

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
February 9, 2016

Application Number: Proposed Amendments to the Darien Zoning Regulations (COZR #2-2015)
put forth by the Darien Planning & Zoning Commission

Name and Address of Applicant: Planning & Zoning Commission

Activity Being Applied For: Proposing fourteen amendments to the Darien Zoning Regulations as follows: Defining Building Coverage; Modifying how side lot lines are defined; Modify Section 230 to allow Monument Signs and to allow such signs in certain non-residential zones; Modify Section 334 and 385 regarding building lots which have at least 50% of the required Lot Width and Depth; Modify Section 371—Height of Buildings or Structures (clarify Building Height relative to cupolas and mechanical equipment.); clarify Section 384; Modify Section 406 #7—Eliminate the Total of Two side yards requirement; Modify Section 406f regarding detached accessory structures, to not allow finished space in detached accessory structures which do not meet the principal setbacks; Modify Section 575 Area and Bulk Requirements DCR Zone; Modify Inclusionary Zoning Regulations (Sections 583, 588a through 588e); Modify Section 572 to refer to the DMR Zone, when it should refer to the DCR Zone; Modify Section 577 to reference signs allowed in the DCR zone; Modify Section 625 Item 15 to be Maximum Average Floor Area of All Dwelling Units; and Modify Section 873 to reflect updated report name and date.

Date of Public Hearings: September 29, 2015 immediately continued to October 20, 2015
then continued to November 10, 2015

Deliberations held on: November 24, 2015

Time and Place: 8:00 P.M. Room 206 (9/29 and 11/10) Room119 (10/20) Town Hall

Publication of Hearing Notices

Dates: September 18 & 25, 2015

October 30 & November 6, 2015

Newspaper: Darien News

Date of Action: February 9, 2016

**ADOPTED WITH MODIFICATIONS WITH
AN EFFECTIVE DATE OF SUNDAY,
FEBRUARY 28, 2016 AT TWELVE NOON**

Scheduled Date of Publication of Action:
February 19, 2016

Newspaper: Darien News

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

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

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

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- A. The subject application to amend the Zoning Regulations was outlined in a seventeen page August 14, 2015 memo from Planning & Zoning Director Jeremy Ginsberg, which described the fourteen proposed Zoning Regulation amendments put forth by the Planning and Zoning Commission. These are:
1. *Modify Sections 210 and 223—Definition of Building Coverage*
 2. *Modify Section 210—Definition of Lot Line, Side*
 3. *Modify Section 230 to allow Monument Signs and Modify Sections 925.1 and 926.3 to allow such signs in certain non-residential zones.*
 4. *Modify Section 334 and 385 to eliminate the need for Lot Width variances to redevelop on building lots which do not have sufficient Lot Width.*
 5. *Modify Section 371—Height of Buildings or Structures (Building Height relative to cupolas and mechanical equipment.)*
 6. *Modify Section 384—Non Conformity, Other Than Use.*
 7. *Modify Section 406 #7—Eliminate the Total of Two side yards requirement which now affects the R-1/3 and R-1/5 Zones.*
 8. *Modify Section 406f regarding detached accessory structures.*
 9. *Modify Section 575 Area and Bulk Requirements DCR Zone to clarify what counts towards floor area.*
 10. *Modify Inclusionary Zoning Regulations (Sections 583, 588a through 588e) to require that all below market rate units be changed to be affordable to those with an income equal to or less than 80% of State Median Income (SMI). Include updated SMI data and calculations.*
 11. *Modify Section 572 to refer to the DMR Zone, when it should refer to the DCR Zone.*
 12. *Modify Section 577 to reference signs allowed in the DCR zone.*
 13. *Modify Section 625 Item 15 to be Maximum Average Floor Area of All Dwelling Units.*
 14. *Modify Section 873. Eligibility for Certification to reflect updated report name and date.*
- B. A follow-up memo dated October 30, 2015 from Planning & Zoning Director Jeremy Ginsberg was submitted for the record, further reviewing amendment #7 relative to “Total of Two Side Yards”, and offering a revised proposal.
- C. This subject zoning regulation amendment application was referred to the Western Connecticut Council of Government (which replaced the South Western Regional Planning Agency – SWRPA) and they found that the proposal is of local concern, but with minimal intermunicipal impact, as noted in an August 31, 2015 email from Jonathan Chew of WestCOG.
- D. Many of the concepts and amendments put forth are as a result of a memo from the Zoning Board of Appeals (ZBA) dated February 6, 2013. This 2013 memo outlined nineteen suggested changes from the ZBA. Seven of these suggestions have previously been adopted by the Commission about a year and a half ago, and the subject amendments could address six others. The proposed amendments range from minor typographical corrections to changing of long-time established setbacks in the R-1/3 and R-1/5 zoning districts.

