

April 14, 2023

Memorandum

0 North Mountain Drive: Tax ID 3.10-1-3

Gross and Net Coverage Calculations / Building Lots

This Memorandum is to provide more documentation relative to the February 15, 2023 Memorandum "Building and Impervious Coverage Calculations" prepared by Gotham Design Planning & Development Ltd. in support of the applications pending before the Dobbs Ferry Planning Board and Dobbs Ferry Zoning Board of Appeals (ZBA) for the development of a single family building lot located at 0 North Mountain Drive, a/k/a Tax ID 3/10-1-3.

CONTENTION

The Dobbs Ferry Building Inspector has recently interpreted the Dobbs Ferry Village Code to require permitted Building Coverage to be calculated using the "Net Lot Area" instead of the "Gross Lot Area." The Applicant contends that, consistent with the Impervious Coverage, the Building Code should continue to allow the Building Coverage to be calculated using the total Lot Area, without any deductions for Steep Sloped areas.

BACKGROUND

An application for the development of 0 North Mountain Drive (the "Subject Parcel") was submitted to the Dobbs Ferry Building Department in June 2022. The Building Inspector determined that, in his opinion, the property, which was created by subdivision, approved by the Dobbs Ferry Planning Board in October 1989 with a Plat Map filed with Westchester County Records in December 1989, was not a building lot compliant with the Dobbs Ferry Village Code ("Code") due to the fact that, with the required percentages of steep slopes deducted, it did not have the required lot area. The Subject Parcel is in the OF-2 zoning district and Table B-1 in the Code indicates that the minimum Net Lot Area for a building lot in that zoning district is 20,000 square feet. While the subject property has a lot area of 23,337 square feet, Section 300-34.A.(2), which is often referred to as the "Steep Slopes Ordinance," stipulates the following:

Reductions for steep slope areas. In order to protect environmentally sensitive lands, preserve the Village's natural resources and promote the orderly development of land through standards that acknowledge the varied topography in Dobbs Ferry, net lot area shall be determined as the gross lot area less:

- (a) *Fifty percent of the gross area of a lot with slopes measuring 25% or greater.*
- (b) *Twenty-five percent of the gross area of a lot with slopes measuring more than 15% but less than 25%.*

Applying this requirement to the Subject Parcel reduces the Gross Lot Area of 23,337 square feet to the Net Lot Area of 15,716 square feet. The Property Owner contested the Building Inspector's decision that this rendered the property no longer a building lot, citing the fact that the Subject Parcel was created by subdivision conducted by the Dobbs Ferry Planning Board with the Minutes confirming that the Steeps Slopes Ordinance had been satisfied. The Building Inspector decided that, for the Subject Parcel to become a "Building Lot," a variance granted by the Dobbs Ferry Zoning Board of Appeals (ZBA) would be required.

An Application to the ZBA was submitted to the Village on June 17, 2022 and a Public Hearing was opened at the ZBA's September 14, 2022 and continued to this date.

In considering this application, the ZBA's identified its primary concern being whether or not the subject property could be developed without adverse impacts on the neighbors and the community. Since the ZBA recognized that those issues are more about engineering, it referred the application to the Planning Board for its input and advice.

The Project was submitted to the Planning Board, which reviewed it at its November, December, and January meetings. The Planning Board adopted a Resolution at the January meeting, which was forwarded to the ZBA, confirming that, in the opinion of the Planning Board, all of the potential adverse impacts intrinsic to this Project could be properly mitigated.

At the January, 2023 ZBA meeting, the ZBA explained that it was not looking for confirmation that A house could be built on the property, but rather that THE house proposed could be built on this site. Specifically, the ZBA wanted confirmation that all stormwater runoff for the required storm could be retained on-site, that the rock could be excavated and removed from the site without undue disruption to neighbors, that the removal of the rock on a site with steep slopes could be done without destabilizing the property, that the traffic generated by the house on the narrow and winding Village street would be safe, that the site could be developed without resulting in erosion and sedimentation, and that the fact that the Property Owner planned to build a "large" house would not exacerbate these concerns.

The matter was returned to the Planning Board at its February meeting for further consideration. To enable the Planning Board to go into further depth and evaluate THE house proposed, instead of simply A house, additional documents were submitted to the Planning Board for consideration at the February meeting. This submission included all of the documents required for Site Plan Review and approval. The Planning Board called for a Public Hearing on this application at its March meeting.

