

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
July 13, 2021**

Application Number: Amendments to the Darien Zoning Regulations (COZR #4-2021)  
put forth by the Darien Planning & Zoning Commission

Name and Address of Applicant: Darien Planning & Zoning Commission  
Darien Town Hall  
c/o 2 Renshaw Road  
Darien, CT 06820

Activities Being Applied For: Proposal to amend Sections 583, 588, and 589 of the Darien Zoning Regulations to clarify that the inclusionary zoning standards pertain to both multi-family and single-family uses, and that the standards would be triggered via four or more units or building lots (for subdivisions); Proposal to increase the amount of deed-restricted, below market rate units required as part of an inclusionary project from 12% to 14%, and to modify Appendix 'E' of the Regulations accordingly; Proposal to change "affordable units" or "affordable housing units" to "below market rate units".

Date of Public Hearing: May 4, 2021 continued to June 8, 2021  
Deliberations Held: June 22, 2021

Time and Place: 7:30 P.M. Room 213 Town Hall and GoToMeeting (online)

Publication of Hearing Notices

Dates: April 22 & 29, 2021

May 27, 2021 and June 3, 2021

Newspaper: Darien Times

Date of Action: July 13, 2021

**ADOPTED WITH AN EFFECTIVE DATE  
OF SUNDAY, SEPTEMBER 26, 2021 AT  
12:01 P.M.**

Scheduled Date of Publication of Action:  
Thursday, July 22, 2021

Newspaper: Darien Times

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

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

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

**THE COMMISSION'S PROPOSAL**

1. The subject application is to amend Sections 583, 588, and 589 of the Darien Zoning Regulations: to clarify that the inclusionary zoning standards pertain to both multi-family and single-family uses, and that the standards would be triggered via four or more units or building lots (for subdivisions); to increase the amount of deed-restricted, below market rate units required as part of an inclusionary project from 12% to 14%; and to modify Appendix 'E' of the Regulations

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accordingly; to change “affordable units” or “affordable housing units” to “below market rate units”.

2. Since their inception in 2009, the inclusionary zoning regulations have been implemented relative to four or more new dwelling units or lots. The proposed changes to Section 583 clarifies that policy, making the wording in the regulation clearer.
3. The increase in the amount of required deed-restricted below market rate units required as part of this will change from 12% to 14%. The Commission believes that the change to Section 583 is appropriate, and will result in an increase in the number of below-market rate units required and/or the fee in lieu payment required. This will result in an increase in below market rate units in Darien.
4. Changing the wording in the regulations for consistency in Sections 583, 588, and 589 and Appendix E will allow the regulation to be clearer, as currently, the regulation refers to “affordable housing” in some parts, and “below market rate housing” in other parts. In this instance, the Commission is proposing to change all references from “affordable units” or “affordable housing units” to “below market rate units”. The regulation is clear in Section 583, that these deed-restricted units will all be affordable to households with incomes equal to or less than 80% of the State Median Income for the State of Connecticut (as adjusted for household size). There is no change proposed to this affordability standard in the regulations. The change is only for consistency in wording, not to change the standard.
5. Appendix E of the Zoning Regulations is entitled, “Example of Inclusionary Zoning Calculation”. The percentage shown in that example is 12%, and that will have to change to properly reflect the change to 14% as adopted herein. In order to keep this Appendix E current, the State Median Income (SMI) for a family of four will be updated to the 2021 standard of \$102,600, from the 2015 reference now in Appendix E (which was \$90,600).
6. The Commission notes that the Town’s inclusionary zoning regulations were originally adopted in 2009, and have been amended a number of times since then. Those amendments are noted below.
  - May 2009 – Originally adopted “Inclusionary Zoning” as part of zoning regulations (Amendment #25).
  - November 2010 – reference to population priorities deleted, and inclusion of section entitled, “Affirmative Fair Housing Marketing Plan” (Amendment #30).
  - December 2011 – Section 585 regarding building height (Amendment #35).
  - July 2012 – Section 585 relative to incentives (Amendment #36).
  - February 2016 – changed requirement from Area Median Income (AMI) to State Median Income (SMI) in Section 583 (Amendment #48).
  - April 2017 – Section 587 amended relative to disabilities restrictions (i.e. Special needs) (Amendment #58).

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7. The application was referred by the Planning & Zoning Department to WestCOG for comment. On April 15, 2021 correspondence was received by the agency indicating that “it is the opinion of WestCOG staff that the proposal is of local interest and with minimal intermunicipal impact. Therefore, it is not being forwarded to adjacent municipalities and the regional staff is making no comment.”
8. The application was referred by the Planning & Zoning Department to CT DEEP for comment. The Commission notes that no comments were received from CT DEEP on the application.
9. The application was referred by the Planning & Zoning Department to the City of Stamford, the City of Norwalk, and the Town of New Canaan for comment. The Commission notes that no comments were received from adjacent municipalities on the application.
10. A letter dated May 3, 2021 was submitted for the record by Mr. Robert Gillon, Jr., on behalf of Parklands Darien LLC, in support of the application being put forth by the Commission.
11. A letter dated May 30, 2021 was submitted for the record by Mr. Andrei Stezinie (undisclosed address), opposing the proposed zoning amendments.

REQUIRED FINDING OF CONSISTENCY WITH 2016 TOWN PLAN OF CONSERVATION & DEVELOPMENT

12. Consistency with 2016 Town Plan of Conservation & Development

The proposal will increase the amount of deed-restricted below-market rate housing in Darien, by increasing the minimum required for certain developments from 12% to 14%. This would be consistent with the following polices on page 106 of the 2016 Town Plan.