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E. Overall, the fourteen zoning regulation amendments proposed are to address items in the ZBA memo, clarify long-time Department policies, and correct improper and incorrect references now in the Regulations.

F. As part of the record in this matter, written comments have been received from professionals in different fields. They are from: architect Jacek Bigosinski; realtor David Hawes; surveyor Mark Lebow and others from the firm of William W. Seymour & Associates; engineer Joe Canas; and former Commission member Reese Hutchison. In addition, a member of the ZBA spoke at one of the public hearings.

1. *Modify Sections 210 and 223—Definition of Building Coverage*

The first proposed regulation amendment is to modify the definition of Building Coverage, and its associated figure in Section 223. The overall goal of this amendment is to better clarify whether certain items count towards Building Coverage. This amendment would exempt air conditioning units if the total square footage of all HVAC units, generators, and above ground propane tanks, does not exceed twenty square feet. Currently all of these items count towards Building Coverage. Section 223 will be revised to reflect whatever determination the Commission makes in the definition of Building Coverage in Section 210. The amendment also addresses the issue of elevated patios. The new definition will now count patios higher than four feet above grade (which are sometimes referred to as raised terraces) towards Building Coverage.

2. *Modify Section 210—Definition of Lot Line, Side*

The second amendment is a change in the definition of Lot Line, Side, in Section 210 of the Regulations. The existing definition of side lot line requires that one end of a Side Lot Line touch a front lot line. As described at the public hearing, in some extreme cases, the definition actually “punishes” a property owner for having extra property, and in fact, the property owner would be better off from a setback standpoint to not own some property. Very small change in angles of lot lines have resulted in staff interpretations regarding when a side lot line turns into a rear lot line. This change in the definition of Lot Line, Side will clarify existing Department policy. The amendment is to specifically note that a change of direction of 60 degrees or more from the original bearing for a length of 30 feet or more shall change a side lot line to a rear lot line.

3. *Modify Section 230 to allow Monument Signs and Modify Sections 925.1 and 926.3 to allow such signs in certain non-residential zones.*

The third amendment is to allow monument signs in certain non-residential zones. In recent years, the ZBA has approved a number of monument signs in Darien, including those at Maplewood, 745 Boston Post Road, Darien Green, 17 Old King’s Highway South, and Land Rover. Some of those are in the OB and SB-E zones, but not all of them. Commission members noted that these signs appear to be functional, and also look good. They agreed that not all zones should allow for monument signs. The Commission believes that it is logical therefore, to describe/define such a sign in Section 230 (the figure entitled, “Types of Signs”), and specifically allow them in the OB, DOR-1, DOR-5, SB, and SB-E zones.

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4. *Modify Section 334 and 385 to eliminate the need for Lot Width variances to redevelop on building lots which do not have sufficient Lot Width.*

The fourth amendment relates to Lot Width and Lot Depth. In recent years, the ZBA has had to address replacement houses on lots which do not have sufficient lot width. At the public hearing on this application, Commission members asked whether the proposed 50% number was appropriate. The Commission also wanted to ensure that no new non-conforming lots are being created.

One suggestion during the public hearing was to have the percentage change from the proposed 50% to 75%. Commission members seemed amenable to the 75%. This will allow for replacement house proposals that meet all setback, parking and other limitations to no longer require a variance, if they have at least 75% of the required width and depth. This amendment modifies Section 385 to establish a procedure for the Zoning Enforcement Officer (ZEO) to determine the legality of non-conforming building lots (width, depth, area, merger).

5. *Modify Section 371—Height of Buildings or Structures (Building Height relative to cupolas and mechanical equipment.)*

The fifth proposed zoning regulation amendment addresses Height of Buildings or Structures—including, but not limited to, the issue of cupolas which extend beyond the existing thirty (30) foot height maximum.

This amendment attempts to address a number of issues. First, it clearly specifies that mechanical units on the roofs of buildings would not count towards building height if they are screened from view. At the public hearing, it was noted that generators on roofs could be a concern on small lots. There is a difference between commercial properties, which traditionally have mechanical equipment on the roof, and residential properties, which almost never do. Commission members agree that this change is appropriate.

