

Chapter II.

Index of DEIS Comments

II - COMMENT INDEX

The following is a list of the comments received during the public hearing on the Draft Environmental Impact Statement. Copies of all comment letters as well as the full transcripts from the public hearings are included in the Appendix.

Town Consultants:

Ashley Ley, AICP, AKRF, April 30, 2021

Esteban Garcia, P.E., Kellard Sessions Consulting, February 4, 2021

Public Comments:

Public Hearing Transcript, April 1, 2021

Public Hearing Transcript, May 6, 2021

The following comments have been received addressing the completeness of the FEIS

AKRF, October 6, 2021

Public Hearing Transcript November 16, 2021

Chapter III.

Responses to DEIS Comments

III. A - ZONING AND LAND USE

A-1 Comment:

Also, they describe the new building as fitting seamlessly integrating seamlessly with the self-storage building that's there currently. It looks like it will all be one piece, and I realize that back in -- I know the resolution was passed in 2013. I don't know if that's when the original project was submitted, but, originally, the applicant was looking for a much larger project back in 2012 or 2013, and the board turned them down, and now they're coming back to build that extra piece of the project that was actually, in my understanding, the board rejected. So this definitely seems like segmentation.

(Board Member Yergin, Public Hearing, April 1, 2021)

A-1 Response:

Procedural history of self-storage applications at the Project Site

In or about 2009, the Applicant filed an application with the Planning Board seeking to construct an approximately 88,000-square foot, 578-unit self-storage facility along with a 6,400-square foot cabinet-making shop with a total of 29 parking spaces on-site.¹ The proposed action required site plan approval and a floodplain development permit from the Planning Board, several area variances from the Zoning Board of Appeals ("ZBA"), a determination that the project was consistent with the Local Waterfront Revitalization Program by the Village Harbor Coastal Zone Management Commission ("HCZMC") and approval from the Architectural Review Board. The Planning Board initially declared its intent to serve as Lead Agent under SEQRA, however the ZBA objected and ultimately assumed Lead Agency status on March 4, 2010. The ZBA issued a positive declaration under SEQRA for the project, citing concerns relating to traffic, flooding and proposed building size. At that time, due to the significant costs associated with pursuing the project that had been declared to have the potential to have one or more significant adverse environmental impacts, the Applicant

¹ See June 20, 2018 submission to the ZBA for a comprehensive procedural history of prior self-storage proposals on the Site.

withdrew its application. The ZBA did not “turn the application down” or reject the proposal.

On approximately October 10, 2012, the Applicant submitted a new application for site plan approval seeking to redevelop the Property and construct the current self-storage facility that exists on the Premises today. This application proposed a 40,620-square foot self-storage facility, as opposed to the 88,000 square foot self-storage facility proposed in 2009. Under the 2012 proposal, many of the then existing uses at the facility were proposed to remain. The Planning Board assumed Lead Agency Status on November 14, 2012 and on January 30, 2013, the Planning Board issued a negative declaration finding that the project would not have the potential for one or more adverse environmental impacts.

On approximately October 3, 2013, the ZBA granted the Applicant several variances for the now existing self-storage facility on the Property. Following receipt of these variances, the Applicant proceeded to obtain a consistency determination from the HCZMC, site plan approval and a flood development permit from the Planning Board and approval from the Architectural Review Board. The Applicant then constructed the existing 40,492-square foot self-storage building, completed towards the end of 2015, that exists on the Site today.

The Amended Proposal (the “Project”)

On May 10, 2018, the Applicant submitted a site plan application to the Planning Board proposing to expand its existing 40,492-square foot self-storage facility by constructing a new 56,328 square foot addition (the “Proposed Action”), for a total size of approximately 96,820-square feet. As noted above, the original application submitted in approximately 2009 proposed a smaller 88,000-square foot building. Additional approvals required for this proposal include several area variances from the Zoning Board of Appeals (“ZBA”), a determination that the Project was consistent with the Local Waterfront Revitalization Program by the Village Harbor Coastal Zone Management Commission (“HCZMC”) and approval from the Architectural Review Board.

