



Memorandum

To: Jerry Barberio- Village Manager

From: Gregory Cutler, AICP- Director of Planning and Development

Date: 5/18/2023

Re: Comprehensive Zoning Issue List & Preliminary Recommendations

Background

At your direction, I was tasked with providing a comprehensive review of outstanding identified zoning code issues. This memorandum will serve to identify those zoning code issues as well as provide preliminary recommendations on how best to remedy them. Most of these are identified within the draft comprehensive plan, and if not specifically identified, none of the preliminary recommendations are in conflict with the current or draft comprehensive plan. Lastly, this issue list in this memorandum is ordered by staff prioritization of these issues. The Village Board of Trustees may, of course, in their discretion re-order these items based on their own prioritization. Please note that this memorandum also includes issues identified by former Village Counsel and the Village's Planning Consultant, AKRF. Attached herewith are copies of those memoranda.

1. *Byzantine Land Use Board Notification Requirements.*

Nearly every type of land use application has different notice requirements, both in terms of distance of notice, whether the village or the applicant is responsible for noticing, as well as different requirements for notice signs. It makes it difficult for staff and applicants to ensure compliance with the notice requirements.

Recommendation

Staff recommends that the notification process be standardized, with an abutters notice requirement of 100-200 ft from the property line of the proposed activity. We further recommend elimination of the sign requirement as it is cumbersome to continuously update signs for months (particularly when those who are following the application are able to look up the next meeting date or call the Planning Department to find the meeting date), and the signs themselves may be perceived as eye sores.

2. *Definitions of Food Service Establishments, Proximity Restrictions in the C-2, and Special Permit Requirements.*

a. Definitions

Here is an excerpt of the issue from a memo prepared by the former Village Attorney in 2017 regarding the definitions:

“The Code contains definitions of “Food Service Establishment,” “Restaurant,” “Restaurant, Carry-Out,” “Restaurant, Fast-Food,” and “Delicatessen.” Food Service Establishment is defined to encompass all of the others. However, the only one of these listed as a Permitted Use (by special permit) is a Restaurant. Since the definition of Restaurant specifically excludes Delicatessen, Carry-out Restaurants and Fast-Food Restaurants, it would appear these are not actually permitted anywhere in the Village. In some zones Restaurants are permitted by special permit pursuant to §342-45, except §342-45 is titled Food Service Establishments and Taverns (Tavern being another undefined term) and includes requirements for each of the defined types of establishments, even though they don’t seem to be permitted. It is clear the definitions and terms used in the Code need to be cleaned up and the Board will need to determine exactly what type of establishments it does want to permit and where, since we do not believe the Code as drafted provides for what it is generally believed to provide”

Recommendation

The definitions should be updated as soon as possible. Staff can prepare language that includes more detailed subcategories of food service establishments for the Board’s consideration, and the Board could then determine what zoning districts they should be permitted within. Alternatively, the board could consider making one definition for food service establishments that is all encompassing and permits that use in commercial zones.

b. Proximity restrictions

Presently the Special Permit Criteria in the code restricts placing delis, carry-out and fast food within 200 linear feet of another deli, carry-out, or fast-food establishment.

§ 342-45. Food service establishments and taverns.

“In a C-2 District, no fast-food restaurant, carry-out restaurant or delicatessen shall be permitted on Mamaroneck Avenue closer than 200 linear feet to another existing fast-food restaurant, carry-out restaurant or delicatessen on the same side of the avenue.”

In 2017 Mamaroneck Avenue within the C-2 zone was inventoried and all but one carry-out, fast-food, or delis, were in violation of this requirement. Many of the same establishments still exist today and remain in violation of this requirement in terms of geographic location (some had variances others were potentially legal non-conforming).

Recommendation

Staff recommends removing this distance provision from the code as it may restrict future economic development on Mamaroneck Avenue. Furthermore,

there have been no recorded anecdotal or negative impacts that relate to the existing condition (in which nearly all establishments violated the distance requirement) and there is no evidence to suggest that removing the provision will lead to negative outcomes.

c. Special Permit Requirements.

This is an excerpt from an AKRF memorandum prepared by Ashley Ley, AICP, dated 11/17/2022:

“Special permits should be reserved for uses that require additional restrictions to address potential nuisance concerns. Currently, too many uses require special permits, and this can be a burden on desirable new businesses in the downtown. For example, a coffee or bagel shop is subject to the same extensive special permit process as a late-night bar. Similarly, the renewal requirement for special permits should be narrowly applied to only those uses that actually require periodic reassessment. There are no clear guidelines for reviewing renewal requests, which can lead to inconsistent decisions and procedural challenges.”

