

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
March 24, 2009

Application: Proposed Amendments to the Darien Zoning Regulations
put forth by 333 West Avenue Associates, LLC

Name and Address of Property Owners: 333 West Avenue Associates, LLC
c/o John D. Hertz
16 Bouton Street
Norwalk, CT 06854

Name and Address of Applicant & Applicant's Representative: Wilder G. Gleason, Esq.
Gleason & Associates, LLC
455 Boston Post Road #201
Darien, CT 06820

Activity Being Applied For: A proposal put forth by 333 West Avenue Associates LLC to amend the Darien Zoning Regulations. This proposal would add a new Section 1052 to define and allow "Single-Family Open Space Development"; amend the existing Subsection 404 to allow such use as a Principal Use requiring a Special Permit; and amend Section 906.6 regarding parking setbacks.

Date of Public Hearing: January 27, 2009 continued to February 24, 2009

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

Publication of Hearing Notices
Dates: January 15 & 22, 2009

Newspaper: Darien News-Review

Date of Action: March 24, 2009

Action: ADOPTED WITH
MODIFICATIONS WITH AN EFFECTIVE
DATE OF APRIL 12, 2009

Scheduled Date of Publication of Action:
April 2, 2009

Newspaper: Darien News-Review

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

1. A proposal was put forth by this applicant in 2008. That proposal was to modify the DCR floating zone and was denied by the Commission. That proposal also would have modified the maximum building coverage allowed.
2. In December 2008, the subject application was submitted for proposed amendments to the Darien Zoning Regulations by 333 West Avenue Associates LLC. The original version of this proposal was dated 12-17-08, and included a proposal for a new subsection 404j and a new Section 1052 (1052.1-1052.7) of the Zoning Regulations.
3. According to the subject application materials, the applicant's property locations are 329, 333 and 339 West Avenue (hereinafter referred to as "333 West Avenue") shown on Assessor's

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Map #48, as Lots #37, #38, #39, #41, and #42. These five lots total 1.86 acres. According to the applicant, Lots #37 and #39 are owned by 333 West Avenue Associates, LLC; Lots #38 and #41 are owned by Michael P. Murray, Trustee; and the applicant's client has an option to purchase Lot #42, which is now owned by Charles S. Moran. Those five lots range in size from .298 to .56 acres.

4. The subject application does not apply to any specific lot (i.e. It is not a Zoning Map amendment), but rather, it is a proposed amendment to the text of the Zoning Regulations to allow a new specific use in certain residential zones via Special Permit. That use is called "Single-Family Open Space Development". During the public hearing process, it was described as a form of cluster development, where multiple single-family residences are constructed on one property and a certain amount of open space is specifically set-aside. These types of developments are proposed to be allowed via Special Permit, and only in the R-1/3 and R-1/5 zones in Darien, on parcels with a minimum lot area of 1.66 acres in the R-1/3 zone and one (1) acre in the R-1/5 zone. The applicant's proposal therefore sets the proposed the minimum lot area at five times the existing minimum lot area.
5. As part of this application, the owners have prepared a number of exhibits in support of their proposal. This included a conceptual site plan of the Westerly Court development showing eight houses on the 1.86 acres. This was presented as a type of development which could occur if the proposed "Single-Family Open Space Development" were to be applied to these properties. The current zone regulations would allow only one single family residence on each lot.
6. The applicant submitted materials during the public hearing process showing that the proposed density for the subject property would be generally no greater than the areas around it. The applicant showed a proposal for eight single-family residences on 1.86 acres—a density of 4.3 dwelling units per acre. As noted above, these 1.86 acres reflect five existing properties. Nearby areas are zoned R-1/3 (3 units per acre) and R-1/5 (five units per acre), but have actually in some cases, been developed at a density greater than that. According to the "Surrounding Neighborhood Densities" map prepared by the applicant and dated 1/27/09, densities in the area range from 3.49 houses per acre to 8.25 houses per acre.
7. A revised proposal was dated 2-24-09. This revised proposal made changes in Section 1052.1, which addressed (1) concerns about development on "sensitive lands" and (2) concerns staff expressed about whether the proposed regulations will inadvertently legalize non-conforming uses, particularly apartments. The new second sentence in the fourth paragraph of Section 1052.1 notes that the development pressure on sensitive lands be reduced. The revised version of the proposal, dated 2-24-09, also reduced the maximum building coverage allowed in the R-1/3 zone from 20% to 17.5%, reduced the Maximum Developed site Area from 40% to 35% in the R-1/3 zone, and reduced the Maximum Floor Area Ratio in the R-1/3 Zone from .30 to .25. The Commission notes that the revised version of the 2-24-09 document corrects a typographical error in the Minimum Width in the R-1/5 zone, correcting it from 12 to 120 (two times the lot width in the R-1/5 zone).
8. The Environmental Protection Commission (EPC), in its role as a Conservation Commission, sent a memo dated January 26, 2009 regarding the proposed Zoning Regulation amendment. In