The ZBA assumed Lead Agency status and on June 6, 2019, the ZBA issued a positive declaration determining that the Project had the potential for one or more significant adverse environmental impacts. As required by SEQRA, the Applicant prepared a Draft Environmental Impact Statement and spent seven months reviewing the DEIS with the Lead Agency.²

The Applicant has amended the Project in order to be responsive to the comments on the DEIS by the ZBA. This Project proposes an additional 160 storage units required to meet local customer demand and incorporate 700 square feet of storage-associated retail space along the Waverly Avenue frontage in the existing self-storage building. Notably, the amended proposal now currently before the ZBA seeks to incorporate a number of new uses and proposes reconfiguration of the Project Site, which were not proposed in either 2009, 2012 or initially with the 2018 original application. The Applicant proposes these Project amendments to address comments received from members of the ZBA during the DEIS process and to meet community workplace demands in response to the global pandemic.

As demonstrated in the amended site drawings enclosed herein, prepared by KTM Architect, dated June 28, 2021, the Applicant proposes the complete demolition of all structures on the site except the existing self-storage use. The proposed expansion to the existing self-storage building will contain the proposed 56,328-square foot addition of self-storage space, as well as the following uses:

- Approximately 5,879-square foot woodworking shop;
- Approximately 2,157 square feet of space for the Murphy Brothers Contracting offices; and
- Approximately 2,008 square feet of community office workspace.

As demonstrated by the proposed configuration of buildings and uses, this amended proposal presents a substantially different Project than the 2009 and

² The Applicant submitted the DEIS on October 29, 2020.

2012 proposals, as well as the original 2018 Project previously reviewed by the ZBA.

Segmentation

Segmentation is defined as “the division of the environmental review of an action such that various activities or stages are addressed under [the SEQRA regulations] as though they were independent, unrelated activities, needing individual determinations of significance.” 6 N.Y.C.R.R. § 617.2(ah).

The State Environmental Quality Review Act (“SEQRA”) and its regulations do not prohibit segmentation of environmental review. Instead, New York State Department of Environmental Conservation (“NYS DEC”) SEQRA regulations recognize that “[a]ctions commonly consist of a set of activities or steps,” and “[c]onsidering only a part or segment of an action is contrary to the intent of SEQR[A].” 6 N.Y.C.R.R. § 617.3(g).

In determining whether a proposed action may have a significant effect on the environment, an agency must consider reasonably related long-term, short-term, direct, indirect and cumulative effects, including other simultaneous or subsequent actions that are: (1) included in any long-range plan of which the action under consideration is a part; (2) likely to be undertaken as a result thereof; or (3) dependent thereon. 6 N.Y.C.R.R. § 617.7(c)(2).

The issue of segmentation often arises when a project sponsor divides a project into smaller parts to avoid triggering the submission of an EIS. NYS DEC SEQRA Handbook, 4th Edition, pg. 53 (2020) (“SEQRA Handbook”). Essentially, in attempting segmentation, a project sponsor’s goal is to avoid comprehensive review of a large project and instead convince the reviewing agency to focus on an individual phase of a development.

In this instance, there has been no avoidance whatsoever of the EIS process. In fact, for the last 3 years, the ZBA has taken a hard look and conducted a comprehensive environmental review of the existing self-storage use, in

conjunction with the proposed expansion and redevelopment. There is no attempt to thwart environmental review or avoid a discussion of environmental impacts.

Further, as previously discussed herein, the amended Project, is markedly different than the 2009 application for a self-storage building, both in scale and use. As opposed to the sole self-storage building contemplated in 2009 and 2012, the Applicant is proposing to incorporate community workspace, a woodworking shop and the Murphy Brothers Contracting office in the new addition, along with approximately 33,896 square feet of additional self-storage space. The proposed community workspace is being provided in response to the objectives of the proposed MAKER zone discussed by ZBA members during the DEIS process, as well the change in workplace demands driven by the global pandemic. The Project currently before the ZBA, as amended, could not possibly have been contemplated in the 2009 or 2012 review process. Indeed, the MAKER zone was not even proposed when the 2009 and 2012 applications were filed.