It is standard procedure for the Village's Consulting Planner and the Village's Consulting Engineer to receive copies of all submissions to the Planning Board. The Consulting Planner and Engineer then prepare Memos to the Planning Board confirming that they have reviewed the application and identifying issues of concern, additional information required, and the next steps in the process.

Anthony Oliveri, the Dobbs Ferry Consulting Engineer, submitted Memos reviewing the submissions to the Planning Board dated October 27, 2022, November 23, 2022, December 27, 2022, and February 1, 2023. Valerie Monastra, the Consulting Planner, submitted Memos reviewing the submissions to the Planning Board dated October 31, 2022, November 28, 2022, December 28, 2022, January 28, 2023, and February 23, 2023.

In her January 28, 2023 Memo, Ms. Monastra noted that the calculations for Building Coverage and Impervious Coverage were prepared by Gotham Design using the Gross Lot Area. She indicated that the Net Lot Area should have been used. Using the Net Lot Area for these calculations resulted in the proposed house exceeding the permitted Building Coverage and Impervious Coverage. Ms. Monastra determined that variances from the ZBA were required.

It should be noted that the design and size of the house has remained effectively the same since the first submission to the Planning Board for the November 3, 2023 meeting, but the January Memo was the first time this issue was raised.

The possibility that the proposed house could require variances for its size was first discussed by the Planning Board at its February meeting. It was clear that this determination by Ms. Monastra raised concerns with at least two of the Planning Board members. Ms. Monastra indicated that the requirement that the coverage calculations had to use the Net Lot Area and not the Gross Lot Area had been confirmed by the Building Inspector.

The Planning Board opened the Public Hearing at its March 2023 meeting and continued the Public Hearing at its April 2023 meeting. The Building Inspector issued a denial letter dated March 22, 2023 to the Property Owner so that an application for the variances could be submitted to the ZBA.

At its April 6, 2023 meeting, the Planning Board considered two Resolutions prepared by Ms. Monastra. The first Resolution was to confirm that the Site Plan and design of the house prepared for the subject property met all of the requirements for Stormwater Management, site stabilization, erosion and sediment control including relandscaping, as well as that the driveway would connect the house to North Mountain Drive without hazard. The first Resolution was approved unanimously by the Planning Board.

The second Resolution addressed the size of the house and indicated that it exceeded the permitted Building Coverage and Impervious Coverage, due to the fact that the Applicant had used the Gross Lot Area to calculate the percentage of Coverage, instead of the Net Lot Area. During the discussion on this Resolution, it was determined that a variance for the Impervious Coverage would not be required, since the definition in the Code for Impervious Coverage specifically stipulates that it is to be calculated as a percentage of the Gross Lot Area. Using the Gross Lot Area, the impervious coverage calculated for the proposed house is 34.82%, where 40% is permitted.

The definition in the Code for Building Coverage, however, refers simply to "lot area," without either "Net" or "Gross" included:

BUILDING COVERAGE - The area of a lot covered by or permitted to be covered by principal and accessory building(s) and structures on the ground level. Percentage of building coverage is the area of principal and accessory building(s) at the ground level divided by the lot area and expressed as a percentage of the lot area.

The Building Inspector has indicated that, since the adjective “gross” does not qualify the “lot area” in the definition for Building Coverage, the percentage has to then be based on the Net Lot Area.

Using the Gross Lot area, the Building Coverage for the house proposed would be 17.43%, which is compliant with the 18% limit stipulated in the Code. However, using the Net Lot Area, the Building Coverage calculates to 25.89%, exceeding the 18% limit and subsequently requiring a variance.

On March 22, 2023, the Applicant submitted a second application to the ZBA requesting that it either overturn the Building Inspector’s decision that the Building Coverage must be calculated using the Net Lot Area, but, if that is not the ZBA’s finding, to grant a variance to permit the development of the property with the Building Coverage complying with an 18% limit of the Gross Lot Area, instead of an 18% limit of the Net Lot Area.

The Planning Board considered the second Resolution at the April 6, 2023 Planning Board meeting, but voted against recommending the ZBA grant the variance to permit the use of the Gross Lot Area for determining the permitted Building Coverage.