While the quoted recommendation is related to all special permits, which is something that must also be looked at, it is particularly apparent that the special permit requirements for certain food service establishments are onerous, particularly to low capital businesses, colloquially known as “mom and pops.” The length of review, cost of application, cost of professionals, and uncertainty may lead to many potential businesses looking elsewhere. Moreover, the supposed criteria for special permit review outlined in 342-45 have nothing to do with special permit review, and are entirely prescriptive (that is to say they are binary requirements, such as the 200 linear feet requirement noted above, and are not review criteria for the board’s consideration). Therefore, the Board of Appeals relies on the standard special permit criteria, which often don’t apply. For reference here are the standard criteria:

A. That the location and size of the use, the nature and intensity of the operations and traffic involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to the type, arrangement and capacity of streets giving access to it and the hours of operation are such that the proposed use will be in harmony with the appropriate and orderly development of the district in which it is located.

B. That the location, nature and height of buildings, walls and fences and the nature and extent of the landscaping and screening on the site, as existing or proposed, are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

C. That operations in connection with the proposed use will not be objectionable by reason of noise, fumes, smoke, dust, vibration, glare, intensity or flashing of lights.

D. That the parking areas to be provided will be of adequate capacity for the particular use, properly located and suitably screened from adjoining residential

uses and that the entrance and exit drives shall be laid out so as to achieve maximum safety.

E. That, where they are applicable, the standards and requirements established or approved by the Village Engineer have been satisfactorily met as evidenced by his certification and that all necessary approvals of any other governmental agency or board have been or will be obtained by the applicant.

Recommendation

Consider removing the special permit requirements for all restaurants other than bars or taverns. This dovetails with the definitions section noted above, where tavern is not a defined term. Definitions for tavern or bar would need to be drafted. There are no special permit requirements for restaurants in Larchmont, Scarsdale, and Harrison (in the downtown and certain business districts, special permits are required in their special business district and TOD district). Given the review criteria applied, the Board of Appeals has limited authority anyway, and outcomes with or without the Special Permit requirement will likely be the same, but the benefit to the applicants and to business diversity in the Village will likely improve.

3. Land Use Definitions (AKRF Recommendation)

The definitions section of the Code leaves out certain modern land uses, which makes it difficult to regulate those uses, for instance, fast casual restaurants or smoke shops. Other sections of the Code sometimes refer to land uses that are not included in the definitions section, and vice versa. For example, the definitions section includes five types of restaurants, but the parking Village of Mamaroneck 3 November 17, 2022 requirements section only addresses two types. The special permit section also refers to certain land uses that are not included in the definitions section.

Recommendations

Expand the definitions to include modern land uses – e.g., doggie daycare, childcare centers, senior centers, convenience store, gas station, medical office, drive-thru restaurant, fast casual restaurant, curbside pickup, smoke shop / tobacco store, and others.

Review and update the land uses listed in various Code sections (e.g., definitions, off street parking, special permit, permitted district uses) to ensure consistency throughout.

Evaluate newly defined land uses for planning concerns and consider use-specific requirements.

Village staff concurs with this recommendation.

4. Subdivision regulations

There are no clear definitions of subdivisions, re-subdivisions, lot mergers and lot line adjustments. Moreover, submission requirements do not account for variations in types of applications subject to subdivision approval.

This chapter requires a total overhaul. There should be clear definitions for resubdivisions, lot mergers, and lot line adjustments. The Village should also consider making lot line adjustments that do not result in a buildable lot a ministerial action with a concrete process that establishes a clean record for both local records and the Westchester County Clerk land records. The current practice is to treat any lot line adjustment as a subdivision. This can become burdensome for homeowners who are seeking minor lot line adjustments that do not result in non-compliance or new building lots. Submission requirements should be tailored to varying types of subdivisions.

5. *Revise wetlands law*

The Village's Wetlands Law, Chapter 192, should be redrafted and updated. As there are a number of inconsistencies and ambiguities that need to be clarified.

Recommendations

Staff recommends that earlier drafts of the proposed wetland laws be revisited and moved forward. Moreover, staff recommends that wetland permit approval authority be transferred from the Planning Board to the Harbor and Coastal Zone Management Commission. In practice, the Planning Board typically defers most of the review responsibilities to HCZMC. The current practice adds time and cost and does not yield improved reviews or outcomes.

6. *Revise definitions of maximum coverage/maximum building coverage and/or institute impervious coverage law*

At present the definition of coverage does not match how it is referenced in other parts of the code. Some sections of code refer to building coverage, while others refer to just coverage.

Recommendations

There should be clear definitions for building coverage as well as lot coverage. Furthermore, a review of the code should be performed to ensure that each section refers to the correct definition. In addition, the Village may seek to implement an impervious coverage law to promote green infrastructure practices such as permeable pavers and porous pavement.

