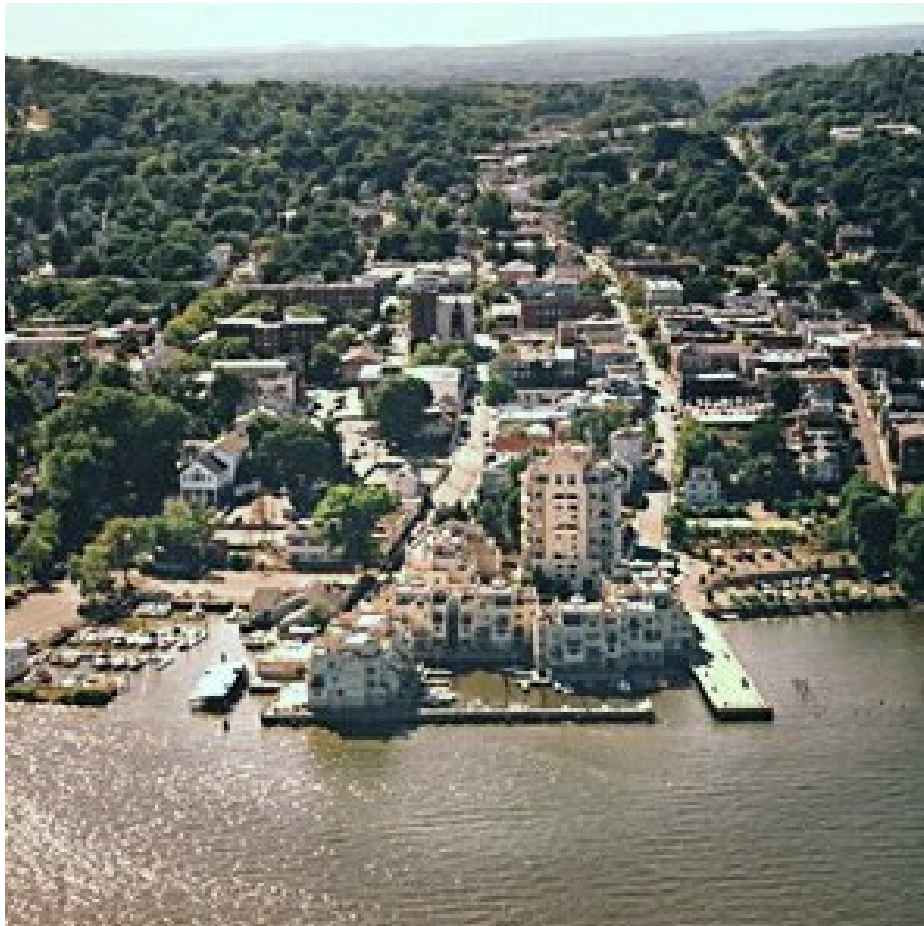


VILLAGE OF NYACK  
ANALYSIS OF SPECIFIED ELEMENTS  
OF THE PROPOSED ZONING CODE



Prepared at the request of the  
Board of Trustees

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## TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. REVIEW.	
A. LAND USE BOARDS.....	4
B. PARKING.....	16
C. FLOOR AREA RATIO.....	26
III. SUMMARY RECOMMENDATIONS.....	33
FIGURES	
Figure 1 Comparison of Nyack Parking Requirements.....	21
Figure 2 Village of Nyack Zoning Map – Comparison of Downtown Core Boundary.....	25

## I. INTRODUCTION

For several years the Village of Nyack has been considering amendments to the zoning local law (usually referred to as “the Ordinance” or “Code”). In order to be consistent with New York State law, which requires that zoning be “in accordance with a comprehensive plan” and because Village officials were of the opinion that it would be desirable to examine recent changes in the Village and look toward a longer time horizon, the Village Board authorized the preparation of a Comprehensive Master Plan (CMP) and appointed a citizens committee to work with the assistance of the planning consulting firm of Phillips Preiss Shapiro Associates. The Comprehensive Master Plan was adopted by the Village on January 11, 2007 and thereafter work began on modifications to the zoning code to reflect the land use policies of the Comprehensive Master Plan. A Zoning Code Review Committee was appointed to work with the same consulting firm that had assisted in the preparation of the CMP. The committee ultimately referred a proposed zoning code to the Village Board for review, public hearing, possible changes and adoption.

As a part of its review, the Village Board decided that several issues were deserving of a fresh look and authorized this study and report, which is grant funded.