At the April 12, 2023 ZBA meeting, the ZBA announced that it would treat the two issues separately. On the matter of the parcel being a building lot, a motion was made, seconded and approved unanimously granting a variance to permit the development of the subject property as a single family home with a Net Lot Area of 15,716 square feet, 4,284 square feet deficient for the 20,000 square feet minimum Net Lot Area, a 21.4% variance.

On the second matter regarding whether the Gross Lot Area or the Net Lot Area is to be used in the calculation of Building Coverage, the ZBA announced that it could not hear that matter that evening due to a defect in the application. Apparently, the Village failed to place the required Notification in the newspaper.

This matter was carried over to the May 10, 2023 ZBA Hearing.

ARGUMENTS AGAINST THE BUILDING INSPECTOR’S DETERMINATION

1. Section 300-14 of the Dobbs Ferry Village Code has definitions for Gross Lot Area, Net Lot Area, Lot Coverage, Impervious Lot Coverage, and Building Coverage which do not support the Building Inspector’s determination. These definitions do not indicate that the calculation of Building Coverage requires the use of the Net Lot Area, which is computed by the deducting a percentage of the Steep Sloped areas on the parcel. Following are the definitions in the Code:

BUILDING COVERAGE - *The area of a lot covered by or permitted to be covered by principal and accessory building(s) and structures on the ground level. Percentage of building coverage is the area of principal and accessory building(s) at the ground level divided by the lot area and expressed as a percentage of the lot area.*

IMPERVIOUS COVERAGE - *The part of a lot that is covered by impervious surfaces, expressed as a percentage of the gross lot area.*

LOT AREA, GROSS - *The total square footage of a lot prior to any reductions pursuant to this chapter.*

LOT AREA, NET - *The area of the lot after any reductions pursuant to this chapter have been deducted. For the purposes of calculating lot area, 1/2 of the area of the lot with slopes measuring 25% or greater shall not be included in the total lot area, and 1/4 of the area of the lot with slopes measuring at least 15% but less than 25% shall not be included in the net lot area.*

LOT COVERAGE - *The amount of building coverage, impervious surface coverage, or a combination of the two, divided by the lot area, and expressed as a percentage.*

Building Coverage is defined as the percentage of the lot covered by buildings divided by the lot area. There is no indication that the word “net” was inadvertently omitted in this definition. Since Lot Coverage is defined as the amount of building coverage and impervious coverage added together, divided by the lot area, it is clear that, for the purposes of defining Coverage, both are contributory. Impervious Coverage is clearly defined as the area of the lot covered by impervious surfaces, including buildings, divided by the **gross lot area** [bold added for emphasis]. It is incongruent that the Impervious Coverage would be based on the Gross Lot Area, but that the Building Coverage would then be based on the Net Lot Area.

2. Section 300-34.A.(2) in the Dobbs Ferry Village Code makes it clear that the intent of this Ordinance is “to protect environmentally sensitive lands, preserve the Village’s natural resources and promote the orderly development of land through standards that acknowledge the varied topography in Dobbs Ferry...” If it is not necessary to limit the Impervious Coverage to the Net Lot Area, which could be argued to potentially reduce the disturbance of steeply sloped areas, it makes no sense to limit the Building Coverage to the Net Lot Area. The Building Coverage is included in the Impervious Coverage. It is not logical to support reducing the size of the house on a site with environmentally sensitive lands, if the Impervious Coverage is then based on the Gross Lot Area.

In a conversation with the Building Department, the Assistant Building Inspector posed a rhetorical question: “If not intended to reduce the size of houses, why would the Village have required steep slopes to be deducted from the lot area?” Reviewing the facts behind the adoption of the Steep Slopes Ordinance, this question actually has an empirical answer.

The Steep Slopes Ordinance was added to the Code at a time in the 1980s when there was concern in the Village about over-development, particularly with cluster projects such as Hunter's Run, Livingston Ridge, and The Landing. The Board of Trustees sought a method to reduce the yield in subdivisions, which includes cluster developments, since hypothetical subdivisions are used to determine the density of a cluster development. There was also a desire to raise the hurdle for previously undeveloped parcels that were becoming more desirable as building lots were becoming scarce. Parcels that would not be considered desirable when lots were selling for \$22,500 in 1981 became far more desirable when lots were selling for \$350,000 in 1987. The costs of developing a more complicated site could then be justified.