#1 – Continue efforts to diversity Darien’s housing portfolio.

#3 – Continue to consider ways to provide for housing that is more affordable.

13. The Commission therefore finds that the proposed modifications to Sections 583, 588, and 589, ARE consistent with the 2016 Town Plan of Conservation & Development.

EFFECTIVE DATE

14. In order for to give time for the adopted changes to be filed with the Darien Town Clerk, posted to the Town web site, and new pages printed in the hard copies of the zoning regulations, the Commission hereby sets an effective date of Sunday September 26, 2021 at 12:01 p.m.

**NOW THEREFORE BE IT RESOLVED** that the Amendment to the Darien Zoning Regulations (COZR #4-2021) are hereby **ADOPTED**, subject to the foregoing and following modifications and understandings:

To summarize, the amendments are to amend Sections 583, 588 and 589 and Appendix E of the Darien Zoning Regulations.

NEW WORDING UNDERLINED AND BOLD; DELETIONS IN STRIKEOUT:

(Appendix C of the Zoning Regulations—Schedule of Amendments to be amended accordingly.)

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583. Affordable Requirements

Developments resulting in the creation of ~~four or more additional~~ multi-family dwelling units shall designate a minimum of **fourteen percent (14%)** ~~twelve percent (12%)~~ of the total number of dwelling units as 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~~ **four** or more building lots shall designate a minimum of **fourteen percent (14%)** ~~twelve percent (12%)~~ of the total number of dwelling units as affordable housing as defined by Connecticut General Statutes. All other single family subdivisions are exempt from the requirements of this regulation.

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

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 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.

*[Amended 2/28/2016]*

588. Additional Standards

- a. On-Site: **Below market rate** ~~Affordable~~ 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. Examples of how to calculate the number of units required are shown in Appendix 'E' of the Zoning Regulations.
- b. Phasing: **Below market rate** ~~Affordable~~ 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** ~~affordable dwelling~~ units for at least forty years or the life of the unit, whichever is longer, the following restrictions shall apply:

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1. **Below market rate** ~~Affordable~~ 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. **Below market rate** ~~Affordable~~ 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** ~~affordable~~ units on another site in Darien, provided that such off-site affordable 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 **below market rate** ~~affordable~~ 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** ~~affordable~~ housing units. Such fee shall take the form of a onetime 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** ~~affordable~~ 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. An example of Fee-In-Lieu Payment Calculations is in Appendix 'E'.
- 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.  
*[Amended 2/28/2016]*
589. Inclusionary Zoning

The provisions of Section 580 shall apply to Larger Developments within the Corbin Subarea, subject to the following:

- a. The incentives and waivers set forth in section 585 shall not apply to Larger Developments within the Corbin Subarea.

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- b. The Commission may approve **below market rate** affordable housing units that are subject to additional occupancy restrictions based on age or disabilities, provided that such additional restrictions comply with all applicable housing laws. Each **below market rate** affordable housing unit that is subject to multiple restrictions shall be counted as a single unit for compliance with Section 583.  
*[Added 4/9/2017]*

**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 **below market rate** affordable units required:  $9 \times 14\% \div 12\% = 1.26 \div 0.08$ .

All of which must be affordable to households at 80% of State Median Income (SMI):  $100\% \times 1.26 \div 0.08 = 1.26 \div 0.08$ .

Since only one unit is required (the  $1.26 \div 0.08$  rounds down to 1.0), the remaining  $.26 \div 0.08$  units would have to be fulfilled via fee-in-lieu at the 80% level standard

$0.26 \div 0.08 \times \$90,600 = \$30,150$   
 $0.26 \div 0.08 \times \$102,600 \times 225\% = \$60,021$

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

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

The number of **below market rate** affordable units required:  $9 \times 14\% \div 12\% = 1.26 \div 0.08$ .

The number of units required to be **below market rate** affordable to households at 80% of State Median Income (SMI):  $100\% \times 1.26 \div 0.08 = 1.26 \div 0.08$ .

Since only one unit is required (the  $1.26 \div 0.08$  rounds down to 1.0), that unit shall be at the 80% SMI 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 **below market rate** affordable units required:  $9 \times 14\% \div 12\% = 1.26 \div 0.08$ .

25% of the 4 bonus units will need to be affordable **below market rate** = 1.00.

Now, there are two required **below market rate** affordable units at the 80% SMI level, with the remainder being a fee-in-lieu calculated as:

The number of units required to be **below market rate** affordable to households at 80% of State Median Income:  $100 \times .26 \div 0.08 = 26 \div 0.08$

The State Median Income for a family of four is ~~\$90,600 (2015)~~ **\$102,600 (2021)**.

The cash contribution is calculated as follows:

$0.26 \div 0.08 \times \$90,600 = \$30,150$   
 $0.26 \div 0.08 \times \$102,600 \times 300\% = \$80,028$

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**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 ~~2015~~ **2021** data:

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

The number of **below market rate** ~~affordable~~ units required:  $5 \times 14\% \text{ } 12\% = 0.7 \text{ } 0.6$ .

The number of units required to be **below market rate** ~~affordable~~ to households at 80% of State Median Income:  $100\% \times 0.7 \text{ } 0.6 = 0.7 \text{ } 0.6$ .

The State Median Income for a family of four is ~~\$90,600~~ **\$102,600 (2021)**.

The cash contribution is calculated as follows:

**0.7** ~~0.6~~  $\times \$90,600$  **\$102,600**  $\times 300\% =$  **\$215,460** ~~\$163,080~~

The total fee-in-lieu payment is **\$215,460** ~~\$163,080~~

(Note: As of the adoption of this Regulation, the ~~2015~~ **2021** 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).