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The ZBA's comments on the DEIS question whether segmentation has occurred improperly in this instance given the existing self-storage facility and the prior application review history. The SEQR Handbook specifically finds that a segmented review is justified and warranted when a future phase of a project may not occur.³ In this instance and as noted herein, the 2009 application was withdrawn by the Applicant. Years later, a new and smaller project was submitted to the Village with no anticipation or proposed future phase. That project was approved and constructed, and the self-storage facility opened for business in 2015. Due to the success of that business, an expansion not contemplated or planned as part of the prior application was proposed in 2018, three years later. The SEQRA Handbook states that "if substantial changes to the project are proposed later, such changes shall be evaluated, and a new determination of significance made."⁴ That is exactly what happened in this matter and a new

³ SEQRA Handbook, 4th Edition, pg. 54 (2020).

⁴ SEQRA Handbook, 4th Edition, pg. 55 (2020).

determination of significance was made in the pending application and the Applicant is in the midst of an EIS review.

The pending application has been reviewed by the ZBA for over 3 years. The ZBA, as Lead Agency, is undertaking a thorough, comprehensive and full environmental review of both the existing and proposed development of the Project Site, as an “overall” project. The Applicant is in the midst of an Environmental Impact Statement review. The Village is not considering a part or a segment of the Project. Portions of the “overall” Project are not being excluded in the environmental review. The “whole action” is being reviewed by the ZBA, a statement made by various ZBA members on numerous occasions. This EIS is noting the procedural history, taking the hard look at the whole action and the review is not being any less protective of the environment. Segmentation has not occurred, and to the extent the ZBA determines otherwise, the segmented review of the overall Project is justified and acceptable given the unique facts herein and SEQRA regulations.

A-2 Comment:

*Also, when they talk about that as it is in line with the Maker zone. My understanding of the Maker zone is to increase night life and pedestrian traffic and, actually, to move away from big warehouses and self-storage, so I think that's an inaccurate statement. I know that it is a permitted use as right now in the code but I don't believe that is in line with what the Maker zone had said.
(Board Member Yergin, Public Hearing, April 1, 2021)*

A-2 Response:

The MAKER zone is a planning concept formulated in approximately 2017 for the approximately 70-acre area that is currently primarily zoned M-1 – Manufacturing (Figure III. A-1). As of this date, the MAKER zone has not been adopted, and is therefore, not applicable to the Proposed Action.

Nevertheless, the Applicant has reviewed the MAKER zone concept, and as noted in the DEIS, believes that the Proposed Action is consistent with the goals of that initiative.

As articulated by the Industrial Area Committee in February of 2018⁵, the primary goal for the area is to *“Revitalize the manufacturing district in Mamaroneck and enhance the sustainability of the area:*

- *Preserve existing uses.*
- *Create incentives to grow the MAKER economy.*
- *Promote redevelopment that is environmentally sensitive.*
- *Establish buffers to abutting neighborhoods that are eco-friendly.*
- *Provide/encourage new recreational activities.”*

The MAKER zone is an acronym for:

- M – Manufacturing
- A – Artisanal Foods and Arts
- K – Krafts and Design Business
- E – Environmental Buffers
- R – Recreation

As set forth in the RFP issued by the Village in 2017 for the creation of the MAKER zone, the mission statement for the MAKER zone is:

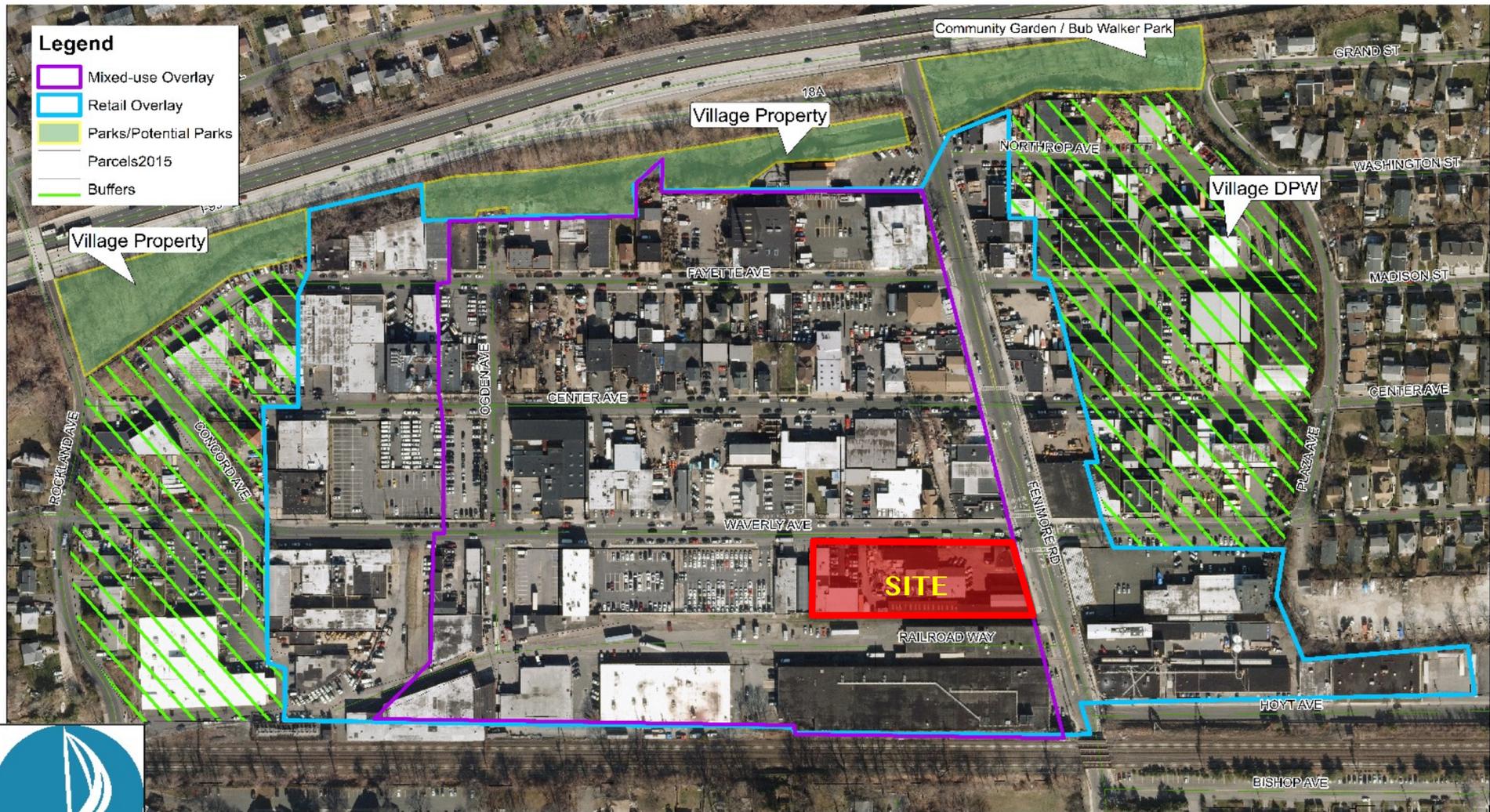
“A coordinated effort to preserve existing uses and incentivize the growth of the “maker” economy in Mamaroneck as an economic engine for jobs, tax revenue, environmentally-sensitive redevelopment, neighborhood and eco-friendly buffering, flood mitigation, and new recreational activities all aimed at the revitalization and sustainability of the manufacturing district in Mamaroneck.”