Requiring a percentage of the steep slopes areas to be deducted from the Gross Lot Area to determine a Net Lot Area required the Gross Lot Area of the lots to increase. This resulted in a reduction in the number of potential building lots in the Village. The Steeps Slopes Ordinance was created to reduce the number of residential units in the Village, not the size of the units.

3. The Building Department has contended that, since it does not say "Gross Lot Area" in the definition of Building Coverage, as does in the case in the definition of Impervious Coverage, it must therefore be interpreted as "Net Gross Area." This is an incongruent assumption, which is not supported by the written Code. If it is argued that the Code is vague as a result of this missing word, the decision to apply the more restrictive requirement is in conflict with New York State Village Law.

It is well established in New York State that zoning codes and regulations weaken and restrict property owners' rights and the use of their property. Zoning intends to limit the use of land which was otherwise free of restrictions. An owner's rights to the use of their land is among the oldest and most protected rights under common law and State and Federal constitutions. The courts of New York have regularly and consistently held that any such codes and regulations must be strictly construed and any ambiguity must be decided against the municipality and in favor of the property owner:

"Since zoning regulations are in derogation of the common law, they must be strictly construed against the municipality which has enacted and seeks to enforce them. Any ambiguity in the language used in such regulations must be resolved in favor of the property owner." New York State Village Law.

4. In discussing the interpretation of the Code that supports the determination that Net Lot Area must be used when calculating Building Coverage and Impervious Coverage, a footnote on Tables B-1 and B-2 has been cited by the Building Inspector as confirmation that this interpretation is correct. The footnote states:

Note: The net lot area is determined by deducting the adjustments specified in § 300-34A(2) from gross lot area.

This footnote directs the reader to the Section of the Code that provides the instructions for determining the percentage of steep slopes that are to be deducted from the Gross Lot Area to determine the Net Lot Area.

There is no reference in either this footnote or in Section 300-34.A.(2) that suggests, addresses, or otherwise stipulates that the Net Lot Area is to be used to determine the Building Coverage or the Impervious Coverage. As is noted above, the use of the Net Lot Area to confirm a parcel's compliance as a building lot and its use to determine the number of building lots that can be created by subdivision of a parcel are the origin of its purpose. Applying the Net Lot Area to the calculations of Building Coverage and/or Impervious Coverage is not supported by the Code.

5. The Village Building Department has a long history of administering applications submitted since the adoption of the Section 300-34.A.(2), Steep Slopes Ordinance in September 1989. In the previously submitted "Building and Impervious Coverage Calculations" Memorandum dated February 13, 2023, a list of more than 15 projects coordinated by Gotham Design between 1997 and 2022 was provided.

All but one of these projects was granted approval with the Building Coverage determined as a percentage of the Gross Lot Area. This was a sample list and not the extent of projects approved this way in Dobbs Ferry. Of the more than 50 projects that Gotham has been created in Dobbs Ferry, only two have used the Net Lot Area for the calculation of Building Coverage and both of those were where the primary action was to grant a subdivision creating a building lot. To confirm that this was not a "Gotham" issue, we reached out to other firms that have provided services in Dobbs Ferry.

Christina Griffin, who is a prolific Architect in Dobbs Ferry, provided a list of eight properties that were approved and developed with the Building Coverage calculated using the Gross Lot Area. The list that she provided includes 228 Clinton Avenue, 235 Clinton Avenue, 156 Palisade Street, 255 Broadway, 7 Fairlawn Avenue, 21 Livingston Avenue, 50 Appleton Avenue, and 20 Lyman Place. All of these parcels have significant steep slopes and all were approved with the Building Coverage calculated using the Gross Lot Area.

At the April 12, 2023 Public Hearing, a ZBA member requested that specifics on several of the projects that involved steep slopes with the Building Coverage calculated using the Gross Lot Area be provided. The following project descriptions have been provided in response to that request. It is clear on each that the standard practice in the Building Department has been to grant Building Permits with the Building Coverage calculated using the Gross Lot Area.

A. 31 Russell Place - This project involved all of the processes that pertain to determining whether or not a parcel is a building lot and then how steep slopes do not factor into the permitted Building Coverage. In 2001, Gotham was retained by the Owner of this property to coordinate the design and construction of a house for his family. The first step required was to determine whether or not the parcel met the requirements of being a building lot. Since this is an irregularly shaped parcel with very steep slopes, the Building Department required an evaluation of the property in accordance to Section 300-34 in the Dobbs Ferry Code.