The following parameters were established for the evaluation:

1. To evaluate the Zoning Committees’ proposed modifications and advise whether the modifications reflect the objectives of the CMP. This component is discussed at the end of each proposed modification.

2. To evaluate the Draft Code, and to provide alternative suggestions/recommendations regarding the provisions of the Draft Code, specifically pertaining to the following issues:
  - A. Balancing the needs of the Village against the needs of applicants regarding the land use review process. There have been times when the jurisdiction between boards - Planning Board, Architectural Review Board and Zoning Board of Appeals - on site plan and architectural issues has been unclear.
  - B. The Village Board, particularly in relation to the downtown area, has struggled to maintain effective and practical parking requirements. A parking study, commissioned by the Nyack Parking Authority, was completed in January 2007 and provided certain recommendations. The Village Board would like a comparison of the parking study recommendations as contrasted with the Draft Codes' treatment of parking requirements in the commercial and downtown districts.
  - C. The Draft Code introduces the Floor Area Ratio (FAR) concept to residential zoning districts, while it has been applied in non-residential districts for some time. The Draft Code also provides the Building Inspector with discretion to waive the FAR in certain (small additions) specified situations. Is this unnecessarily complicating the land use process?

The balance of this report examines each of these three areas based on the parameters established by the Village Board. For each, the present zoning code requirements are outlined, issues are identified, an examination is made of whether CMP objectives are reflected, comparative approaches used in other communities are noted, and the proposals of this study are described. For the parking evaluation, the independent parking study is also examined.

## **A. LAND USE BOARDS**

Balancing the needs of the Village against the needs of applicants regarding the land use review process. There have been times when the jurisdiction between boards - Planning Board, Architectural Review Board and Zoning Board of Appeals - on site plan and architectural issues has been unclear.

There are four Village boards with land use responsibility (additionally there is a Historic District and Landmarks Preservation Commission, but it has been described as not active).

- The Village Board of Trustees has the jurisdiction over amendments to the zoning code and map and for certain special permits.
- The Planning Board has jurisdiction over site plans, subdivisions and conditional use permits.
- The Zoning Board of Appeals has jurisdiction over use and area variances, interpretations of the zoning code, and certain special permits.

The three agencies identified above have clearly identified authority that is derived from the Village Law of New York State. For each activity the state law describes and limits the power of each Board, subject to court decisions, amendments to the state legislation from time to time, and some modifications allowed by the Municipal Home Rule Law.

- The Architectural Review Board (ARB) is also created by the Village Board of Trustees but does not have specific authorization in NYS Village Law. The authorizing legislation comes from NYS General Municipal Law and allows for a range of activities. ARB's have been established in many communities in New York State and throughout the country over the past 50 or so years in response to a growing concern about community appearance and the visual character of communities. While this is the central thrust of these agencies, their specific authority, administrative organization and operating procedures vary widely around New York State. Due in part to this variety of approaches, and the general responsibility to be stewards of community appearance and design, the role of the ARB in relation to the other land use agencies of the municipality is often not clearly defined, and it is not unusual for Boards to feel that their "toes are being stepped on".



The Nyack ARB was authorized by Article XA of the Nyack Zoning Code, adopted in 1999, so the Village has had about a decade of experience with the present code (with a few amendments). Prior to the establishment of the ARB the Planning Board included design review as part of its responsibility. The legislative findings and purposes of Article XA of the zoning code are similar to those in many other codes. The findings begin with the statement that the "Board of Trustees finds that

monotonous similarity, striking visual discord, inappropriateness or poor quality of design in the exterior appearance of structures...adversely affects the desirability of the immediate area and neighboring areas of the community...”.

The ARB is directed to assist the applicant to focus on design principles; members must be Village residents; be qualified by training or experience in architecture, design, building construction or other related business or profession; may retain an architect or other consultant to advise the ARB at applicant cost.

Applications for building permits for construction or alterations of any structure or item that would affect the exterior appearance or would be visible from the exterior (except for site grading, landscaping and lighting of public or private outdoor spaces) must be referred by the Building Inspector to the ARB.

The application to the ARB for matters within its jurisdiction must include submission of a formal site development plan, the specifications for which are included in the ARB chapter of the code. The ARB may make findings that “due to special conditions peculiar to the site, certain of the information normally required as part of the site development plan is inappropriate or unnecessary” or cause extraordinary and unnecessary hardship and the ARB may then vary or waive some of the requirements. The code specifically references ARB approval of a site plan application.