7. *Required Submissions (AKRF Recommendation)*

The required submissions for zoning applications, particularly the number of copies required, may be unclear or excessive, depending on the Board or application type. For example, site plan review by the Planning Board requires six copies of the application (Section 342-78A), and special permit review requires 16 copies of the application (Section 342-70).

Recommendation

Revise the Code to refer to a “schedule of document submissions” that can be updated annually by land use department staff to reflect an appropriate number of hard copies, and the proper format for sending digital submissions. Consider granting each Board the ability to stipulate in its procedures the number of copies required for applications before it.

Village staff concurs with this recommendation.

8. *Revise site development plan triggers.*

Below is the code section outlining site plan triggers:

§ 342-75. Uses and actions subject to approval.

Site development plan approval by the Planning Board shall be required in all districts for:

A. The erection or enlargement of any building or other structure other than one- or two-family dwellings.

B. Any change of use or intensity in use other than in relation to a one- or two-family dwelling that will affect the characteristics of the site or increase the requirements under this Code in terms of parking, loading, circulation, drainage, utilities, landscaping, or outdoor lighting.

C. Any proposed clearing of vegetation or earthwork on any property 1/2 acre or larger or any land involving 25% or more of the site.

D. Any amendment of a previously approved site development plan or the tree preservation plan associated with that site development plan.

E. Stormwater pollution prevention plan. A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter 294, entitled "Stormwater Management and Erosion and Sediment Control," of the Mamaroneck Village Code, shall be required for site plan approval. The SWPPP shall meet the performance and design criteria and standards in Chapter 294. The approved site plan shall be consistent with the provisions of Chapter 294.

It is unclear why SWPPP is listed here, and it is written in language that seems to indicate it is not a trigger. It is written in such a way that it simply references that site plans should be consistent with Chapter 294 (stormwater management).

Secondly, it is unclear why one and two-family homes would be exempt from site plan requirements if any property where 25% of the site is disturbed is subject to site plan, which would likely capture all single- and two-family home construction. It should be either required or not. Moreover, the standard of “any clearing of vegetation or earthwork on any property ½ acre or larger” is arbitrary, as it does not have any connection with impacts or the need to require a site plan. For example, should a homeowner who lives on a property ½ acre or larger be required to submit for a site plan to remove a 5 ftx10ft patch of invasive vegetation?

Recommendations

It is recommended to remove the SWPPP language, as either way an applicant that is subject to Chapter 294 must be compliant with the SWPPP requirements.

It is recommended to eliminate the language requiring site plan for “any clearing on a property ½ acre or larger.”

It is recommended that the Village Board consider either excluding single and two family homes from the 25% disturbance requirement, or require site plan approval for construction of new single and two family homes.

9. Provide for escrow payments for applications to the BAR

Presently escrow funds can only be established for items that meet the definition of a land use application:

§ 176-2. Definitions.

Any application by an applicant for subdivision approval, site plan approval, a special permit, a zoning amendment, an amendment to the comprehensive plan, an amendment to the zoning map, a wetland permit, a variance, a perimeter, construction or reconstruction permit or a consistency determination or an appeal by an applicant to the Zoning Board of Appeals from a determination of the Building Inspector.

Based on the definition in the code, the Village cannot collect an escrow payment for stormwater review of projects that only go before the Board of Architectural Review. The definition of a land use application should be expanded to include applications for BAR approval that require stormwater review.

10. Address temporary residences (ie AirBNB)

The code expressly prohibits “tourist homes” as accessory uses in single family districts. The code does, however, permit up to two roomers or boarders as an accessory use. Neither of these accessory uses are defined anywhere in the code. The practical application of the code means that renting a room in a home for short-term use is permitted, but renting a separate structure for short-term use is prohibited. At present short-term rentals (less than 30 days) are not permitted in multiple residence dwellings, per the definition of a Class A multiple dwelling in section 4 of the Multiple Dwellings Law.

Recommendation

The Board of Trustees should consider regulatory options for short term rentals, including a permitting system or outright prohibition.

11. Clarify code with respect to multiple uses on one lot

Mixed-use development should be expressly permitted in the C-2 and TOD zones. In fact, it is required on Mamaroneck Avenue in the C-2 zone. Mixed-uses on the same site are also contemplated in the proposed MAKER zone in the Industrial Area. The code should be clear that in these districts, multiple primary uses on one lot are permitted.

