

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
May 24, 2016

Application Number: Amendments to the Darien Zoning Regulations
put forth by Knobel Hill, LLC (COZR #4-2016)

Name and Address of Applicant: Knobel Hill, LLC
23 Butler's Island Road
Darien, CT 06820

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

Activity Being Applied For: Proposal to amend various subsections of Section 430 of the Zoning Regulations, which address the below market rate (BMR) units required for Active Senior Residential developments. These changes would: reduce the minimum average size of off-site BMR units to 45% of the average of the on-site market-rate units; and would remove the age restriction from the off-site BMR units.

Date of Public Hearing: April 5, 2016
Deliberations held on: April 26, 2016 and May 10, 2016

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

Publication of Hearing Notices
Dates: March 25 & April 1, 2016 Newspaper: Darien News

Date of Action: May 24, 2016 Action: ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, JUNE 19, 2016 AT 12:02 P.M.

Scheduled Date of Publication of Action: June 3, 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 adopt the amendments.

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

1. The subject application consists of a proposal to amend various subsections of subsection 435 and subsections 438a and 438c of the Zoning Regulations, which address the below market rate (BMR) units required for Active Senior Residential developments. The Active Senior

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Residential Overlay Zone (Section 430 et. seq.) was created in 2014. At the time, the Commission noted that this was a first of its kind in Darien, and that there was an associated need or desire for elderly (age-restricted) below market rate (BMR) units. The regulation also would allow for those units to be created either on-site or off-site. The subject proposed regulation amendments would change the criteria for off-site BMR units:

- reduce the minimum average size of off-site BMR units to 45% of the average of the on-site market-rate units; and
- would remove the age restriction from the off-site BMR units.

No changes to the criteria for on-site BMR units is proposed.

2. The Knobel Hill LLC project at the corner of Settler's Trail and Locust Hill Road is the first "Active Senior Residential" project developed under Section 430 of the Regulations. As part of that approval, six on-site market-rate units were approved, and those are now under construction. Two off-site elderly (age-restricted) below market rate (BMR) units were also required as part of that approval. However, the off-site units that the applicant acquired to fulfill the requirement are not large enough to comply. Section 438c of the existing zoning regulations states that "...the average size of all the below market-rate units shall be at least 50% of the average size of the on-site market rate elderly units constructed..."
3. Attorney Robert F. Maslan, Jr. represented Knobel Hill LLC at the public hearing and explained the two zoning regulation amendment proposals are: a) to allow the off-site BMR units to be at least 45% of the average size on-site market rate units; and b) that the BMR units being created off site not be restricted only to people 62 years or older. The proposal does not change the age restriction or size requirement of on-site BMR units (see Section 435 Note 3).
4. Attorney Maslan said that each unit in the 67 and 69 Leroy Avenue two-family house, which is being considered by the applicant to fulfill the BMR requirement of Section 430, is less than 50% of the new market-rate units being built on Settler's Trail. The Commission notes the difficulty in matching the sizes of off-site units, especially if they are pre-existing units within Town. In the future, the Commission will require applicants proposing such Active Senior Residential developments, to define the BMR units up front as part of the submitted application, unless a legitimate reason why such units cannot be identified is produced.
5. The Commission acknowledges that when it was drafted, the Active Senior Residential zone was a new concept in the Regulations. The Commission recognizes the difficulty of requiring existing units in Darien to be age-restricted (elderly) units, since they may be on upper stories of structures which have no elevators.

ISSUES REGARDING SIZE OF BELOW MARKET RATE (BMR) UNITS

6. There are three criteria for the size of the on-site BMR units in Section 435 Note 3. First, it requires that each elderly BMR unit be at least 800 square feet in size. Second, it also requires a size relationship between the market rate units and the BMR units, stating that the BMR units must be at least 50% of the average size of the market-rate units. Third, it requires that the BMR units have no less than the average number of bedrooms in the on-site market rate units,

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rounded down. These criteria are reiterated in Section 438c of the Regulations for off-site BMR units.

7. The Commission finds that a change in the second of the three existing criteria, modifying the size relationship from 50% to 45% for off-site units, is still in keeping with the spirit and intent of the Active Senior Residential Overlay Regulation. The other two criteria which affect the size of off-site BMR units are not proposed to change as part of this proposal.
8. The Commission believes that headings within the regulations will better distinguish the fact that Section 435 Note C addresses on-site BMR units, and Section 438c addresses off-site BMR units.

ISSUES REGARDING AGE RESTRICTION OF UNITS

9. The application proposes an amendment to Section 438a of the Regulations, to no longer require an age-restriction for the off-site below market rate dwelling units. The Commission agrees with that concept. The Commission acknowledges that it is imperative that all applicants provide a detailed plan of how the BMR units will be provided for and managed.
10. As always, the Commission has the final decision on whether required BMR units as part of Active Senior Residential Overlay Zones will be required on-site or off-site. That is not proposed to change. In the case of Knobel Hill, LLC, off-site BMR units were approved by the Commission, and the applicant is working on complying with that requirement.