After review, the ARB may approve, approve subject to specified conditions or modifications, or disapprove any application based on:

- Excessive monotonous similarity to another building or structure within 500 feet
- Excessive dissimilarity in relation to another building or structure within 500 feet
- Inappropriateness of design with respect to certain criteria

In considering an application the ARB must take into account natural features of the site and surroundings, exterior design and appearance of existing structures in the immediate area and the character of the area and the Village.

A denial of the application for reasons of excessive monotonous similarity or excessive dissimilarity requires findings by the ARB. If the ARB disapproves an application, the Building Inspector shall refuse to issue a permit. The ARB must act within 62 days of the date of a full application. If an applicant is denied a permit, a request can be made to the ARB for formal findings of fact, which must be provided within 60 days. The applicant may then respond to the findings with formal proof, and the ARB then reconsiders the application. If dissatisfied with the result the applicant may then initiate an Article 78 proceeding in New York Supreme Court.

Within Article XA of the code there are several references indicating that ARB members are not to impose their own design or architectural preferences on an application.

## ISSUES IDENTIFIED

- The code has a requirement that a site plan be accompanied with an application to the ARB, and the code lists the requirements for a complete site plan. Since the Planning Board also requires a complete site plan the dual requirement sets the potential for conflict since the ARB is encouraged by the code language to go beyond the usual parameters in reviewing a plan.
- While some communities do not have a separate ARB and provide for the Planning Board to carry out this function, these are sometimes in communities in which the items reviewed by the Planning Board as the ARB may be limited to, for example, commercial buildings and multi-family residential buildings.
- In Nyack the ARB has a wide range of responsibilities, including almost all development proposals (which has the potential to create overlapping responsibilities and unclear lines of authority in reviewing an application).

## DOES THE PROPOSED CODE REFLECT THE OBJECTIVES OF THE CMP?

The Comprehensive Master Plan has frequent references to the variety of architectural styles, the wide range of age of buildings, desire for historic preservation and need for the

review of building design with respect to individual buildings and the relationship of new buildings and additions to the existing fabric of the community.

The CMP recommends a merger of the Architectural Review Board and the Historic District and Landmark Preservation Commission into a Design Review Board, which would have responsibility for both historic and non-historic development review. The Design Review Board decisions would be binding, with appeals directed to the Zoning Board of Appeals.

The proposed zoning code (October 2008 draft) establishes an Architectural Review Board which, by the description of its responsibilities, include the usual ARB function and the review of eligible and non-eligible historic buildings. It appears to have essentially the role recommended in the Comprehensive Master Plan for the Design Review Board.

### PROPOSED ZONING CODE

The legislative findings and purposes of the ARB chapter in the present and proposed codes are virtually identical except that in the proposed code the ARB is given the authority to issue certificates of appropriateness for any exterior alterations of a building or site designated as a landmark or located within a designated historic district, a role which would otherwise be the responsibility of a historic review board or similar local board.

The proposed code, in its description of the powers and duties of the ARB relating to its capacity as a historic review body with regard to building permit applications, provides the authority to impose reasonable conditions regarding building permit applications for historic buildings or landmarks or properties in historic districts; to properties listed in, or eligible for listing in, the State or National Register of Historic Places; or to recommend or review the historic designation of properties or landmarks; to maintain an inventory of historic properties or districts.

The organization of the ARB is essentially the same in the present and proposed code, although there are changes in format which add clarity to the role of the ARB. One change in the powers and duties of the ARB is that in the present code the ARB has the authority to issue a demolition permit (except under the provisions of Village code sections 10-24 or 30-13), while in the proposed code the ARB provides recommendations to the Planning Board, which acts on the request for a demolition permit.

As noted earlier in this review, the present code includes site plan requirements within the ARB chapter, sec. 59-41.8 and requires submission of a formal site development plan to the ARB, sec 59-41.7.D, providing a greater opportunity for conflict between the ARB and the Planning Board. The proposed code provides that site plan approval is a responsibility of the Planning Board, see sec. 59-5.2.A.(2)(d). It also provides that the role of the ARB with respect to site plan approval is “to provide recommendations related to design and appearance to the Village Board, Planning Board and other village boards and

agencies on requests for site plan development, subdivision, and demolition” see sec. 59-5.2.C.(4)(e).

The proposed code has a new sub-section (59-5.4) “General Development Review Procedures” which is a road map through the review process in Nyack and should help to clarify that process. The Building Inspector functions as an application coordinator and gatekeeper; determining which submittal requirements may be waived in specific applications; when applications are complete for agency review; conducting and coordinating staff and outside agency review; and advising on whether the common procedure should be followed or where, because of particular circumstances involving an application, a modified order of agency review is appropriate.

