

Memorandum

February 14, 2017

TO: Honorable Hartley S. Connett
Members of the Village of Dobbs Ferry Board of Trustees

FROM: Darius P. Chafizadeh, Esq.

RE: Zoning Code Revisions

The Planning Board met on a number of occasions to review proposed changes to the Village of Dobbs Ferry Zoning Code as recommended by the Ad Hoc Committee (the “Committee”) created under the leadership of Village Trustee David A. Koenigsberg. The Planning Board also reviewed additional portions of the Village of Dobbs Ferry Code for consistency. The following sets forth the proposed revisions.

“Strike throughs” will eliminate language in the current code and **bold/underline/red** are proposed additions.

1. **Eliminate The Technical Advisory Committee**

- The Planning Board agreed with the Committee that the Village Board should eliminate the Technical Advisory Committee (“TAC”). The Planning Board concluded that this step in the review process has not streamlined matters, but only created more of a burden on applicants.

- Action:
- a. Village Code § 300-26 will now read “RESERVED”.
 - b. Delete Definition of TAC in § 300-14.
 - c. Strike reference to Technical Review Committee in Village Code § 300-16(b)(10).
 - d. Strike reference to Technical Review Committee in Village Code § 300-22(b)(7).
 - e. Eliminate reference in Village Code § 300-25(a) to TAC.

Village Code § 300-25(a) will now read as follows:

- To assist the public and the Village government in complying with this chapter by providing application forms and explanatory materials to applicants, ~~arranging preapplication conferences with the Technical Advisory Committee~~, and ensuring that application forms and other materials are delivered in a timely fashion to reviewing boards and agencies.

f. **Eliminate Village Code § 300-25(c)(e).**

- (c)(e) will now be read “RESERVED”.

g. **Eliminate Reference To TAC in Village Code § 300-28(b)(1)(3).**

- Language should eliminate any reference to the TAC.

h. **Strike Reference to TAC in Village Code § 300-38(B).**

i. **Strike Reference to TAC in Village Code § 300-46(D)(3)(a).**

2. **AHRB ADVISORY TO BOT IN 5 DISTRICTS**

This will require the striking of the existing Village Code § 300-17(C)(4)(5) and replace it with additional language to be added to Village Code § 300-17(C)(4) to state:

- **The Board of Trustees shall be responsible for final review and approval of site plan applications following review and recommendation by the Planning Board and the Architectural and Historic Review Board for the following districts: Waterfront (A); Waterfront (B); Chauncey Park; Downtown; and Educational/Institutional District. The AHRB shall recommend approval, approval with modifications or disapproval, and the matter shall then be heard and determined by the Board of Trustees.**

3. **REVISE SKY EXPOSURE PLAN LANGUAGE**

- **Revise Village Code § 300-14, § 300-17, § 300-52**

a. **SKY EXPOSURE PLANE (Village Code § 300-14)**

A theoretical inclined plane, through which no part of a building may penetrate in OF and MDR-1 residential zoning districts. It rises over the zoning lot at an angle from or above the level base plane set forth in district regulations. For purposes of context-based height limits in this chapter, determined by projecting a ~~forty-~~ **forty-five** degree angle from a height of 10 feet measured above a lot line with the base point of the

measurement established as the average grade between the grade at the base of a building and the grade at the point on the lot line closest to the building. The ~~Architectural and Historic Review Board~~ **Building Department** may choose to disregard anomalies in the terrain to determine the average grade and when considering a ~~waiver~~ **compliance** of the sky plane exposure limits. The base points for establishing the sky exposure plane shall be located in a plan as the four points along the side lot lines determined by extending the line of the front wall of the building and the line of the back wall of the building to the side lot lines and as the one point along the front lot line and the one point along the rear lot line determined by extending a line through the midpoint of the building extended to the front and rear lot lines. All sky exposure planes shall be shown on the elevation drawings submitted to the **Building Department** ~~Architectural and Historic Review Board~~.

b. POWERS (Village Code § 300-17(C)(1))

Remove (C)(1) in its entirety and the section will now read “Intentionally Left Blank”.

c. Remove Village Code § 300-17(4)(5)(relocated to Village Code § 300-34(E)) #8 below

d. Revise Village Code § 300-35(D)(8)(c)

- Anomalies identified by the **Building Department** ~~Architectural and Historic Review Board~~, consisting of existing buildings with unusually high or unusually low ridges and/or eaves, may be excluded from the calculations used to determine the average ridge or average eave heights above.

e. Revise Language of Village Code § 300-52(b)(2)

Revise language as follows:

The Land Use Officer shall refer all applications in these districts, as well as any application in another district involving at least one acre of land and/or any application that impacts at least one acre of land, to the Board of Trustees for site plan approval in accordance with this section. The Board of Trustees shall have final site plan approval authority for all applications set forth in Subsection B(1)(a) through ~~(e)~~ **(e)** above, after referral to the Planning Board for recommendation. The Board of Trustees shall have the option to retain final site plan approval authority in all other districts if the site plan impacts, in any way, at least one acre of property. The Board of Trustees shall have 30 days to decide whether it desires to retain final site plan approval in districts where a proposed site plan impacts at least one acre of property, after referral from the Land Use Officer. If the Board of Trustees decides not to be responsible for final review and approval of a site plan application, such review and approval shall become

the responsibility of the Planning Board, subject to this section. The Planning Board shall be responsible for review and approval of site plan applications for properties not set forth in Subsection B(1)(a) through (e) above and where the Board of Trustees does not retain final site plan approval authority.

4. WAIVER OF BUILDING DESIGN STANDARDS/4th STORY

Revise Language to Village Code § 300-36(E)(1)

- Building design standards. The building design standards are intended to ensure compatibility with the historic character and design quality of the Village. These standards apply within all downtown zoning districts, except where specifically noted. The **Board of Trustees on recommendation from the AHRB and the Planning Board may, at its sole discretion, waive or modify these standards through the site plan review. See Table B-8.**

(1) Upper-story setbacks. **The number of stories in the DT and DB Zones shall be three (3) stories.** The **addition of a fourth story** ~~uppermost story of any building (e.g., the fourth story in the DB District, the third story in the DT District)~~ may be permitted only at the discretion of the Board of Trustees ~~decisionmaking body~~ as part of a **the site plan** review application. In determining the appropriateness of the **fourth story** ~~uppermost story~~, the **Board of Trustees** ~~Architectural and Historic Review Board~~ **shall take into consideration the recommendations of the Planning Board and the AHRB in** ~~shall consider~~ **ing** impacts, including but not limited to viewsheds, solar access to the streetscape and surrounding buildings, and consistency with the character of the individual building and surrounding buildings. **Based on a review of potential impacts cited above, a** ~~Any~~ **fourth story may be required to** ~~shall~~ recede from the front facade, either within a sloping roof form or as a setback volume.

5. ADDITIONAL FOURTH STORY ISSUES/HEIGHT

Revise Table B-8

- **Revise DB to maximum stories of “3” and footnote “a” should be next to DB stories and DT stories. Footnote should be revised to remove reference to the Planning Board.**
- **Maximum height in the DB zone is 45 feet (currently it is 50’)**

6. **FENCES**

- **Revise Village Code § 300-42(A)(1)(2)**

Village Code § 300-42(A)(1)

Except as noted herein, all fences should be submitted to and approved by the AHRB. **Certain fences that meet specific requirements as adopted by the Building Department in consultation with the AHRB do not require approval from AHRB.**

Village Code § 300-42(A)(2)

Fences, property walls, and retaining walls are not subject to setback requirements from property lines. Retaining walls with a height differential of less than 30 inches as measured from the grade at the low side to the grade at the high side do not require a building permit. All retaining walls with a height differential of 30 inches or greater as measured from the grade at the low side to the grade at the high side require a building permit and are subject to site plan review and approval. All retaining walls requiring a building permit shall be submitted to and approved by the AHRB.

7. **EXEMPT FROM AHRB REVIEW**

a. **Village Code § 300-18(A)**

- Add the following prior to the language set forth in Village Code § 300-18(A).

“Except as listed in paragraph (F) below ...”

b. **Village Code § 300-18(F) “Exemptions”**

The following language shall be added:

- **Prior to any exemptions being granted, any and all applicants for the following shall first notify all contiguous property owners by sending certified mail, return receipt requested notifications with proof of service to same and place a lawn sign along the front property line and/or at a location to be determined by the Building Department for a period of 14 days. In the absence of any written objections by anyone received within 14 days of the date of mailing as described above, with proof of mailing, the below items shall be subject to approval by the Building Department. Items which receive objections must be placed on the AHRB agenda and will require AHRB approval.**

- (1) All sheds less than 100 square feet and no more than 10' above grade at the ridge and only in the rear yard. All sheds must be painted, stained or colored to match either the body or trim color of the house.
- (2) All retaining walls less than 5' which are constructed of natural stone or have a natural stone veneer on all visible, exposed surfaces.
- (3) All new basement egress windows or doors, except on the front facade, provided that the windows and doors are located more than 50% below the most adjacent grade and the style of window or door matches that of the same facade.
- (4) All replacement windows or doors, showing no change in rough opening, style or location. Windows and doors must fit in the existing window rough openings without modification. Windows and doors which have currently exposed exterior muntins must be replaced with same; SDL (Simulated Divided Lites) are acceptable.