As depicted on Figure III.A-1, the MAKER zone is comprised of two overlay areas, a Retail Overlay and a Mixed-Use Overlay, within which the Site is located. Buffer and park areas are envisioned along the perimeter of the area. The following uses are encouraged in these areas:

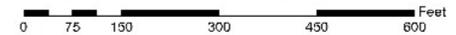
Retail Overlay

- Indoor recreational facilities

⁵ Industrial Area Committee/Chazen Companies PowerPoint Presentation, February 15, 2017.



Draft MAKER Zoning



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Source: Village of Mamaroneck MAKER Zone RFP

Scale:
As Shown

MAKER Zone

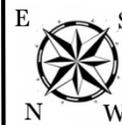


Figure
III.A-1



- Micro-alcohol establishments
- Theaters
- Higher education uses
- Art and film studios and dance and music instruction
- Boutique hotels

Mixed-Use Overlay

- All uses outlined above plus mixed-use with retail on the ground floor and office or manufacturing above.
- Live-work units.

As thoroughly documented in the Chapter IV.A of the DEIS, the area where the MAKER zone is proposed, locally know as “The Flats” is overwhelming dominated by light industrial, automotive, warehouse and similar land uses. This land use pattern has evolved from a more heavily industrialized character, to what exists there today. The uses proposed for the MAKER zone reflect the future land use goals of the Village of Mamaroneck and do not reflect existing land use characteristics of the area. While those uses may in time be drawn to the district, the current pattern of land use will likely remain prevalent for the foreseeable future.

The FEIS Plan has been developed to more closely align with the goals of the MAKER zone, while continuing to make an economically viable use of the Site today. The FEIS Plan will remove all of the pre-existing non-conforming structures on the Site that related more to the prior lumber yard operation. The development will support an existing business, and result in an expansion of the areas economy and tax base, in a manner that is extremely environmentally sensitive (through the development of a “net-zero” building), while improving and enhancing the public streetscape along both Waverly Avenue and Fenimore Road, and by creating a new publicly accessible vest-pocket park at the northwest corner of the Site. All of the Site’s public frontages allow for improved and unrestricted pedestrian circulation. Importantly, the FEIS Plan will result in an increase in flood storage on-site, thereby benefitting the flood conditions of the surrounding area.

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It is important to bear in mind that uses that create “night life and increase pedestrian traffic” such as restaurants, retail uses, theaters, etc., are essentially prohibited in the M-1 zoning district with the exception of a limited area within 150’ of Fenimore Road, so currently, there is no night life, or places for the general public to walk to. As noted above, if the MAKER zone is adopted, that may begin to change, but likely incrementally, and over a prolonged period of time.

Finally, it is anticipated that the new uses at the Site, including the woodworking shop that will be used as an educational resource and the incubator office space, will enliven the Site, certainly more than the prior proposals and the existing operation of the Site.

A-3 Comment:

*And then in the end, I appreciate the additional renderings that were added from the very first draft of the DEIS and I have to say that I feel that that is an enormous impact on visually on the neighborhood, that there is no other kind of warehouse that takes over a property like that, that it is the combination of the mass and the height. It has an enormous [inaudible] on the lot and in my mind, I realize there's industrial purposes and they're not super attractive purposes in the industrial area, yet none of them are of that size. When they get to be this size, in my mind, it's turning it into an urban type of feeling in the community. It's taking away from the sense of a Village that has an area where there's some contractors and there's car repair and there is some warehousing to a certain extent but it's of a smaller nature. When I see this kind of size of a structure, it definitely seems to be -- tending to be an urban environment rather than a village environment.
(Board Member Yergin, Public Hearing, April 1, 2021)*

A-3 Response:

Comment noted. The FEIS Plan reflects a complete redesign of the building, as well as its use. The new building extension would consist of 43,940 square feet of gross floor area, or a net increase of 25,361 square feet once the floor areas of the existing industrial buildings are deducted. Where the building addition presented in DEIS Plan was somewhat monolithic, the building proposed in the FEIS Plan has

been completely redesigned and is now broken into 5 separate segments, each of which are distinctly articulated and clad in differing façade materials to resemble independent buildings. This treatment significantly reduces the mass of the building, while restoring a human scale to the Site.