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that memo, the Commissioners noted their comments related only to the proposed zone change amendment, and not the site plan. One of the Conservation Commission's recommendations was a change to require more formal Open Space demarcations. That recommendation has specifically been included in the applicant's 2-24-2009 revised proposal in Section 1052.3.

9. The applicant noted that if the Commission were to approve this amendment to the Zoning Regulations, then a subsequent application would need to be made for a Site Plan and Special Permit, prior to any project being approved for construction. This subsequent application would include necessary details regarding building locations, parking, drainage, curb cut(s), etc.
10. The subject application provides for allowing multiple single family residences on one lot, in a condominium-style ownership of the land surrounding the detached single family houses. It also allows those residences to be "clustered", providing additional open space, while at the same time, preserving "sensitive lands", such as inland and tidal wetlands, steep slopes, and areas within the flood zone. By specifically including provisions regarding these sensitive lands, the Commission is not opening up these areas for development, or allowing development in these areas. One important note is that the Commission will be encouraging the preservation of additional open space via open space declaration and/or conservation easement, only a portion of which can be sensitive lands. Overall, the Commission believes that "Single Family Open Space Developments" will not be a common type of development in Town, but in certain circumstances, will provide an option for developers while providing greater protection for the natural conditions and the surrounding neighbors. This proposed development option would have strict limits on amounts of impervious area as well as a requirement that at least 30% of the land be set aside as open space.
11. At the public hearing, a number of speakers from the general neighborhood near 333 West Avenue explained their concern with existing drainage and flooding in the vicinity. They also had concerns regarding this alternative form of housing ownership (condominiums). The public noted that this proposed regulation amendment could allow additional housing units at a greater density than the existing R-1/3 and R-1/5 zoning on the subject properties. They said that the property at 333 West Avenue could only be developed into four or five single-family residences each on their own lot under current Regulations. Under the proposed regulations, the subject properties could accommodate up to eight single-family residences.
12. It is noted that since this proposal is only for a zoning text change, it is not appropriate to specifically review any proposals for drainage and/or stormwater management. If the text change is approved, and the applicant proposes a "Single-Family Open Space Development", then, as part of that site plan and Special Permit review by the Commission, issues such as drainage and stormwater management will be thoroughly considered by the Commission.
13. The Commission deliberated on this matter at its meeting of March 10, 2009.
14. During the deliberations, the Planning & Zoning Commission noted the many benefits of this proposed Regulation amendment. They include a Maximum Floor Area Ratio (FAR) of .25-.30 depending on the zoning district; a minimum amount of open space required (30%), which is greater than that now required by the Darien Subdivision Regulations; and a maximum Developed Site Area (35% or 40% depending on the zoning district). The proposal also

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includes a maximum Building Coverage of 17.5% in the R-1/3 zone, which is actually less than the 20% maximum which is now allowed in the R-1/3 zone. Currently, in both the R-1/3 and R-1/5 zones, there are no limits to maximum Developed Site Area and no limits on Floor Area Ratio.

15. The Commission hereby confirms that they have recently adopted Inclusionary Zoning, and that regulation takes effect on May 31, 2009. All applications submitted subsequent to May 31, 2009 for “Single Family Open Space Developments” and other types of development meeting certain criteria will have to address affordable housing either by constructing price restricted housing per that Regulation or paying a fee in lieu thereof.
16. Commission staff noted its concern with allowing more than one single-family residences on one lot, and possible precedents that this could establish. Since Section 387 is expressly limited to “legally existing uses” at the time the regulations are adopted, the proposed regulations (Section 1052 et. seq.) cannot be used to legalize apartments, etc. which are not already legally nonconforming. However, to avoid any ambiguity the applicant proposed a fifth paragraph to the “purposes” section of Section 1052.1.
17. The Commission believes that although the applicant has proposed a minimum lot area of five times the existing permitted in the R-1/3 and R-1/5 zones, that a larger Minimum Lot Area is appropriate in the R-1/5 Zone. That modification by the Commission is to require 1.666 acres (72,600 square feet) for this type of development in R-1/5 zone and 2.25 acres if it is in the R-1/3 Zone. This modification by the Commission is reflected in Section 1052.2 (below).
18. One provision within the proposed Section 1052.3 (Open Space) would allow up to half of the area of the Open Space to include surface stormwater treatment practices that are so vegetated with associated underground drainage structures. These could include items such as a rain garden, bio-retention basin, and/or treatment wetland or similar practice. The wording in Section 1052.3 has been modified to specifically reflect these natural stormwater management structure options.
19. The Commission finds that this zoning regulation amendment is consistent with the 2006 Town Plan of Conservation & Development. The following specific recommendations are in the 2006 Plan on page 6-3:
 1. *Consider expanding the current size restrictions for condominiums.*
 3. *Consider establishing regulations regarding impervious surfaces coverage restrictions to maintain the character of the community.*
 10. *Adopt density incentives for congregate/cluster and condominium housing providing significant open space.*