Gotham prepared and submitted Sheet A-1.02, dated 12-06-2001, to the Building Department and Planning Board. This Sheet includes two plans of the property. One plan shows a rectangle inscribed within the property boundaries with the rectangle containing the required lot area for the zoning district within which the property is located (OF-6 requiring a minimum of 5,000 square feet), with no side of the rectangle being less than 80% of the required lot width (80% of 50 feet = 40 feet). This demonstrated that the irregularly shaped parcel is in compliance with Section 300-34.A.(1), satisfying that requirement.

The second plan on Sheet A-1.02 shows the slopes on the property, defining slopes 0-15%, 15%<<25%, and 25%<. A Table provided on that Sheet shows that 2,744 square feet of the parcel is sloped at 15% or less, 4,694 square feet is sloped at more than 15%, but less than 25%, and 2,136 square feet of the lot is sloped at 25% or more.

Section 300-34.A.(2) requires that 25% of the lot area greater than 15% but less than 25% (1,174 square feet), and 50% of the lot area 25% or greater (1,068 square feet) be deducted from the Gross Lot Area to determine the Net Lot Area. The 11 Russell Place parcel has a Gross Lot Area of 9,574 square feet. Subtracting the deductions reduces the Net Lot Area to 7,332 square feet. Since the required Net Lot Area in the OF-6 zoning district on Table B-1 is 5,000 square feet, this evaluation confirmed that the parcel is in compliance with Section 300-34.A.(2), satisfying that requirement.

Gotham also prepared and submitted Sheet A-1.01, which is the Site Plan for the project, dated as revised 03-07-2002. This Sheet shows the proposed house and site improvements along with the topography and trees on the parcel. This Sheet includes a Zoning Analysis Table. On that Table the calculation for the Building Coverage is included. It shows that the OF-6 zoning district limits Building Coverage to 27% with the tabulation calculating the limit to be 2,586 square feet for a parcel with a Gross Lot Area of 9,574 square feet.

The Table then shows the Building proposed with a Coverage of 2,570 square feet, which is 26.84% of the Gross Lot Area of 9,574 square feet, with no deduction for steep slopes. This application was approved without any waivers or variances being required. It was built and enjoyed for many years by that Owner, enjoyed now by a new Owner, and considered one of the nicest homes in the neighborhood.

- B. 19 McClelland Avenue** - While indicated as a separate parcel on the Village Plat Map, this parcel was originally conjoined in ownership with 11 McClelland Avenue. When a new Owner purchased the property, he decided to separate the ownership of the two parcels, selling the one already improved with a single family home, and building a new home on the undeveloped parcel for himself. The Building Department determined that subdivision was not required, due to the fact that it was already a separate parcel on the Plat Map with frontage on an improved street and a total lot area of 5,000 square feet, which met the minimum requirement for the OF-6 zoning district within which it is located.

An application for Site Plan Review was submitted and conducted by the Planning Board for the new house. Included in that submission was Sheet 1.10, prepared by Gotham, dated 08-02-2007, with revision dates through 06-25-2008. This Sheet is the Site Plan for the construction of a single family home on the parcel and includes the proposed house, site improvements, and topography. A calculation of sloped areas on the site was not required, due to the Building Department's determination that, while there were slopes, they were not substantive and fell within the exemption provided by Section 300-34.A.(2)(c):

Sloped areas with a horizontal dimension of less than five feet and/or an area of less than 150 square feet may be considered an anomaly by the Planning Board and not deducted from the site area as otherwise required above.

As the topography on Sheet A-1.10 reveals, approximately 20% of the site has slopes exceeding 15%, which could otherwise have reduced the Net Area of the lot from the 5,000 square foot minimum to approximately 4,750 square feet, but which was not required by the Village, citing the exemption above. There is a Zoning Analysis on Sheet A-1.10 that includes the lot coverage calculations. It indicates that the permitted Building Coverage in the OF-6 zoning district is 27% of the Gross Lot Area and provides the proposed coverage of 26.44%, or 1,322 square feet, again calculated using the Gross Lot Area with no deductions for steep slopes.