12. Review/repeal multiple dwelling law.

This issue was outlined in an April 7, 2017 memo from Dan Sarnoff, Deputy Village Manager: When the Village revised its building code in 2014, the Board also enacted Chapter 248 – Multiple Dwellings Law which referenced and incorporated the standards of the New York State Multiple Dwelling Law (NYS MDL). It is important to note that the provisions of the Multiple Dwelling Law only apply to cities with a population of 325,000 or larger. The only city in New York that currently exceeds this threshold is New York City -- although when adopted originally both Buffalo & Rochester exceeded that threshold as well. In order to enforce the provisions of the NYS MDL, a municipality must adopt a local law, as the Village did. In lieu of the NYS MDL, all other cities, towns and villages, by default, enforce the provisions of the New York State Multiple Residence Law (NYS MRL). Given that the MDL is particularly onerous from an administrative perspective and clearly designed for large cities, Village staff recommends that Chapter 248 of the Village Code be removed.

13. Change definition of a half-story

The clear height between the top of the floor beams and the structural ceiling level should be changed from seven feet six inches or more to seven feet or more, to be consistent with the State Building Code.

14. Update code regarding home professional offices and customary home occupations.

The home occupations that are permitted as accessory uses have not been updated since 1987. There are many new home occupations that are not expressly listed as permitted accessory uses in the code. The code should be updated to include modern professional occupations. Attached please find the Planning Advisory Service report on Home-Based Businesses in the Twenty-First Century.

15. Revise code to allow Planning Board to permit parking within 500 feet of property.

At present the Board of Appeals may allow applicants to satisfy their parking requirements as long as they demonstrate control of parking spaces that are within 500 of the property per 342-54 A <https://ecode360.com/7713251#7713251> . When done in conjunction with a site plan this jurisdiction should be moved to the Planning Board as they are best able to determine the parking demand in relation to the site plan specifics and the larger planning context. This was done as a pilot test in the adaptive reuse legislation and the outcomes of this “test” should be reviewed (specifically as it relates to the French American School in Most Holy Trinity).

16. Jurisdiction of Zoning Board of Appeals relative to the enabling Statute.

Section 342-90 setting forth jurisdiction of the Zoning Board of Appeals should be amended to be consistent with the enabling statute, Village Law 7-712-a(4) states “Unless otherwise provided by local law, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any local law adopted pursuant to

this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the village.”

17. Revising section 342-74 with respect to site plan certification on one and two family homes.

Section 342-74 requires some clarifications. It begins by saying no building permit shall be issued except in accordance with an approved site development plan. However, per 345-75, site development plan approval is not always required for 1 and 2 family dwellings. This clarification needs to be incorporated into the first sentence of §342-74. The last sentence of §342-74 needs to be deleted or revised. This sentence states that a certification is to be provided by the building inspector with every application for site development plan approval stating that the plans meet all requirements of the Code. This contradicts an applicant’s ability to apply for variances. The sentence also provides for a certification from the Village Engineer that the plans meet all applicable standards and requirements established or approved by him. This should be a condition of permit approval, not a requirement for the submission of an initial application.

18. Allowable Use Table (AKRF Recommendation)

The existing zoning code does not have an allowable use table that clearly summarizes which uses are allowed in each zoning district.

Recommendations:

Add a use table to the end of the zoning code. The use table should clearly specify which uses are allowed in each zoning district, and whether it is a permitted principal or special permit use.

The Code should be updated to include key land uses that are currently defined but not expressly permitted. There are numerous disconnects between the defined uses and the allowable uses listed for each zoning district.

The allowable uses in the commercial zoning districts should be updated to include, as appropriate, the modern land uses identified above.

Village staff concurs with this recommendation.

19. Review Existing Parking Requirements. (AKRF Recommendation)

The parking standards should be updated to reflect modern parking generation rates for the allowable uses in the Code.

Recommendations:

Use consistent terms in the allowable use table, definitions, and parking requirements. o Assign parking generation rates to the allowable uses.

Consider expanding opportunities for shared parking and parking waivers.

Village staff concurs with this recommendation.

20. Wireless Telecommunications Facilities. (AKRF Recommendation)

The Federal Communications Commission (FCC) has issued a series of declaratory rulings that narrow the scope of municipal review of applications for wireless telecommunications facilities. Broadly, the FCC rulings address the “shot clock” (the maximum number of days for a municipality to act on an application), limit the requirements that a municipality can impose on an applicant, and clarify certain definitions, e.g., “eligible facilities request.” The most recent rulings address modification requests, notably, that if a proposed modification constitutes an “eligible facilities request,” then the Village will have 60 days to review the application; and, if the proposed modification would not substantially change the physical dimensions of the existing tower, then the application must be approved.

Recommendation:

Update application procedures and reduce restrictions imposed on wireless telecommunication facilities applications to ensure compliance with FCC rulings.
Simplify the process for co-locating wireless facilities.
Eliminate the re-certification requirements.

Village staff concurs with this recommendation.