On page 9-5, Recommendation #13 is:

20. *As trends change through time, the Commission should consider methods to accommodate such in the Darien Zoning Regulations. Examples include, but are not limited to: the provision of day care; wireless telecommunications; home occupations, senior housing developments, cluster housing, hotels, and larger condominiums. The*

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Zoning Regulations should continue to be reviewed to ensure that they meet the changing demographic needs of the community, while maintaining existing community character.

NOW THEREFORE BE IT RESOLVED that based upon the review of all of the materials and information, the Commission, acting in its legislative capacity, hereby ADOPTS WITH MODIFICATIONS the 2-24-09 revised ***Proposed Amendments to the Darien Zoning Regulations*** WITH AN EFFECTIVE DATE OF SUNDAY, APRIL 12, 2009 AT TWELVE NOON, as revised herein:

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

Add the following text Article IV - Residential Zone Regulations; Section 400. Residential Zones; Subsection 404. Principal Uses Requiring Special Permits:

- j. Single-Family Open Space Development in accordance with the provisions of Subsection 1052.**

Add the following text to Article X – Special Permit, Site Plan and other Special Regulations; Section 1050 – Special Uses with Special Standards:

1052. Single-Family Open Space Development

1052.1 Background and Purposes

Open space plays an important role in Town for environmental/ conservation purposes, aesthetic purposes and for passive enjoyment and may include woodlands, wetlands, vacant property left in its natural state and naturally landscaped open areas. Single-Family Open Space Development allows for the preservation of such property.

Excess impervious surface area contributes to the volume and velocity of surface water runoff, thereby increasing flooding potential. Establishing regulations restricting impervious surface coverage will reduce flooding impacts caused by development and help to maintain the character of the community. Single-Family Open Space Development achieves these objectives by establishing a Maximum Developed Site Area standard.

The Planning and Zoning Commission generally views a variety of housing options as an enhancement to Darien. Housing that permits Darien residents to “downsize” is needed. Single-Family Open Space Development addresses this need by allowing more than one single-family dwelling on a lot at a density no greater than the existing zone theoretically allows, provided that such housing is appropriate for the specific lot and the neighborhood in general.

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Single-Family Open Space Development is intended to apply to oversized lots as an alternative to subdivision. It reduces the intensity of development on lots with sensitive lands by deducting wetlands, steep slopes and flood zones from the lot area for density, coverage and floor area calculations. It protects neighboring properties with buffers and setbacks equal to or greater than those required by the residential zone in which the property is located and with architecture designed to harmonize with the neighborhood and surrounding uses.

Except as specifically provided herein, these regulations shall not legalize or be construed to legalize any residential use not lawfully existing at the time these regulations are adopted including but not limited to apartments, cottages, or any other residential use involving more than one dwelling unit on a single lot.

1052.2 Area and Bulk Requirements

Single-Family Open Space Development is only permitted in the R-1/5 and R-1/3 Residential Zones in accordance with the Area and Bulk Requirements of Subsection 406 of these Regulations and the additional requirements noted below. The requirements listed below for each zone 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-1/3</u>	<u>R-1/5</u>
1. Minimum Lot Area (Square Feet)	98,010	72,600
2. Minimum Width	160	120
3. Minimum Frontage	See Subsection 406	
4. Minimum Depth	See Subsection 406	
5. Minimum Front Yard	See Subsection 406	
6. Minimum Side Yard: Least One	See Subsection 406	
7. Minimum Side Yard: Total of Two	See Subsection 406	
8. Minimum Rear Yard	See Subsection 406	
9. Accessory Structures Minimum Distance from Any Lot Line	25	
10. Maximum Height in Stories	See Subsection 406	
11. Maximum Height in Feet	See Subsection 406	
12. Maximum Building Coverage (See Note a)	17.5%	20%
13. Minimum Building Separation	20	16
14. Maximum Developed Site Area (See Note a, c)	35%	40%
15. Maximum Floor Area Ratio (See Note a)	0.25	0.30
16. Minimum Open Space (See Note b)	30%	