It should also be noted that the three buildings of The Mason, located just north of the site are of a similar size and scale as the FEIS Plan. A number of the industrial buildings in the area have much larger footprints, and very large square footages (the adjacent Artic Glacier Ice building, the KRB building, Marvel Industries among others) although they are not as tall. The character of the area is not distinguishable between “urban” and “village” but rather as industrial.

A-4 Comment:

Given more substantively, I want to clarify one thing that came up and they talked about this being an addition and this is a new thing and the other thing was approved before. Let's just go back a little bit. First application made on this property which I'm aware, obviously there may have been others, concerned a permit to build a building about the size of the existing building plus what they have proposed. The board issued a positive declaration which was issued in an ENB, the Environmental Notice Bulletin at the time, and went not to what it had gotten to. At that point shortly thereafter the application was withdrawn or abandoned and in lay of it, they cut the project significantly. I think about 50 percent, I'm not gonna just mention square footage, but about half. And that's where they went and that was not paused at. Now they're back to take the second half, and to me, that's probably what we would call segmentation about as clear as you can be.

(Board Member Neufeld, Public Hearing, April 1, 2021)

A-4 Response:

See response to comment A-1 above. As noted previously herein, the proposal currently before the ZBA is markedly different than the 2009 and 2012 proposals, both in scale and use.

A-5 Comment:

Not only is it just not a question of segmenting but to suggest that it is not impacting the first building is silly because even if it hadn't been a segmentation of the application initially, the buildings are being integrated into one. There's structural changes on both, and they're all going to be integrated. The new site, the whole area, the parking, et cetera. So I think it's not fair to characterize it nor have I ever heard this characterized as an addition. It is a structural change of the area. It is basically going back to, and I don't know if the planners have looked at this, the original application which was probably about what, you mentioned it earlier, about five years ago, something like that.

(Board Member Neufeld, Public Hearing, April 1, 2021)

A-5 Response:

The building proposed in the FEIS Plan will be structurally integrated with and physically connected to the existing self-storage building. The spaces within the building will share common utility and mechanical equipment. By any definition, the Proposed Action is an addition to the existing self-storage building.

As explained more fully in Response A-1, the Proposed Action envisioned in the FEIS Plan could not have been contemplated in 2009, and regardless of whether one believes the Proposed Action represents "segmentation" the Proposed Action is undergoing the most thorough environmental review available to the Lead Agency, allowing for the Proposed Action to be judged on its merits.

A-6 Comment:

So they filled up the first and now they're going to bootstrap. I think that's the segmentation concern.

(Board Member Neufeld, Public Hearing, April 1, 2021)

A-6 Response:

See response to comment A-1 above.

A-7 Comment:

And one last thing and that is what is going to be left there? Because I was always baffled. I had thought they were going to be removing a lot of the extra buildings as part of the first building, but I was incorrect on that or it wasn't complied with or I was just probably incorrect, but what's going to be left here? And how does that impact the property? Because this is by, anyone's standard, if you take this amount of land and you look at that amount of structural improvement, I would be hard-pressed to find anything close to it in Mamaroneck or adjacent communities, so it's obviously a very serious concern.

(Board Member Neufeld, Public Hearing, April 1, 2021)

A-7 Response:

The FEIS Plan calls for demolishing all of the existing buildings on the Site (with the exception of the existing self-storage building). In total 18,589 square feet of existing older, non-conforming buildings will be razed. The new building extension is 43,940 square feet, resulting in a net increase of 25,361 square feet of gross floor area.