CONCLUSIONS AND FINDINGS

11. The application was referred to the Western Connecticut Council of Governments (WestCOG). They responded on February 25, 2016 stating as follows: "The opinion of WestCOG staff is that the proposal is of local concern, but with minimal intermunicipal impact. Therefore it is not being forwarded to adjacent municipalities and the regional staff is making no comment."
12. The subject application consists of zoning regulation amendments. As part of this request, the applicant has not proposed a specific site plan for the Commission's review or consideration.
13. Significant documentation was provided during the public hearing confirming that the proposal complies with the Town Plan of Conservation & Development. The Commission believes that this is an appropriate modification for this overlay zoning district.

NOW THEREFORE BE IT RESOLVED that Amendment to Darien Zoning Regulations (COZR #4-2016), is hereby adopted subject to the foregoing and following modifications and understandings:

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NEW WORDING UNDERLINED, DELETIONS IN STRIKEOUT:

Changes are to Sections 435 (both the table and Note 3); 438a; 438b; and 438c.

435. Area and Bulk Requirements

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

1. Minimum Lot Area	3 acres
2. Minimum Lot Width	200 feet
3. Minimum Street Frontage	200 feet
4. Minimum Lot Depth	200 feet
5. Minimum Front Yard	40 feet
6. Minimum Side Yard- each side	25 feet
7. Minimum Side Yard- total of two sides	50 feet
8. Minimum Rear Yard	40 feet
9. Accessory Structures	
9A. Minimum Distance from Front Lot Line	40 feet
9B. Minimum Distance from Side Lot Line	25 feet
9C. Minimum Distance from Rear Lot Line	40 feet
10. Maximum Height in Stories (see Note 1)	2 ½ stories
11. Maximum Height in Feet	28 feet
12. Maximum Building Coverage	15%
13. Maximum Developed Site Area (see Note 2)	60%
14. Minimum Distance between Structures	20 feet
15. Maximum Finished Floor Area per Dwelling Unit (see Notes 1 & 3 and Section 438c)	3,000 square feet
16. Maximum Number of Dwelling Units (round down to the nearest whole number. See Section 438e)	2 per acre

Note 1: The Regulations allow for the finishing of up to ½ of the basement. No attic space is allowed to be finished at all. Any finished space in the basement does not count towards the 3,000 square foot maximum in Item 15.

Note 2: The definition of Developed Site Area set forth in Section 210 shall apply to developments created under this Section.

Note 3: On Site BMR units. Each on-site elderly BMR housing unit required to be constructed or acquired shall be equal to or greater than 50% of the average size of the on-site market rate units, and no less than 800 square feet in size. Each on-site elderly BMR housing unit shall have no less than the average of the number of bedrooms in the on-site market rate units, rounded down. See Section 438 regarding below market rate (BMR) housing units.

438. Requirement for below-market rate (BMR) units

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- a. A below market rate (BMR) dwelling unit is one which is affordable to households with an income equal to or less than 80 percent of the State Median Income for the State of Connecticut. All on-site BMR units constructed (or acquired) and deed-restricted under this Section shall comply with the age restrictions in Section 433. The age restriction shall not apply to off-site BMR dwelling units constructed or acquired in connection with a development under section 430.
- b. To calculate the minimum number of BMR units required to be constructed (or acquired) either on-site or off-site and deed-restricted, the following shall apply:
 - Less than 5 market-rate elderly units: 0 BMR units
 - 5-6 market-rate elderly units: 2 BMR units
 - 7-9 market-rate elderly units: 3 BMR units
 - 10-12 market-rate elderly units: 4 BMR unitsOne BMR unit shall be constructed (or acquired) and deed-restricted for each three market rate units thereafter. (Round any fractional requirement for below market rate units up to the nearest whole number).
- c. Off-site BMR units. Each off-site BMR housing unit required to be constructed or acquired must comply with both of the following requirements: a) the average size of all the off-site BMR units shall be at least 45% of the average size of the on-site market rate elderly units constructed; and b) each unit shall not be less than 800 square feet in size. Any off-site BMR housing unit shall have no less than the average of the number of bedrooms in the on-site market rate units, rounded down. The age restriction shall not apply to off-site BMR dwelling units constructed or acquired in connection with a development under section 430.
- d. Section 580 (Inclusionary Zoning) provisions for incentives, density bonus, and for requiring below market rate dwelling units are not applicable to the use of the Active Senior Residential Overlay Zone, since this overlay zone has a separate below market rate requirement.
- e. The total number of units on-site (market rate and below market-rate) shall not exceed a density of 2.0 per acre in the R-1 Zone. Any additional required BMR units beyond that density must be constructed or acquired off-site.