Second, the amendment also tries to address how cupolas are treated, including how much of the roof area can be covered by a cupola. The existing policy is that a 4' x 4' x 4' cupola is exempt from the regulations and is considered the height necessary to accomplish the purpose. Mr. Ginsberg said that the ZBA has addressed twelve cupola requests within the past twelve years. The proposed standard was suggested by former Planning & Zoning Commission member Reese Hutchison, who may have obtained it off a manufacturers' web site. Mrs. Cameron said she is more concerned about the height of the cupola than the width. Commission members acknowledged that the 4' default practice doesn't appear to fit properly with every house design. The goal is to define a maximum height ignoring any weathervane/spire type projections. The maximum width should be proportional to the ridge length the cupola sits on. It was noted that the existing Department policy (4' x 4' x 4') will remain in effect if the proposed amendment regarding cupolas is not adopted. After some discussion, the Commission was not in favor of changing the standard for cupolas, and thus, that aspect of the proposal is not adopted.

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6. *Modify Section 384—Non Conformity, Other Than Use.*

The sixth proposed zoning regulation amendment codifies long-time Department policy regarding non-conformities. The Planning and Zoning Commission hereby adopts this amendment as proposed.

7. *Modify Section 406 #7—Eliminate the Total of Two side yards requirement which now affects the R-1/3 and R-1/5 Zones.*

The seventh amendment is to modify Section 406 by eliminating the existing "Total of Two Side Yard" requirement. This "total of two side yards" is very difficult to administer and hard to explain to owners and their representatives. This amendment would only affect the R-1/3 and R-1/5 zones, as all other zoning districts have the same side yard setback for both sides. At the public hearing, Mr. Ginsberg showed on a number of surveys how this regulation is currently interpreted, and how it "punishes" homeowners who have non-conforming residences that are too close to one side lot line, by creating an extra large setback on the other side. Commission members noted that this could result in wide houses in small lot zones, which could create the appearance of over-building on those lots. This amendment will allow an addition to be constructed without a variance if all of the new volume conforms to applicable setback and other limitations. It will eliminate the current "penalty" practice and simplify the application of the total side yard setback requirement in the R-1/3 and R-1/5 zones.

Mr. Ginsberg's October 30, 2015 memo offered one way to modify this section of the Regulations. That amendment would eliminate the Total of Two Side Yard requirement entirely. He explained that this is a common ZBA variance request in the R-1/3 and R-1/5 zones. It does not affect other zoning districts. He then showed an example from Brookside Drive, where the applicant had a non-conforming situation with a two foot setback on one side. Mr. Ginsberg said that one other way to address this issue would be to specifically note in the regulations that if all new construction complies with existing setbacks, that a Total of Two Side Yard provision would no longer apply.

At the public hearing, Mr. Mark Lebow, a surveyor from William W. Seymour & Associates, said that most communities do not treat the Total of Two Side Yards the same way that Darien does—most communities do not require a property owner to make up the deficiency. He mentioned that the existing regulation is very complex to explain. He said that this is applied uniquely in Darien.

The Commission has decided to address this Total of Two Side Yards issue by requiring that all NEW construction comply with the setbacks without regard to existing development or structures on the site. This would ignore any existing conditions. This will require simply keeping Item #7 in the chart in Section 406 and adding a new Note j. Commission members agree that this would be an appropriate solution to this matter.

8. *Modify Section 406f regarding detached accessory structures.*

The eighth amendment addresses detached accessory structures. The existing long-time regulation allows small one-story structures very close to the property line. In recent years, a

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number of proposals have been made to finish such space, which could result in potential impacts to neighboring properties. It was agreed that large detached accessory structures can have a negative impact on neighborhoods. The proposed amendments clarify how to measure the height of such structures, and give a maximum height to the ridge. It also notes that detached accessory structures which do not meet the principal setbacks cannot contain finished space.

9. *Modify Section 575 Area and Bulk Requirements DCR Zone to clarify what counts towards floor area.*

The ninth amendment, to modify Section 575, codifies a June 23, 2015 Commission determination regarding Kensett, and how to treat the square footage of finished floor area in the basement. At that June 2015 meeting, the Commission agreed that the wording in the DCR zone requirements needs to clarify that portions of finished basements do not count toward the floor area of the dwelling units. The amendment is to add a Note to the Area and Bulk Requirements of the DCR zone, clarifying the Commission's policy.