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A-8 Comment:

The DEIS, this is actually in the executive summary but it's also repeated in the chapter on land use zoning and community plans, it talks about as demonstrated by the continued operation of the existing self-storage that is more fully documented, it generates no impact there for the self-storage. It's entirely compatible with the existing surrounding uses. And I disagree. I do not think that the fact that it is consistent with the existing building means that it will not have an impact or make it appropriate. In fact, one of the concerns I had, which again is also repeated later, is that this future zoning will be the maker zone which is discussed here. The maker zone seeks to have more foot traffic and other traffic. This use, which keeping the traffic down will, in fact, have a significant impact on the future of the area and the development of the maker zone because it's not adding any -- it's taking up an enormous site without adding any people to the area, and, therefore, it will not support the surrounding community.

(Chairwoman Kramer, Public Hearing, May 6, 2021)

A-8 Response

See response to comment A-2 above. Throughout the DEIS and FEIS, the Applicant has endeavored to demonstrate how the Proposed Action does meet many of the planning goals of the MAKER zone. However, the MAKER zone has not been adopted, and it would be inappropriate, and in fact illegal for the Lead Agency to render a decision based on the Project's compliance with zoning that has not been adopted.

The FEIS Plan now includes uses that will increase foot traffic, and the revised design of the building addition is smaller and far more compatible with a pedestrian scale, even though pedestrian activity along Waverly Avenue is limited.

A-9 Comment:

I notice and this is probably a technical that I noticed. I think it's interesting that in the existing zoning compliance when they're showing, they talk about the existing and they never provide the existing FAR, which is interesting. Yes, you can calculate it, but it isn't provided. Really should be provided. I wonder is that so we don't realize how big it is.

(Chairwoman Kramer, Public Hearing, May 6, 2021)

A-9 Response:

The existing FAR/GFA are both included on the plan set filed along with the DEIS (Sheet SY-101, Site Plan and Zoning) and was presented in the DEIS on Table I-2 on Page I-7. Table III.A-1 indicates the FAR/GFA highlighted in red for the FEIS Plan.

Table III.A-1 FEIS Plan Zoning Compliance				
Zoning Criteria	Required/ Permitted	Existing	Proposed	Variance Required
Minimum Lot Area (SqFt)	10,000	44,156	44,156	--
Minimum Lot Width	50	134	134	--
Building Coverage				
Area (SqFt)	22,078	20,081	23,096	1,018
Percentage	50%	45%	52%	2%
Floor Area Ratio (FAR)	1.0	1.34	2.11	1.11
Maximum Gross Floor Area	44,156	59,081	84,432	40,276
Impervious Surface Coverage				
Area (SqFt)	N/A	41,653	40,383	--

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Percentage	N/A	94.3%	91.5	--
Maximum Building Height				
Stories	3	4	4	1 story
Feet	45'	45'	45'	
Minimum Yard Requirements				
Front (Waverly)	Note 1	0'	0'	--
Front (Fenimore)	10'	0.4'	10'	--
Rear (Southeast)	None	2'	2'	--
Rear (Southwest)	None	3'	3'	--
Off-Street Parking	137	52	26	111
Off-Street Loading	8	0	3	5

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A-10 Comment:

*Yes. I'll just ditto one of your comments. I think it was excellent. I think to say it's compatible because now there is one there, I think this is an enormous out of character construction and it involves very significant variances and I think those underscore the need to be attentive here. As I understand it, the FAR, they want to go from 1 to 2.43. They want a variance of 63,000 feet and also various parking variances.
(Board Member Neufeld, Public Hearing, May 6, 2021)*

A-10 Response:

The commentary in the DEIS indicated the proposed building addition is consistent with the existing self-storage building, for which the ZBA previously granted variances. The FEIS Plan requires the area variances noted in Table III.A-1.

A-11 Comment:

*One thing that's unclear regarding the variances, particularly the parking ones and some of the setbacks. I think they have to indicate what buildings and what improvements there are going to be serviced by those from the existing to the proposed for the other buildings. I'd like to see so we have breakdown in a chart of how that goes because we often run into a situation where parking is given and then there's an argument over whose they are. You have a lot of different buildings here and a lot of different uses.
(Board Member Neufeld, Public Hearing, May 6, 2021)*

A-11 Response:

All of the existing buildings on the Site (with the exception of the existing self-storage building) will be demolished under the FEIS Plan. The new 26 space off-street parking lot will serve the 4 uses on the Site (the self-storage facility, Murphy Brothers office, the woodworking space and the incubator office space).