The neighbor to the north on Seneca Street objected to this project at every step in the process. He claimed that the front of the existing house at 11 McClelland faced Seneca, making the parcel to the east the rear yard of the improved parcel. He objected that the proposed house was too large and would deprive him of the quiet enjoyment of his house, as well as result in the loss of a cherry tree on his neighbor's property that he enjoyed. After the Site Plan approval was granted by the Planning Board, the neighbor filed an appeal to the ZBA that faulted the Planning Board's approval. The ZBA heard the application and supported the Planning Board's decision.

After the Architectural Review Board (ARB) approved the design, the neighbor again appealed to the ZBA, but the ZBA supported the ARB's decision.

The opposing neighbor then filed an Article 78 in the New York Supreme Court, appealing the Building Department's handling of the matter and appealing the decisions made by the Planning Board, the ARB, and the ZBA. The Court carefully reviewed the claim and conducted a hearing at which the Building Inspector and Village Attorney appeared. The Courts decision was that the process conducted by the Village was correct in every decision.

- C. 1 and 3 King Street** - This project consisted of the development of two parcels that were undeveloped building lots fronting on King Street between Northfield Avenue and the Saw Mill River Parkway. Similar to the 19 McClelland Avenue Project, these two parcels were each

exactly 5,000 square feet, which was the minimum lot area permitted in the OF-6 zoning district within which the parcels are located. Any deduction due to steep slopes would have rendered the parcels non-compliant.

Gotham prepared Sheet A-1.10, dated 04-17-2008, which is the Site Plan for both properties. The Site Plan shows the proposed buildings, the proposed site improvements, and the topography. There is also a Zoning Analysis Table on this Sheet showing the calculations for the Building Coverage. Again, the maximum coverage is the 27% limit that is stipulated in the Table B-1 for the OF-6 zoning district. And again, the Building Coverage is calculated using the Gross Lot Area of 5,000 with the coverage for each house being 26.46%, or 1,323 square feet. No deduction was taken for steep slopes to determine a Net Lot Area used to determine the permitted Building Coverage. The Building Coverage for this project was determined using the Gross Lot Area.

- D. Cyrus Place** - This project consisted of the development of a new parcel created by the Planning Board's having combining six small parcels of very steeply sloping property into one parcel in 2008. The Owner purchased this parcel as a single family building lot. It was one of the first properties proposed for development following the adoption of the new Land Use Regulations in 2010.

The parcel, with a total lot area of 18,750 square feet, is located in the OF-6 zoning district that requires a Net Lot Area of 5,000 square feet. A steep slopes analysis was conducted during the subdivision process and it was noted that, even if 100% of the new parcel was 25% or greater, the maximum deduction would be 50%, resulting in a Net Lot Area of at least 9,375 square feet.

Gotham prepared Sheet A-1.10, dated 05-30-2011. This Sheet includes the Site Plan with the proposed house, proposed site improvements, and topography shown. This Sheet also includes a Zoning Analysis Table that calculates the Building Coverage and the Impervious Coverage. The Table indicates that, in the OF-6 zoning district, the maximum Building Coverage permitted is 27% and the maximum Impervious Coverage permitted is 54%. However, the Table also notes that a new provision in the Code adopted in 2010 requires the use of the Table B-3 Sliding Scale in the Dobbs Ferry Village Code.

The Sliding Scale reduced the maximum permitted Building Coverage to 20% and the maximum permitted Impervious Coverage to 40%. The Table then provides the proposed Coverages, with the Building Coverage proposed to be 15.23%, which is 2,857 square feet, and the Impervious Coverage proposed to be 25.17%, which is 4,719 square feet.

Both of these calculations were computed using the Gross Lot Area, with no deductions for steep slopes. This project received very careful consideration in part because it was one of the first to be developed under the new regulations, but also because this was an area with significant flooding concerns.

- E. 60 Florence Avenue** - This project consisted of the subdivision of a single parcel that had been improved with a single home that was destroyed in a storm by a fallen tree. The property is located in the MDR-1 zoning district, which requires a minimum Net Lot Area of 5,000 square feet for a two-family home. With a Gross Lot Area of 12,835 square feet, the property was subdivided into two separate lots, with Lot 1 having a Gross Lot Area of 6,743 square feet and Lot 2 having a Gross Lot Area of 6,092 square feet. The initial Subdivision process was handled by others and a Steep Slopes Analysis was performed for each lot, confirming that each had a Net Lot Area exceeding the 5,000 square foot minimum required.

