

McCULLOUGH, GOLDBERGER & STAUDT, LLP

MEMORANDUM

TO: Mayor and Village of Mamaroneck Board of Trustees

FROM: Linda B. Whitehead

DATE: February 16, 2017

CC: Lester Steinman
Dan Gray

RE: Zoning Code review for clarifications and inconsistencies

At the Board of Trustee's January 17 work session the Board requested that the Village Attorney, Land Use Counsel and Building Inspector review the zoning code and prepare a preliminary report highlighting subject matter areas recommended for revision. At a subsequent meeting, and in light of the upcoming Comprehensive Plan update, it was clarified that this review and recommendation would focus on inconsistencies or provisions requiring clarification rather than any substantive zoning modifications. In fact, it should be noted that Section 4.3 of the Comprehensive Plan points out that the Code contains a number of inconsistencies and undefined terms and recommended that the Code be "updated, clarified and streamlined to ensure that it can be administered effectively and interpreted by the public and applicants appearing before the Village land use boards."

Lester Steinman, Dan Gray and I met on January 24 and reviewed the Zoning Code. We asked Dan in particular to point out items which had been problematic to him in applying and interpreting the code. As a result of this review, we are providing the following recommendations. Some of these are relatively easy to fix, and some will require additional work and review of the use of terms throughout the Code.

1. 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.

2. Club, Membership is a defined term, and one which should probably be updated. Club is not a defined term. However, in some parts of the Code (non-residential districts) the word Club is used as the permitted use whereas in the residential districts some version of Membership Club is used. Both terms are used throughout the Code and it is unclear what is meant by “Club” on its own. Section 342-42 setting forth the special permit criteria for Clubs and Recreational Uses does not refer to Membership Clubs. A related issue is the need to better define “nonmember events” in the context of Clubs.

3. Clarification is needed in the Code on multiple uses on one lot. In residential zones there should be only one principal permitted use. However, in non-residential zones there may be more than one. This is not clear.

4. The definition of Coverage does not match how it is referenced in the Code, particularly in the Schedule of Requirements. The definition includes buildings and structures. However the Schedule for residential zones refers to Maximum Coverage all Buildings and the Schedule for non-residential zones refers to Maximum Building Coverage, therefore both do not include structures and do not match the definition. Throughout the Code, the terms Coverage and Building Coverage are both used, without any recognition that by definition they are different. It is our recommendation that the Board actually consider definitions of Building Coverage and Lot Coverage, the latter including all impervious surfaces, and then review how they are used in the Code.

5. Note 4 in the Schedule of Minimum Requirements for Nonresidential Districts needs to be clarified or removed. It is unclear what is meant by this requirement and the Building Department does not know how to apply it. The note states “No new construction or addition to existing construction and no new or expanded use shall be permitted which will reduce the area of land immediately surrounding any residential structure on the same lot to less than 5,000 square feet per dwelling unit.”

6. Note 12 in the Schedule of Minimum Requirements for Residential Districts is also problematic in that it exempts additions to residential structures where 50% of the existing structure is retained and there is no increase in footprint from having to comply with FAR requirements. This runs counter to the purpose of having an FAR requirement and could permit a full second story addition to a one story house which is at the maximum FAR.

7. 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) which 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.”

8. Section 342-100 needs to be revised to comply with the requirements of the General Municipal Law which requires 10 days' notice to adjacent municipalities.

9. Section 342-54 gives the Zoning Board the authority in conjunction with review of a variance or special permit to allow an applicant to utilize parking within 500 feet of the property. We propose extending this authority to the Planning Board in conjunction with its review of a site plan or special permit.

10. 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 the next section, site development plan approval is not 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 taken out in its entirety 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.

11. The subdivision regulations should be redrafted and updated. This was a specific recommendation in section 4.4 of the Comprehensive Plan, which noted that few updates have been made since the Subdivision Regulations were originally adopted in 1964. Since that time, both the enabling statutes (Village Law §7-728) has been revised, and the SEQRA laws have been adopted.

12. One item in the Subdivision regulations needs to be addressed quickly for clarification. This relates to apportionments or lot line changes and mergers. These have typically been handled administratively and there is a process in place to do them administratively, including a check that they will not create a non-conformity and submission of surveys to the Building Department and the assessor. Alternatively, some of these requests have been sent to the Planning Board for "subdivision" approval. This issue arises because the definition of Subdivision, although clearly stating that it is the division of land into two or more lots, at the end has the language "and including resubdivision." The term resubdivision is not defined, and there is some case law which would support a lot line change or merger being considered a resubdivision unless they are specifically excluded. This could be addressed by clarifying that both subdivision and resubdivision do not include lot line changes and mergers if the preference is to have them done administratively, or by providing for a specific procedure for these applications authorizing the Planning Board to waive jurisdiction over a de minimis resubdivision, subject to the filing of a final plat in the County Clerk's office showing the elimination of the lot line and the creation of one lot out of what was formerly two subdivided lots in the case of a merger, or the change in a lot line in the case of an apportionment or lot line change. There is some benefit to having the County Clerk's records accurately reflect the lots in the Village.

13. The provisions for home professional offices and customary home occupations which are permitted as accessory uses in the residential zones should be updated.

14. Section 342-84C provides for a moratorium on building permits for 60 days after the Board schedules a public hearing on a proposed zoning amendment if what would be permitted by the building permit would not be consistent with the proposed amendment. The Board may want to consider extending this “mini moratorium” to the processing of applications before the Planning and Zoning Boards.

15. As has been discussed previously, the Board may wish to consider moving the special permit approvals for some or all special permits from the Zoning Board to the Planning Board.

16. It is also recommended that the wetlands law be redrafted and updated.