8. SEP LANGUAGE¹

Revise Village Code § 300-34 by adding SEP language to this section

Add Village Code § 300-34(E)

- (1) Limits of Eave Height, Ridge Height and Sky Exposure Plane shall comply with the following. For any application in an OF or MDR-1 residential district submitted to the Building Department, the following shall apply:
 - (a) Roof ridges shall not exceed a maximum height determined by multiplying the prevailing ridge height of existing buildings within the context limit area of the subject lot by 1.25. Existing ridge heights shall be measured from the average grade along the facade with the highest grade elevation, and the proposed ridge height shall also be measured from the average grade along the facade with the highest grade elevation. Existing buildings with ridge heights

¹ The Committee proposed revised language of the SEP. The Committee proposed that the review power and “waiver” power remain with the AHRB in Village Code § 300-17. See Memorandum from Committee dated August 15, 2014 annexed hereto as **Exhibit “A”**. The Planning Board considered a process where the Building Department determines non-compliance which then allows for an appeal to the ZBA through the variance process. In my presentation of January 2017, I also indicated that the Planning Board considered/recommended that SEP be reviewed by the Planning Board during suite plan review and that the Planning Board consider the “waiver” of compliance with the SEP with revised language as set forth by the Committee, substituting the Planning Board for the AHRB and amending the current language. See **Exhibit “B”** annexed hereto which sets forth the current Code language and then the proposed revised language.

excessively high or excessively low may be omitted from this calculation at the discretion of the Building Department. Proposed buildings with ridge heights that do not exceed 28 feet, as measured above, are exempt from this requirement. Refer to Table B-7.

(b) Roof eaves shall not exceed a maximum height determined by multiplying the prevailing eave height of existing buildings within the context limit area of the subject lot by 1.15. Eave heights shall be measured above the facade with the highest grade elevation, and the proposed eave height shall also be measured from the average grade along the facade with the highest grade elevation. Existing buildings with eave heights excessively high or excessively low may be omitted from this calculation at the discretion of the Building Department. Proposed buildings with eave heights that do not exceed 22 feet, as measured above, are exempt from this requirement. Refer to Table B-7.

(c) The Building Department may omit buildings from the calculations that it determines are an anomaly within the context limit area.

(d) No part of a proposed building may penetrate a plane determined by projecting a forty-five-degree angle from a height of 10 feet along a lot line, with the base point of the measurement established as the average grade between the lot line and the proposed building. Exceptions to this are chimneys and dormers seven feet or less in width, not to exceed a total aggregate width of 33% of the overall length of the building wall below that roof on which the dormers sit.

(e) A table listing the eave heights and the ridge heights of all relevant buildings used in determining the prevailing eave and ridge heights shall be provided with the documents submitted to the Building Department for the application. The table shall show the prevailing eave height based on the calculation as per Table B-7.

(f) Diagrams showing the sky exposure plane relative to the proposed building shall be included on the drawings submitted for the application to the Building Department.

- (2) The Building Department shall make a written decision of compliance or noncompliance with the foregoing within thirty (30) days of the submission of a complete application. Within thirty (30) days of the written decision of noncompliance by the Building Department, the applicant may appeal said decision to the Zoning Board of Appeals. The applicant may also seek an area variance for any noncompliance as set forth in Village Code § 300-24.

9. **REVISE TABLE B-7**

- Reference should be to Village Code § 300-34(E) not Village Code § 300-17. *See* SEP Revisions above.
- Reference should also be made to Village Code § 300-35(8).

10. **ADD FOOTNOTE TO TABLE B-6 WITH REFERENCE TO VILLAGE CODE § 300-35(D)(A)(2)**

11. **TOWN HOMES PERMITTED IN MDR-1?**

- **Revise Village Code § 300-35(A)(2)(b)**

Village Code § 300-35(A)(2)(b)

The primary purpose of the MDR Districts is to maintain the character and scale of established neighborhoods characterized by a mixture of detached one-family houses, two- and three-family homes, and multifamily housing, often found in large, older buildings which have been reorganized into apartments, and to allow for the appropriate development and redevelopment of lots and existing buildings in those areas. **See Appendix A for all permitted uses in the MDR Districts.** The districts are also intended to provide a transition between OF Districts and higher-density apartment districts or commercial districts. The Zoning Ordinance includes three types of MDR Districts intended to address the current and desired character of different areas of the Village.

Village Code § 300-35(A)(2)(b)(1)

MDR-1 allows for a mixture of one-, two- and three-family dwelling units **as well as townhomes. See Appendix A, Table A-1.** A minimum lot area of 2,500 square feet per dwelling unit is required. See Appendix B, Table B-2.