10. *Modify Inclusionary Zoning Regulations (Sections 583, 588a through 588e) to require that all below market rate units be changed to be affordable to those with an income equal to or less than 80% of State Median Income (SMI). Include updated SMI data and calculations.*

The tenth amendment was relative to the Inclusionary Zoning Regulations in Section 580. Mr. Ginsberg explained that this Section of the Regulations was originally adopted in 2009, and has been tweaked a few times through the years. The amendment is to no longer require a 110% of Area Median Income (AMI) unit, but rather, require all inclusionary units tied to 80% of State Median Income (SMI). Mr. Ginsberg noted that 110% of Area Median Income is \$137,610 and 80% of State Median Income is \$69,520. It was also noted that an 80% of SMI unit would get 1 or 1.5 points towards an 8-30-g moratorium, while a 110% of AMI unit would not qualify. A 110% of AMI unit would not get any consideration toward the Town's 10% count, as considered by the State of CT, and in fact, would push the Town further behind that number, even though such a unit it is deed-restricted by income.

The proposed amendment also updates out-of-date numbers used in the calculations. It was suggested that the numbers be included in a new Appendix to the Regulations, in order to improve readability of this section of the regulations. The change in the Regulations will change the maximum income standard, creating units which are affordable to lower incomes, and allow the Town to gain moratorium points for these units. The change will also include updated SMI figures. It was agreed that using 80% of SMI, rather than 110% of AMI was appropriate, and that relative to Item #10, Mr. Ginsberg would be creating a new Appendix E to the Zoning Regulations to remove some of the detailed calculations out of Section 580, to make the regulations more readable.

11. *Modify Section 572 to refer to the DMR Zone, when it should refer to the DCR Zone.*

12. *Modify Section 577 to reference signs allowed in the DCR zone.*

13. *Modify Section 625 Item 15 to be Maximum Average Floor Area of All Dwelling Units.*

14. *Modify Section 873. Eligibility for Certification to reflect updated report name and date.*

Amendments 11, 12, and 13 are essentially typographical corrections, and amendment 14 is to properly reflect the correct, updated document in the Regulations. At the public hearing,

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Commission members had no comments on amendments 11, 12, 13, and 14. Amendment #12 clarifies that signs allowed in the DCR zone are those allowed in the DBR and all other Residential Zones. Amendment #13 corrects a typographical error in the DB-2 zoning table. Amendment #14 updates a reference to a document.

CONSISTENCY WITH 2006 TOWN PLAN OF CONSERVATION & DEVELOPMENT

1. Under the State Statutes, the Commission is required to make a finding on any adopted zoning regulation amendment that it is consistent with the Town Plan of Conservation & Development. The existing Town Plan does not have anything right on point for many of these proposed amendments. One recommendation is on page 6-3 of the Town Plan, which reads as follows: "Continue to evaluate and consider amending the existing building coverage and height restrictions to maintain the character of the community."
2. 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. The inside cover sheet, Table of Contents and Appendix B of the Regulations will be amended accordingly to reflect these changes. As noted above, relative to amendment #10, a new Appendix E will be created entitled, "Calculations regarding Inclusionary Zoning".

NOW THEREFORE BE IT RESOLVED that the **Amendments to the Darien Zoning Regulations (COZR #2-2015)**, are hereby **ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, FEBRUARY 28, 2016 AT TWELVE NOON.**

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NEW WORDING UNDERLINED, DELETIONS IN STRIKEOUT

1. *Modify Sections 210 and 223 of the Regulations (Definition of Building Coverage).*

Building Coverage: The combined percentage of the land covered by the roof area or outside dimensions of all structures on the lot including eaves and other similar projections. Building Coverage shall include: dwellings; garages; storage/accessory buildings; commercial buildings; porches; decks; covered courtyards and walkways; pools; tennis and other recreational courts; and other structures that are located on or above the ground. Patios, steps, stoops and similar structures, any portion of which is more than 4 (four) feet above any of the adjacent ground level, shall be included in the calculation of Building Coverage. (See Subsection 223 for illustration). ~~For pervious tennis courts and other pervious recreational courts located on lots in a commercial zone or on a residential lot with a Special Permit use thereon, only the largest such court shall count in Building Coverage.~~

The following shall not count towards Building Coverage:

- The first six inches (6") of building eave, and up to a total of twenty (20) square feet for overhangs for stairs, stair landings, and stoops ~~do not count toward Building Coverage.~~
- Driveways, uncovered walks, patios, terraces and other at grade surfaces that do not require a Building Permit, shall not be included in building coverage, but
- Provided they each are less than nine (9) square feet each; and provided the total of such features does not exceed a maximum total of twenty (20) square feet – above ground mechanical HVAC, pool equipment, generator equipment, fuel tanks, and covers over basement access stairs or window wells.
- For pervious tennis courts and other pervious recreational courts located on lots in a commercial zone or on a residential lot with a Special Permit use thereon, only the largest such court shall count in Building Coverage.