The Mamaroneck Self Storage facility currently has 1-2 employees on-site at any one time. With additional units, this could increase to a maximum of 3 employees on-site at times. A self-storage facility of a total of 429 units, based upon the Institute of Transportation Engineers' (ITE) publication "Parking Generation", 5th Edition, would generate a peak parking demand of 6 spaces, inclusive of the employee spaces.

The Murphy Brothers Contracting portion of the Site will have four full time office staff on-site which are projected to use four parking spaces. Murphy Brothers Contracting will generally not generate any visits from the general public or contractors. There were previously 19 parking spaces designated for five businesses that parked on-site. That usage will be replaced by the self-storage building addition, and thus the overall parking demand will be reduced. Many of these contractors/businesses have already moved or are no longer in business since the previous studies were performed and thus are no longer parking there. The Woodworking Shop is projected to utilize three parking spaces while the Incubator Offices are projected to utilize approximately six parking spaces. Thus, a total of approximately 19 parking spaces could be utilized if all of the uses were to peak at the same time.

With the proposed self-storage facility addition and the modifications to the layout of the Site, there will be 26 parking spaces provided on-site along with three (3) loading spaces, in addition to the on-street parking spaces along Waverly Avenue. The three loading spaces will be utilized by the patrons of the self-storage facility, thus freeing up even more parking spaces.

The Village's Code permits the utilization of "Shared Parking", referred to as "Joint Parking", in Section 342-56 B. Shared Parking is the principle where

different land uses would have their peak parking demands at different times during the day/week and thus can utilize or “share” the same parking space during different periods. As described above, there will be ample parking even without the principles of share parking being applied.

It is likely that during the site plan review phase of the project, specific parking spaces would be assigned to the various uses.

A-12 Comment:

One thing I also would like to see addressed in the FDIS is the impact on future development and variances. We are bound principles of our precedent. We have our own administrative -- I think we have to also then say if this were to go forward, what would the impact on it be by virtue of the fact that someone could come in next door and say, by the way me too. And you can't say to them, well, you weren't here first so you're out of luck. You really do need to address what it this is doing. I think the chair said this. This is changing something dramatically and I think we have to look at them. It's not just the this that it's going to change. You then have to apply this to our future assessments. I'd like to see that looked at carefully.

(Board Member Neufeld, Public Hearing, May 6, 2021)

A-12 Response:

“Precedent” is not an environmental factor to be considered when making a determination of significance. Speculation of unrelated projects that may be proposed at a future date is not a relevant consideration in the review of this FEIS.

The Zoning Board is not bound by Precedent in the determination of an area variance request, unless all of the circumstances involving the requested variance are identical to a previous decision. The Zoning Board must apply the statutory criteria set forth in §7-712-b of Village Law. Specifically:

“[T]he zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment

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to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.”

The five factors must be applied to the specific characteristics of the property and the requested variance, which are rarely, if ever identical. Further, zoning boards may consider new applications and new information when reviewing applications before them, and so long as the board provides a rational explanation for reaching a different result, the Court will not overturn the decision. Hurley v. Zoning Bd. of Appeals of Village of Amityville, 69 A.D.3d 940, 893 N.Y.S.2d 277 (2d Dep't 2010).

A-13 Comment:

*This is a segmented project and I know we're considering the whole development because originally this was proposed and it was POS decked years ago, 5 years ago I guess. And then what occurred is they cut the project in half and it was no longer a POS deck. Now, they're going to the same result.
(Board Member Neufeld, Public Hearing, May 6, 2021)*

A-13 Response:

See response to comment A-1 above. As noted previously herein, the proposal currently before the ZBA is markedly different than the 2009 and 2012 proposals, both in scale and use.