12. PUBLIC HEARING NOTICES

Revise Village Code § 300-28(G)

- (1) The reviewing board shall hold a public meeting on a complete application in accordance with applicable law. To the extent required by state local law, the board shall give public notice of such ~~the initial public~~ hearing by causing publication of a notice of such hearing in the official newspaper at least ~~seven~~ five days prior to the date thereof. The applicant shall be required to send notices of the initial public hearing to owners of properties within ~~2500~~ 500 feet of the subject property by certified mailing and shall provide proof in the form of an affidavit that such notice has been given. Public hearings are required for site plan review at the Planning Board and the Board of Trustees, variances, AHRB review, special permit review and subdivision review. Renoticing of public hearings shall be required for all applicants which have become dormant or have been extended beyond 90 days.

13. VIEW ANALYSIS

- Revise Village Code § 300-46(D)(2)(3)

(2) Applicability.

These view protection standards and guidelines shall apply to all development within the Village subject to site plan review. ~~or review by the Architectural and Historic Review Board.~~

(3) View analysis.

- (a) Analysis required. Each development project with the potential to impact the visibility of the Hudson River or with the potential for visibility from any established viewing platform ~~in the opinion Technical Advisory Committee or any board with review authority~~ shall be subject to a view analysis during site plan review. (For purposes of this subsection, "potential" is defined as capable of being seen from a viewing platform if trees or large shrubs are removed, significantly pruned, or impacted by construction.)

14. **REVISIONS TO AHRB REVIEW (TIMING)**

- **Revisions to 300-18(C)**

Time for decision. Within 45 **90** days of the submission **of a complete application** ~~first meeting on the application~~, the Architectural and Historic Review Board shall approve, deny or approve the application subject to conditions in accordance with the law. This time period is subject to such extensions of time ~~as may be required by the Architectural and Historic Review Board to obtain further information~~, to complete the environmental quality review process, or for the applicant to submit amendments to the application. The time frame shall be extended to the next scheduled meeting if a regularly scheduled meeting has been cancelled for any reason. The failure to render a decision **with a minimum of three (3) meetings attended** on an application within 45 **90** days of the first meeting on the application **results** ~~does not result~~ in an automatic approval **based on the last submitted plan**, ~~but rather, an applicant's sole remedy is a mandamus proceeding to compel the Board to act~~. Written findings shall be filed with the Village Clerk within 30 days of any decision denying the application. In instances where filing of a written decision is not required under this section and a written request for the issuance of a written decision has been made within 30 days of such decision, written findings will be filed with the Village Clerk within 60 days of such request.

15. **REVISION TO DEFINITION OF HEIGHT AND STORY AND MULTIFAMILY DWELLING**

a. **Revision to 300-14 "Building Height"**

- The maximum height of a structure in feet shall be measured perpendicularly from the existing grade to an imaginary plane located the permitted number of feet above and parallel to the existing grade. For peaked roofs, height shall be measured to the midpoint of the roof. No portion of a peaked roof below the midpoint shall extend above said imaginary plane. For flat roofs, height shall be measured to the top of the roof. No portion of a flat roof shall extend above the imaginary plane. Parapets with a height of 36 inches or less are not included in determining building height. **In the Downtown Districts, building height is measured from the sidewalk to the roof as taken at the midpoint of the building façade as it fronts on the public right of way, and not from the grade plane.**

- Remove Photo.

b. Revision to 300-14 “Story”

That portion of a building between the surface of any floor and the surface of the floor above or, if there is no floor above it, then the space between any floor and ceiling next above it. A basement shall be counted as a “story” for purposes of height measurement if the floor-to-ceiling height is more than six feet above the grade plane, more than six feet above the finished ground level for more than 50% of the total building perimeter, or more than 12 feet above the finished ground level at any point. **In the Downtown Districts the number of permitted stories shall be calculated from the building frontage on the public right of way. In the Downtown Districts the first floor of a building which provides at grade direct access or egress onto the public sidewalk shall be considered a story, whether or not it meets the standards of being considered a basement.**

c. Revision to 300-14 “Multi-Family Dwelling”

A building containing **more than** three ~~or more~~ residential dwelling units.

16. ADDITIONAL ISSUES TO BE COVERED IN SECOND MEMORANDUM

- Revisions to 300-18 Fences – notice requirements etc.
- Certain Fences, Sheds, Retaining Walls, Egress Windows, Egress Doors, Replacement Windows and Rear Decks do **not** need AHRB approval.
- Fire sprinkler formula – §§ 180-5 and 300-14.
- Technical Engineering Issues – §§ 300-79 and 300-83.