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Section 223. Building Coverage (figure)

(Update figure to reflect revised definition and make reference to the definition in Section 210.)

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2. *Modify the definition of Lot Line, Side in Section 210 of the Regulations.*

Lot Line, Side: Boundary line which separates two lots and one end of which intersects a front lot line. A change of direction of 60 degrees or more ~~for a length of 30 feet or more~~ from the original bearing at the street line shall change a side lot line to a rear lot line. In situations where a side lot line starts at the street as a turning radius or in situations where there is a total deflection of greater than 60 degrees for a total length of 30 feet or less of the side line, then the boundary shall remain a side lot.

3. *Add monument style signs as a possible sign type in Section 230 of the Regulations, and allow them in the OB, DOR-1 and DOR-5, and SB and SB-E Zones.*
(the existing subsection 925.1 and 926.3 headings are now underlined and will remain underlined)

925.1. Ground and Monument Signs (See Subsection 230 for illustration.)

- a. The maximum total square footage of a ground or monument sign shall not exceed 20 square feet.
- b. The maximum height of a ground or monument sign shall not exceed four feet.
- c. No letter or figure on a ground or monument sign shall be higher than four inches.
- d. Multiple occupancy buildings may have one combined ground or monument sign listing all occupants.

926.3. Ground and Monument Signs (See Subsection 230 for illustration.)

One ground sign or monument sign may be permitted in lieu of one pole sign. All ground or monument signs shall comply with the requirements of Subsection 925.1(a-d) and shall be subject to the same setback requirements as pole signs.

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Add new figure to Section 230 (Types of Signs) to reflect a monument sign.
(existing figure showing various signs to now include a monument sign).

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4. *Modify Section 334 and 385 to eliminate the need for Lot Width variances to redevelop on building lots which do not have sufficient Lot Width.*

334. Lot Width and Depth Required

Within any zone, no part of any building or any structure housing a principal use shall be erected on any part of a lot which has a minimum width or depth of less than the distance specified for the zone in which located. Further, such lot shall be able to fully enclose a square having a dimension on each side equal to the lot width requirement for that zone.

On existing non-conforming lots where there is no portion of the lot with sufficient lot width and/or lot depth ~~is not sufficient~~ to fulfill these requirements, the following shall apply:

- a. Construction of a new principal building on a vacant building lot shall be permitted only in accordance with Subsection 385; and
- b. The lot width and/or lot depth requirement shall not apply to the construction of a replacement dwelling or to an addition to an existing structure provided the actual lot width and actual lot depth shall equal at least 50/75 percent of ~~the required lot width that~~ which is required.

385. Building on Non-conforming Lots

A permit may be issued for the erection of a building on any building lot, recorded in the Darien Land Records, that was made non-conforming with respect to area, frontage, lot depth and/or lot width requirements, by the adoption of, or any amendment to, these Regulations or the Zoning Map, provided the Zoning Enforcement Officer makes a written finding that:

- (a) The owner of any such lot did not own sufficient adjoining land at the time of the adoption of said Regulations (September 24, 1954) or said amendments to conform therewith, or more nearly therewith, and
- (b) All yard and open space requirements of the Regulations are met, and
- (c) Adequate provision is made for protecting the general health, safety, and welfare and providing adequate access, drainage facilities, and protection of the nearby properties, and
- (d) The lot has not been used in conjunction with adjacent property to the extent that its identity has merged with adjacent property in the same ownership. Uses or activities

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that may cause the identity of a lot to be merged with adjacent properties include, but are not limited to the following:

1. allowing two or more parcels to be assessed as one building lot, or
2. construction of a structure crossing the property line, or
3. location of an accessory structure (tool shed, pool, garage, etc.) on the lot, or
4. having utilities and/or services (electrical, telephone, sewer, water, septic system, etc.) on or crossing the lot without having an easement or documented distinction between the parcel being serviced and the lot in question, or
5. having a driveway, parking area, accessway or similar facility on or crossing the lot without having an easement or documented distinction between the parcel being serviced and the lot in question, or
6. planting and/or maintaining a garden, lawn, row of planted trees or shrubs, fence, or similar improvement(s) on or encompassing the lot or portion of the lot, or
7. other actions of the lot owner that indicate that they have treated the lot as a portion of the adjoining property.