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17. Minimum Lot Area per Dwelling (Square Feet) (See Note a)	14,520	8,712
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Note a: For calculation of Building Coverage, Developed Site Area, Floor Area Ratio, and Lot Area per Dwelling, the Lot Area shall exclude the following “Sensitive Land”: wetlands, watercourses, land areas sloped at more than 15%, and special flood hazard areas inundated by the 100-year flood as indicated on the Flood Insurance Rate Map and determined in conjunction with an accurate topographic survey of the site. The submitted site plan shall delineate the “Sensitive Land” as defined herein.

Note b: Minimum Open Space shall be 30% of the total area of the lot (not Lot Area as defined in Note a). At least one-third (1/3) of the Minimum Open Space shall affect property that is not Sensitive Land as determined per Note a, above.

1052.3 Open Space

Open Space shall be the portion of the lot subject to an open space easement approved by the Commission that requires such portion to be maintained as indicated on the Landscape Plan and Grading and Drainage Plan approved by the Commission. Such Open Space shall be formally demarked and vegetated with meadow seed mix, shrubs, screening, trees, woody vegetation, and similar native vegetation with habitat value. Up to half of the area of the Open Space may include surface stormwater treatment practices that are so vegetated with associated underground drainage structures (such as a rain garden, bio-retention basin, and/or treatment wetland or similar practice). Lawn is not permitted within designated Open Space.

1052.4 Lot to be Served by Public Water and Public Sewerage Facilities

To qualify for development under these regulations, a lot shall be served by public water and public sewerage facilities of sufficient capacity for the proposed development.

1052.5 Off-street Parking, Loading and Vehicular Access

Parking, loading and vehicular access to the lot shall conform to Section 900 except that the Parking Setbacks from adjacent residential zones shall be a minimum of ten feet from any lot line.

1052.6 Landscaping, Screening, and Buffer Areas

Single-Family Open Space Development shall conform to Section 940 except that buffer areas need not exceed ten (10) feet in width and, at the discretion of the Commission, may include lawns, gardens, uncovered walks, patios, terraces and other at grade surfaces not considered a building. Single-Family Open

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Space Development is not considered a “single-family dwelling” under Section 940.

1052.7 Architectural Design and Review

Single-Family Open Space Development shall conform to Subsection 1023.4. In addition, the proposed architecture shall be suitably diverse in its design and appearance to emulate the look of a single-family neighborhood. Subsequent to Special Permit Approval, any significant modification to the architectural plans of an individual dwelling approved by the Commission shall be reviewed and approved by the Architectural Review Board prior to issuance of a Zoning Permit for such modifications.

Add the following text (indicated in **bold**) to Article IX – Supplementary Regulations; Section 900. Off-Street Parking, Loading and Vehicular Access;
Subsection 906. Location of Off-Street Parking Facilities;
Subsection 906.6 Parking Setbacks:

906.6 Parking Setbacks

Subject to other specific buffer or applicable restrictions of these Regulations, parking and off-street loading facilities (including stalls, turning areas, access drives, etc.) shall be located in accordance with the following setbacks and requirements:

<u>Use or Zone</u>	<u>Minimum Distance From:</u>		
	<u>Front Lot Line</u>	<u>Side Lot Line</u>	<u>Rear Lot Line</u>
Special Permit Uses in Residential Zones (See Note a)	25 ft.	25 ft.	25 ft.
<u>All Uses In:</u>			
PR	10 ft.	10 ft.	10 ft.
DBR and DMR	30	25	25
DOR-(1 and 5)	40	25	25
NB	10	4	4
OB	10	5	5
DB-1	20	4	10
DB-2	30	10	10
DC	6	10	10
CBD	none	none	none
SB	6	none	none
SB-E	18 (see 675 note e)	none	none

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A buffer area of 25 feet shall be required adjacent to all residential zones. See Subsection 944.

Note a. In a Single-Family Open Space Development (Section 1052 of the Regulations), the parking setback shall be not less than 10 feet.

In addition, the 9th page of the Table of Contents shall be updated to reflect the new Section 1052, Single Family Open Space Development, and Appendix C, Schedule of Amendments, shall be updated to reflect all of these modifications.