### COMPARABLE APPROACHES IN OTHER COMMUNITIES

Rockland County municipalities have a variety of approaches with respect to architectural review, based on the needs and objectives of each community and the extent to which a community desires to regulate the architectural aspects of development as a technique to avoid uncontrolled building design. The typical approaches are:

- No regulation
- Planning Board acting, informally or formally, as an ARB for all developments
- Planning Board acting formally regarding certain type of development, often all except single family homes

- ARB with full powers, similar to the Nyack proposal, but with some variations as to the matters within their jurisdiction, based on those elements considered to be most important in the particular community.

The last approach is most common in the Hudson River villages in Rockland County. It is also generally found in the Hudson River Villages in Westchester County

### RECOMMENDATIONS TO ZONING CODE - ARB

- Accept the proposals of the October 2008 draft of the zoning code, which combines the ARB and Historic Districts and Landmarks Preservation Commission; provides that the ARB provide an informal review of site plans (and add subdivisions) for the Planning Board on request; provides recommendations to the Village Board on request; provides recommendations to the Planning Board with respect to requests for demolition permits.
- An alternative would be transferring the responsibility of the ARB to the Planning Board and the appointment of one or two additional members with training or experience in design, unless this background is already represented on the Planning Board. This would eliminate the “stepping on toes” and unclear lines of authority and overlapping responsibilities in reviewing an application. It would require changes to the proposed zoning code.

If a decision were to be made to combine the ARB with Planning Board this would not be consistent with the CMP but operationally may eliminate the issues that currently exist between the two Boards. It would increase the Planning Board workload and may require additional meetings.

- The ability of an ARB acting in its capacity to review certificates of appropriateness for construction involving historic buildings and in attempting to preserve historic buildings is often limited because of a lack of funds or insufficient public interest in supporting preservation. The condition of an old building may be such that, on first examination, it would appear that the cost or time involved in carrying out preservation efforts would be too great.

One way to attempt to address this issue would be to provide in the code for a “breathing period” of a specified length of time to allow the ARB and the building owner to work on a collaborative basis to seek grant or loan funds, a public or private partnership, alternative uses, special zoning consideration, community support or other methods that may lead toward a positive solution. If after the specified time period no solution has been found, the owner would be allowed to proceed with the original proposal.

- The Comprehensive Master Plan includes as an objective to “protect views and improve connections between the waterfront and the rest of the Village, particularly downtown Nyack”. The accompanying recommendation is to

“preserve and enhance views of the Hudson River from throughout the Village”. The Plan recommends that maintaining and improving views be supported by Village policy. The proposed zoning code includes a plan of proposed view protection corridors, which include most of the east-west streets in the Village. The proposed code also provides that the ARB advise the Planning Board regarding view protection relating to site plan (and presumably subdivision) reviews (see Sec. 59-4.4.B) and adoption of a View Protection Overlay District. The proposed code does not have an identified map of such a proposed district. A map and view protection standards should be prepared for review and adoption.

- The General Development Review Procedures (Sec. 59-5.4.D(2)) of the proposed code includes the procedural “road map” for development applications, in this order:

Building Inspector

County Planning Board

Architectural Review Board

Planning Board

Zoning Board of Appeals

Board of Trustees

It is recommended that this order be modified to place the Planning Board after the Building Inspector. Where any informal review is deemed to be desirable, depending on the nature of the application, the Planning Board may informally



refer the application to the ARB for an informal review relating to view preservation or any other subject generally within the purview of the Planning Board. It has been our general experience that because the Planning Board has the broadest jurisdiction that is the best agency to begin the review process.

## **B. PARKING**

The Village Board, particularly in relation to the downtown area, has struggled to maintain effective and practical parking requirements. A parking study, commissioned by the Nyack Parking Authority, was completed in January 2007 and provided certain recommendations. The Village Board would like a comparison of the parking study recommendations as contrasted with the draft codes' treatment of parking requirements in the commercial and downtown districts.



**Main Street Parking**

The present code includes parking standards for a list of permitted uses. For two of the most common categories of uses found in the business area of the Village, the requirement for restaurant and drinking establishments is one parking

space for each 3 seats or one parking space for each 100 square feet of gross floor area, whichever is greater; for retail sales, arts and crafts, and personal service establishments the requirement is one parking space for each 200 square feet of gross floor area. The present code provides that the spaces be on-site, be within 300 feet of the use, may be shared in certain circumstances with other uses on a lot, or, if these alternatives are not feasible, a fee as established by the Village Board be paid to the Parking Authority in lieu of providing spaces. The number of spaces for which a fee is to be paid is established by the Building Inspector based on the code.