When the owner of two or more adjacent non-conforming lots abandons the separate, non-conforming status of the lots by failing to comply with any of the above standards, the non-conforming lots shall be eliminated and the parcels shall, for purposes of these Regulations, be considered merged into one or more conforming lots or a single more nearly conforming lot. This shall apply even if one or more of the non-conforming lots has been developed. Once considered merged the lots may not be sold, conveyed, altered, or otherwise used as separate lots.

5. *Modify Section 371 Height of Buildings or Structures.*

371. Height of Buildings or Structures

The height limitations of these Regulations shall not apply to church spires, ~~belfries~~, belfries, flagpoles, cupolas ~~and domes~~ not used for human occupancy; ~~or to~~ chimneys, ventilators, solar panels, skylights, water tanks, ~~bulkheads, non-commercial transmitting or receiving antennas, or similar features, and~~ mechanical equipment or similar features not intended for human occupancy. ~~N~~Necessary mechanical appurtenances usually carried above the roof level may exceed the height limitation provided they shall be adequately screened from view from nearby streets. All ~~S~~such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are intended to serve, and the total area covered by such features shall not exceed 15% of the roof area or the area actually needed, whichever is less.

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NEW WORDING UNDERLINED, DELETIONS IN STRIKEOUT

6. *Modify Section 384—Non Conformity, Other Than Use.*

384. Non-Conformity, Other Than Use

A building that is conforming in use, but does not conform to the height, setback, yard, land coverage or parking requirements of these Regulations shall not be considered to be non-conforming within the meaning of Subsection 383 (nonconforming use). Any and all additions to the building must comply with all current requirements of the zone in which the site is located. No permit shall be issued that shall result in the increase of any non-conformity in height, setback, yard space, land coverage or parking without an appropriate variance from the Zoning Board of Appeals. No intensification of use nor increase of the amount of building vertically, horizontally or otherwise, shall be based on the existing noncomplying or nonconforming aspects of the structure.

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7. ***Modify Section 406 by eliminating the “Total of two side yard” requirements, which impact the R-1/3 and R-1/5 Zones. All items in the chart shall be renumbered accordingly.***

406. Area and Bulk Requirements

The requirements listed for each zone as designated shall be deemed to be the minimum or maximum requirements in every instance of their application. Dimensions are in feet unless otherwise indicated.

	<u>R-2</u>	<u>R-1</u>	<u>R-1/2</u>	<u>R-1/3</u>	<u>R-1/5</u>
1. Minimum Lot Area (Square Feet) (See notes e, g)	87,120	43,560	21,780	14,520	8,712
2. Minimum Width (See notes a, b, e)	200	150	100	80	60
3. Minimum Frontage (See notes a, e, h, i)	75	50	50	50	50
4. Minimum Depth (See notes a, e)	200	150	100	100	100
5. Minimum Front Yard (See notes a, b, c, d)	50	40	40	30	25
6. Minimum Side Yard: Each One	35	25	15	10	8
7. Minimum Side Yard: Total of Two (See notes b, e, j)	70	50	30	25	20
8. Minimum Rear Yard (See note b)	50	40	25	25	25
9. Accessory Structures (See note f)	50	40	40	30	25
9A. Minimum Distance from Front Lot Line					
9B. Minimum Distance from Side Lot Line	35	25	10	5	5
9C. Minimum Distance from Rear Lot Line	50	40	10	5	5
10. Maximum Height in Stories	2-1/2 (All Residential Zones)				
11. Maximum Height in Feet	30 All Residential Zones)				
12. Maximum Building Coverage	20% (All Residential Zones)				

j. All new construction shall comply with minimum side yard setbacks without regard to existing development or structures on the site.

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8. Modify Section 406f regarding detached accessory structures. This will clarify how the height of the structure is measured, and give a maximum height to the ridge of such a structure. Also notes that there shall be no finished space in such detached accessory structures.

f. Detached accessory structures within five feet of a principal structure, and/or over 15 feet tall at any point, and/or over one floor/story in height, shall observe the same setbacks as for main buildings. Such detached accessory structures that do not comply with the setbacks for principal use or structure shall be for parking and/or storage only and shall not contain any finished or habitable space for occupancy.