Gotham got involved with the project while the previous Contract Vendee was trying obtain an approval for four town homes, which was a use similar to another nearby development project that was approved and in construction at that time. There was objection to the four town home design and Gotham proposed a reconfiguration the project as two two-family homes, which was approved.

The Contract Vendee failed to purchase the property in the allotted time period and the property was purchased by someone else. The new Owner retained Gotham to continue with the project.

Gotham prepared Sheet SP-1, dated 12-18-14 as issued and 06-19-2015 as revised. While the final Site Plan had the same building footprints and the same number of parking spaces, the new Owner received a revised Site Plan approval with each of the two-family homes converted to single family homes.

Sheet SP-1 includes the Site Plan with the two buildings shown, as well as site improvements and topography. Sheet SP-1 also includes a Zoning Analysis Table that includes the Building and Impervious Coverage numbers. The Table confirms that the maximum permitted Building Coverage in the MDR-1 zoning district is 27% and the maximum permitted Impervious Coverage is 54%. Lot 1 has a Building Coverage of 25.18%, or 1,698 square feet, and an Impervious Coverage of 37%, or 2,495 square feet. Lot 2 has a Building Coverage of 24.82%, or 1,512 square feet, and an Impervious Coverage of 37%, or 2,254 square feet.

All of the Coverage calculations for this project have used the Gross Lot Area, with no deductions for steep slopes.

- F. 82 Belden Avenue** - This project consisted of the removal of an existing single family home located on a parcel with a Gross Lot Area of 10,527 square feet in the OF-5 zoning district, which requires a minimum Net Lot Area of 7,500 square feet. Due to the fact that this lot exceeds 10,000 in lot area, the Table B-3 Sliding Scale required an adjustment in the permitted Coverages. Where the Building Coverage would otherwise permit 25% and the Impervious Coverage would otherwise permit 44%, the Sliding Scale required these to be adjusted to a 20% maximum Building Coverage and a 40% maximum Impervious Coverage.

Gotham prepared Sheet SP-1, dated 10-20-2016, which includes the proposed single family house and the site improvements. Since this property had already been developed with a single family house, there was no concern with “proofing” out the viability of the parcel as a building lot. Subsequently, no topography was required since no steep slopes needed to be determined to confirm whether or not this parcel qualified as a building lot. This was discussed at the Planning Board and the Building Inspector at the time explained that steep slopes are only required to be determined for the purposes of confirming whether or not a property is a building lot. Since this lot had already been developed, there was no need for topography to be provided and steep slopes calculated. While Gotham does not actually agree with this approach, since drainage and other construction sensitive issues are affected by the topography, this was the instruction given at that time by the Building Department.

The approved house has a Building Coverage of 19.28%, or 2,029 square feet, where 20% is permitted, and an Impervious Coverage of 37.76%, or 3,975 square feet, where 40% is permitted. These calculations were computed using the Gross Lot Area, with no deductions for steep slopes.

- G. 40 Devoe Street** - This project consisted of the removal of an existing two family house and its replacement with three town homes on an existing parcel with a Gross Lot Area of 11,508 square feet in the MDR-1 zoning district that permits town homes at a density of one unit per 2,500 square feet of lot area.

Gotham prepared Sheet A-1 T, dated 05-19-2019 as issued and revised through 08-15-2019, which is the Site Plan for the project. This Sheet includes the building plan, the site improvements, and the topography. Also on this Sheet are a Zoning Table, a Building Coverage Table, and an Impervious Coverage Table. The MDR-1 zoning district permits a Building Coverage of 27% and an Impervious Coverage of 54%. As approved, the Building Coverage is 26.46%, or 3,046 square feet, and the Impervious Coverage is 46.10%, or 5,306 square feet. Both of these calculations were computed using the Gross Lot Area with no deduction for steep slopes.

SUMMARY

Empirical evidence confirms that Dobbs Ferry’s Building Department has consistently used Net Lot Area for the purpose of confirming whether or not a parcel within a zoning district meets the requirements of being a building lot in that zoning district.

Tables B-1 and B-2 in Chapter 300 Zoning and Land Use in the Dobbs Ferry Village Code include a row labeled “Minimum Net Lot Area (square feet).” A number is provided under each zoning district stipulating the net number of square feet required for a parcel within that zoning district to be compliant for development as a building lot. The footnote at the bottom of each of those Tables directs the reader to the Section of the Code that provides the instructions as to how to calculate the deductions from the Gross Lot Area to be the Net Lot Area.

