Height in Stories	2 (See Note c)
9. Maximum Height in Feet	30 (See Note c)
10. Maximum Building Coverage	35%
11. Minimum Front Landscape Depth.	6
12. Maximum Developed Site Area	80%
13. Maximum Density Dwelling Units/Gross Acre	12
14. Maximum Floor Area of each Dwelling Unit	1,200 sq. ft.

Notes:

- a. Minimum front yard of 6 feet required, except that within 100 feet of a Residential Zone, the front yard setback shall be at least one-half that required in that Residential Zone. No parking shall be permitted in front of any building unless the setback from the street line shall be at least 75 feet.**
- b. None, except as follows:**
 - (1) If a side yard shall be provided, it shall be at least four feet, except where access to parking space shall be provided through a side yard, in which case the side yard shall be at least 25 feet in width. Where access shall be provided jointly by two adjoining properties, the side yard may be reduced by 12 1/2 feet for each of the properties, provided the full 25 feet wide access shall be assured;**
 - (2) Where a side yard abuts a Residential Zone, it shall equal the side yard requirement of said abutting Residential Zone.**
- c. The maximum building height shall be two stories and 30 feet, except that the Commission may specifically permit height to be increased to a maximum of three stories and 42 feet, provided that:**
 - (1) The Commission finds that the unique use and design of the building combined with its location in the zone, the topography of that location, and**

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the development plan for the building, will result in a project that will be appropriate for the community, and will not be detrimental to the reasonable use and values of adjacent properties. Where the zone abuts a Residential Zone the maximum building height shall be 2 stories and 30 feet as calculated from the average finished grade of the elevation abutting the residential zone. One level of underground parking shall not constitute a story.

(2) If an applicant proposes a building that is higher than two stories or 30 feet, such applicant will be required to provide open space per the provisions outlined within Section 656e of the Zoning Regulations.

686. Special Controls

- a. At-grade parking areas may extend to within 10 feet of a rear lot line except where it abuts a Residential Zone, in which case the minimum rear yard requirement set forth in Section 685 shall apply.**
- b. Landscaping, screening and buffer areas shall be provided in accordance with Section 940.**
- c. All uses shall be subject to Site Plan Approval in accordance with Section 1020.**
- d. Display or storage of materials shall be in accordance with Subsection 373.**
- e. If more than 2 dwelling units are provided in any building, then at least 30 percent of the total number of such dwelling units shall be limited to one bedroom.**
- f. Structured parking per Section 907.**

Modify Section 905 by adding a sentence to the end of section 905, and inserting a new subsection 905.1:

905. Joint Parking

Where two or more different uses occur on a single lot, the total amount of parking facilities to be provided shall be the sum of the requirements for each individual use on the lot, except that the Commission may approve the joint use of parking space by two or more establishments on the same or on contiguous lots, the total capacity of which space shall be less than the sum of the spaces required for each, provided:

- a. The Commission finds that the proposed capacity shall meet the intent of the requirements;**

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- b. Approval of such joint use shall be automatically terminated upon the termination of the operation of any of such establishments;
- c. Legal documentation shall be furnished establishing such rights for the duration of such joint use.

Such shared parking arrangements shall be limited to use and shall not include shared parking by time. **No parking spaces shall be reserved for any specific building tenant.**

905.1 Due to the lack of municipal parking or on-street parking within the Noroton Heights Redevelopment Overlay Zone, the Commission there may waive only up to a maximum of fifty percent (50%) of the parking required per Section 904.

Modify Section 907 as follows:

907. Parking Structures

Parking structures (whether above or below ground; **or understructure**) ~~whether detached or attached) shall not be permitted; however, one level of basement, underground or understructure parking shall be encouraged in appropriate situations as a substitute for surface parking and to allow the area normally occupied by surface parking to remain undisturbed or to provide open space, landscaping and similar amenities. Such subgrade or understructure parking shall be provided in lieu of required surface facilities, and not in addition thereto. The provisions of subgrade or understructure parking shall not be permitted if its use shall result in a larger above-ground structure or intensification in use of the site to an above-ground floor area exceeding that permitted by these regulations.~~ **shall be permitted in appropriate situations subject to approval of a Special Permit per Section 1000 et. seq., provided it is located below the finished elevation of surface parking or landscaped areas, or provided that the Commission makes an affirmative finding that, due to the location and/or design of the proposed use, no neighboring property will be adversely impacted by such structure. Any such parking structure shall be fully enclosed by or attached to a principal structure, and shall be limited to one story above the finished elevation of surface parking.** In addition, appropriate measures shall be taken to minimize the street level view of such **above ground, below ground,** subgrade or understructure parking. The Commission ~~may~~ **shall** require the submission of a sketch plan which shall clearly ~~illustrate the relationship between the alternative proposals for either surface or understructure parking.~~ **compares alternative proposals for surface parking and a parking structure including landscaping or other screening. Any parking structure approved under this section shall be subject to the setback requirements of the principal structure. The design of any parking structure must architecturally blend in with surrounding design aspects and not delineate itself as a parking structure.**

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Proposed Amendment to the Zoning Map

22. The Commission believes that a new overlay zone for the Noroton Heights commercial area is appropriate, and fully consistent with the 2006 Town Plan of Conservation & Development, as amended. Portions of the Town Plan of Conservation & Development which would apply were included in the applicant's May 2010 Application Narrative and include the following:

The policy on page 9-2 which reads as follows:

Continue the commitment to upgrading all of the commercial districts within Town, including, but not limited to, Noroton Heights and downtown Darien to better serve the needs of the Town.

The recommendations on pages 9-4 and 9-5 which read as follows:

- *9. Encourage coordination between property owners/developers to minimize curb cuts, and encourage cohesive development in all commercial zones. Parcel assemblage is beneficial in downtown (the CBD Zone) and in Noroton Heights (the DC Zone) to meet these desires.*
- *10. In large commercial districts, such as Noroton Heights and Downtown, one-stop shopping should be strongly encouraged. Shoppers should be encouraged to park once, and visit numerous businesses in the area.*
- *15. In the Noroton Heights and downtown commercial areas (the DC and CBD Zones), the Planning & Zoning Commission should consider revising the Zoning Regulations to allow a full third floor especially if it would provide some form of housing, with the exception that such a third floor be set back off the road.*

NOW THEREFORE BE IT RESOLVED that ***Proposed Amendment of the Darien Zoning Map*** is hereby ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, OCTOBER 24, 2010 AT TWELVE NOON.

The proposed map change is shown below, with the area shown as "Proposed NHMU Zone" outlined in gold, being the area the Commission is adopting as the newly established Noroton Heights Redevelopment Zone. Note that the title of the map should read, Noroton Heights Redevelopment Zone, not Noroton Heights Mixed Use Zone (NHMU).

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