9. Modify Section 575. Area and Bulk Requirements DCR Zone to clarify what counts towards floor area.

575. Area and Bulk Requirements

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

Minimum Lot Area	10 acres
Minimum Lot Frontage	200
Minimum Lot Width (Average)	200
Minimum Lot Depth (Average)	200
Minimum Front Yard	50
Minimum Side Yard	25
Minimum Rear Yard	25
Maximum Height	2 ½ stories or 28 feet
Maximum Building Coverage	20%
Average Floor Area of Dwelling Units (see Note 1)	3,900 sq. ft.
Maximum Dwelling Units/Building	4
Maximum Average Building Size	16,000 sq. ft.

Note 1: Portions of finished basements do not count toward the floor area of the dwelling units unless the basement is a ‘story’ as defined by these regulations.

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10. Modify Inclusionary Zoning Regulations (Sections 583, 588a through 588e) to require that all below market rate units be changed to be affordable to those with an income equal to or less than 80% of State Median Income (SMI). Create a new Appendix E. (NOTE THAT IN THIS SPECIFIC CASE, ALTHOUGH NEW WORDING IS SHOWN UNDERLINED, THE TITLE OF THE SECTION WILL REMAIN UNDERLINED)

583. Affordable ~~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~~ affordable housing as defined by Connecticut General Statutes. 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 ~~below market rate~~ as affordable housing as defined by Connecticut General Statutes. All other single family subdivisions are exempt from the requirements of this regulation.

The ~~below market rate~~ affordable housing requirement shall be satisfied by: providing affordable housing ~~below market rate~~ dwelling units on the subject property; providing ~~below market rate~~ affordable housing 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~~ All affordable housing units shall be affordable to households with an income equal to or less than 80 percent of the State Median Income (SMI) 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.

588. Additional Standards

a. On-Site: Affordable ~~Below market rate~~ dwelling units shall be reasonably dispersed throughout the development and shall contain, on average, the same number of bedrooms

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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. Examples of how to calculate the number of units required are shown in Appendix E of the Zoning Regulations.

(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: $50\% \times 1.08 = .54$.~~

~~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:~~

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

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

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

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- c. Phasing: Affordable ~~Below market rate dwelling~~ units shall be developed simultaneously with or prior to the development of the other units on a pro rata basis.
- d. Deed Restrictions: In order to maintain affordable ~~below market rate~~ dwelling units for at least forty years or the life of the unit, whichever is longer, the following restrictions shall apply:
- (1) Affordable ~~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 or the sum of the original purchase price and the cost of any documented fixed improvements made by the owner, whichever is greater.
 - (2) Affordable ~~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.
- e. Alternative Sites: The Commission may, at its absolute discretion, approve the construction or rehabilitation of the required affordable ~~below market rate dwelling~~ units on another site in Darien, provided that such off-site affordable ~~below market rate dwelling~~ units shall be maintained for at least 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 affordable ~~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.
- f. 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 affordable ~~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 affordable ~~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 affordable in the same manner as required in Section 584. ~~The case contribution provided for each dwelling unit, or fraction thereof, shall be as follows:~~ An example of Fee In Lieu Payment Calculations is in Appendix E.
- ~~(1) Units affordable to households earning 80 percent of the State Median Income (SMI) for the State of Connecticut require a cash contribution equal to 300% of the State Median Income for a family of four.~~

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~~(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 2008/2014 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: $100/50\% \times 0.6 = 0.6/0.3$.~~

~~The Area Median Income for a family of four is \$86,900 (2014) \$117,800 (2008).~~

~~The cash contribution is calculated as follows:~~

~~$0.3 - 0.6 \times \$117,800 / \$86,900 \times 300\% = \$156,420$~~

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

~~The total fee in lieu payment is \$156,420 \$185,535~~

~~(Note: As of the adoption of this Regulation, the 2008 Area 2014 State 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).~~

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(NOTE THAT IN THIS SPECIFIC CASE, NEW WORDING IS SHOWN UNDERLINED AND THE TITLE OF THE APPENDIX AND SUBHEADINGS WILL BE UNDERLINED)

APPENDIX E

EXAMPLES OF INCLUSIONARY ZONING CALCULATIONS

A. Calculating the Number of Units Required

(1) Example: Nine lot subdivision:

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

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

All of which must be affordable to households at 80% of State Median Income (SMD): $50\% \times 1.08 = .54$.