The Applicant contends that the Subject Parcel was already confirmed to be a building lot by the Planning Board when it was approved the subdivision creating the Subject Parcel in October 1989 and signed the Plat Map filed with the County in December 1989. The Minutes of the Planning Board meeting at which the subdivision was approved includes reference to the requirements of the newly created Steep Slopes Ordinance having been satisfied.

The Building Inspector did not agree with the argument that the Subject Parcel was already approved as a building lot and the initial denial of the Subject Parcel was specifically based on the required Net Lot Area for the zoning district within which the Parcel is located not being met. The fact that the ZBA has already granted the variance to allow the Subject Parcel to be a building lot with a Net Area of 15,716 square feet should make further discussion on this issue moot.

The issue with the application of the Net Lot Area to the Building Coverage remains.

The definitions of Building Coverage, Impervious Coverage, Gross Lot Area, Net Lot Area, and Lot Coverage are clear and consistent. None suggests, let alone stipulates, that Building Coverage should be determined using the Net Lot Area.

The definition of Impervious Coverage, which is clearly the regulation that has the greatest impact on fulfilling the objective of “protect[ing] environmentally sensitive lands, preserv[ing] the Village's natural resources and promot[ing] the orderly development of land through standards that acknowledge the varied topography in Dobbs Ferry,” is clearly defined as being calculated using the Gross Lot Area.

Requiring Building Coverage to use the Net Lot Area in its computations is incongruent with the other sections of the Code and is not required by Section 300-34.A.(2), which is the Section of the Code referenced in the footnote on Tables B-1 and B-2 that has been claimed by the Building Department as the link that requires the use of Net Lot Area for Building Coverage.

There is a long and consistent record of Building Coverage and Impervious Coverage areas being approved using the Gross Lot Area in the computations.

There has been no change in the Village Land Use Regulations in the past several years that support the decision of the new Building Inspector and the new Village Consulting Planner to begin imposing the use of the Net Lot Area in calculating permitted Building Coverage and Impervious Coverage areas. There has not been any public discussion with the Board of Trustees to change the Land Use Regulations to require the use of the Net Lot Area in calculating Coverage calculations.

There is nothing that suggests that there would be any public benefit by changing the Coverage requirements to be based on Net Lot Area instead of Gross Lot Area. To the contrary, making this change would render entire neighborhoods of homes in the Village non-conforming. There are many properties in Dobbs Ferry that have already been developed with the parcel being at or close to the minimum Net Lot Area.

Dobbs Ferry is a community of dynamic topography with a significant percentage of properties having slopes that exceed 15%. To require Net Lot Area to now be required for the calculations of Building Coverage would render a significant number of developed properties in the Village non-compliant.

Often when municipalities make decisions like this, they suggest that there is no harm to existing property owners because their now non-conforming improvements will be “grand-fathered,” allowing their continued use. The reality, however, is that a property with non-conforming improvements is considered to be compromised, reducing property value. Purchasing a pre-existing, non-conforming property can be more difficult to finance. Since the value of a property is based on what can be done with that property, the simple reduction in the coverage that is permitted for buildings on the property reduces the value of the property.

Creating new building lots in Dobbs Ferry already uses the Net Lot Area in determining the size of the parcel, which constricts potential development and limits the yield of residential units that this Village dominated by steep slopes can create. Changing Building and Impervious Coverages to be based on Net Lot Area instead of Gross Lot Area would impose new restrictions on existing properties and buildings at the exact same time that every level of government in New York State, from the Governor to the County to the Town and to the Village, is trying to figure out how to stimulate and improve the production of housing to address the daunting need of our communities to be more affordable. Changing what has been the practice in Dobbs Ferry by requiring Building Coverage to be based on the Net Lot Area instead of the Gross Lot Area is incongruent and disconnected from the needs of the community.

The Applicant agrees that the current wording in the Code is not definitive and clear, but it is a simple correction to make. The definition of Building Coverage simply needs to clarify the type of lot area to be used in the same way as the definition of Impervious Coverage.

BUILDING COVERAGE

The area of a lot covered by or permitted to be covered by principal and accessory building(s) and structures on the ground level. Percentage of building coverage is the area of principal and accessory building(s) at the ground level divided by the lot area and expressed as a percentage of the **gross** lot area.