Since only one unit is required (the 1.08 rounds down to 1.0), the remaining .08 units would have to be fulfilled via fee in lieu at the 80% level standard

$0.08 \times \$86,900 \times 225\% = \$21,204$.

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

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

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

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The number of units required to be affordable to households at 80% of State Median Income (SMI): $100\% \times 1.08 = 1.08$.

Since only one unit is required (the 1.08 rounds down to 1.0), that unit shall be at the 80% 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 affordable 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 at the 80% 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: $100 \times .08 = .08$

The State Median Income for a family of four is \$86,900 (2014).

The cash contribution is calculated as follows:

$0.04 \times \$86,900 \times 300\% = \$10,428$

$0.04 \times \$86,900 \times 225\% = \$7,821$

The total fee in lieu payment is: \$18,249

B. Calculating the Fee In Lieu Payment

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 (SMI) for the State of Connecticut require a cash contribution equal to 300% of the State Median Income for a family of four.

(2)–Example: cash contribution based on 2014 data:

The total number of on-site units proposed is five (5).

The number of affordable units required: $5 \times 12\% = 0.6$.

The number of units required to be affordable to households at 80% of State Median Income: $100\% \times 0.6 = 0.6$

The State Median Income for a family of four is \$86,900 (2014).

The cash contribution is calculated as follows:

$0.6 \times \$86,900 \times 300\% = \$156,420$

The total fee in lieu payment is \$156,420

(Note: As of the adoption of this Regulation, the 2014 State 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).

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11. Modify Section 572a to refer to the DMR Zone, when it should refer to the DCR Zone.

a. Utilities

To qualify for development under these ~~DMR~~DCR regulations, a site shall be served by public water supply and public sewerage facilities of sufficient capacity to serve the development. The applicant shall submit a statement from a licensed Professional Engineer or the utility companies certifying that such capacity exists.

12. Modify Section 577 to reference signs allowed in the DCR zone.

577. Design Criteria

The following required criteria on specific design elements under this Section are found in the following Subsections of Section 500 Designed Business and Residential Zone (DBR):

- A. Sec. 509 Accessory Buildings, Structures, ~~Signs~~, and Uses shall apply as modified by Sec. 577 and 578 below.
- B. Sec. 511 Architectural Design shall apply
- C. Sec. 517 Application shall apply
- D. Sec. 516 General Standards and Requirements shall apply
- E. Sec. 519 Drives shall apply.

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13. Section 625 Item 15 should be clarified to be “Maximum Average floor area.”

625. 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 (21,780 sq.ft.)
2. Minimum Lot Width	80
3. Minimum Lot Frontage	80
4. Minimum Lot Depth	100
5. Minimum Front Yard	30 (See Note a)
6. Minimum Side Yard	15 (See Note b)
7. Minimum Rear Yard	25 (See Note c)
8. Maximum Height in Stories	2
9. Maximum Height in Feet	28
10. Maximum Building Coverage	Determined by FAR
11. Minimum Front Landscape Depth	30
12. Maximum Developed Site Area	70%
13. Minimum Setback from Any Residential or DOR Zone	25
14. Maximum <u>Average</u> Floor Area Ratios	0.40 of first 10,000 s.f. of lot area plus 0.20 of all lot area over 10,000 s.f.
15. Maximum Floor Area of all Dwelling Units	1,000 sq. ft. (See Note d.)

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***15. Modify Section 873. Eligibility for Certification to reflect updated report name and date.
(NOTE THAT IN THIS SPECIFIC CASE, ALTHOUGH NEW WORDING IS SHOWN UNDERLINED,
THE TITLE OF THE DOCUMENT WILL REMAIN UNDERLINED)***

873. Eligibility for Certification

To be eligible for certification, a Soil Erosion and Sediment Control Plan shall contain proper provisions to adequately control accelerated erosion and sedimentation and reduce the danger from storm water runoff on the proposed site based on the best available technology. Such principles, methods and practices necessary for certification shall be found in the “2002 Connecticut Guidelines for Soil Erosion and Sediment Control” published by the Connecticut Department of Energy and Environmental Protection, ~~Connecticut Guidelines for Soil Erosion and Sediment Control (1985)~~, as amended. Alternative principles, methods and practices may be used with prior approval of the Commission.