The present code has provisions similar to those of numerous codes in Rockland County, adopted in the mid to late 1960's when the effect of the completion of the Tappan Zee Bridge and the NYS Thruway became evident. Most of these codes were intended to regulate suburban development and were largely focused on providing adequate parking for each commercial development on individual properties. While there were some provisions for shared parking and off-site parking within 300 feet of a property, these were not sufficient to recognize the needs of an active downtown area in a compact Village. Over time, exemptions and adjustments were made to the Nyack parking regulations to meet local conditions.

#### ISSUES IDENTIFIED

- Does the proposed code adequately consider the recommendations of the Nyack Parking Authority Parking Study, prepared by BFJ Planning, which was undertaken and completed while the Comprehensive Master Plan Study was underway?
- Should the availability of municipal parking in the core business area of the Village be reflected in the code parking requirements?
- Should the core boundaries of the parking study apply, or the proposed zoning district boundaries, for purposes of applying differing parking standards?

#### DOES THE PROPOSED CODE REFLECT THE OBJECTIVES OF THE CMP?

The Comprehensive Master Plan has a number of recommendations regarding parking that include:

- Provide additional on-street parking through re-striping, removing curb cuts and diagonal parking
- Dedicating the most convenient off-street parking to short-term parking; moving long term parking to outlying lots
- Promote shared parking for multiple uses
- Improve “readability” of parking options for visitors
- Acquire and build additional small-scale at-grade lots in locations close to the downtown core area
- Reconfigure existing lots to increase landscaping and attractiveness
- Redesign public and private parking on the Nyack Plaza superblock

One of the above, shared parking, can be directly affected by provisions in the zoning code. Several of the others could be implemented with funds received from businesses and property owners in lieu of providing parking. The balance would be acted upon independently of the zoning code. None of the proposed code revisions are inconsistent with the objectives of the Comprehensive Master Plan.

### NYACK PARKING AUTHORITY STUDY

The Nyack Parking Authority commissioned a parking study independent of the Comprehensive Master Plan process. It was undertaken after surveys performed by the CMP “revealed that nearly 60% of the residents and merchants rated the availability of parking in downtown as either poor or very poor”. (Nyack Parking Study, prepared by

BFJ Planning and completed in January 2007). The BFJ study involved all aspects of parking and included an analysis of available data and local regulations, a survey of the number and location and availability ( public or private) spaces within the study area; a survey of parking space usage and degree of demand; and undertaking three surveys of people who live, work or shop in the Village.

The BFJ Parking Study made a series of recommendations involving such factors as alternate side parking requirements, extending hours at parking meters , pricing parking permits, upgrading meters and enforcement, loading zones, “municipalizing” Main Street lots, shared parking, theater parking, upgrading parking facilities and improved lighting, residential parking permits, monitoring parking conditions, planning for future parking needs, and changes to the Village code. Only the last item is directly related to the zoning code, but the parking provisions in the zoning code can be affected by Village policies regarding some of the other subjects.

The parking study recommends several specific changes to the current code to address downtown parking needs and to help meet the study objective of providing shared, generally municipal, parking:

- The study recommends that in the core area of the Village, where additional parking is required to meet the needs of new businesses that up to 100% of the required parking be allowed as a payment in lieu of providing actual parking spaces.

- The study recommends that the code state that the downtown core parking ratios do not permit individually reserved parking spaces.
- The parking study also recommends that parking requirements in the downtown core area be revised and reduced from the current code to reflect public on and off street parking and the intent to provide additional public parking. In the core area the reduction for restaurants would be from one space per 3 seats to one space per 3.5 seats or from 10 spaces per 1,000 square feet to 7 spaces per 1,000 square feet.

The proposed code departs in a significant way from the present code in the handling of parking:

- It generally reduces the parking requirement for land uses likely to be found in the central business area of the Village in recognition of the pattern of visitors to downtown Nyack – that many visitors make more than one stop in the area and often walk from one destination to another. The parking requirements for specific uses in the proposed code are similar to those in the BFJ parking study, and the differences do not warrant changes from the recommendations. See Figure 1, a comparison of Parking requirements, on page 21.

Figure 1. Comparison of Nyack Parking requirements

Use	Present Code	Parking Study – Core Area	Proposed Code
Restaurants and Bars	1/3 seats or 10/1,000 gfa	1/3.5 seats or 7/1,000 gfa	1/1.5 seats or 6.6/1,000 gfa
Art Gallery	1/200 gfa or 5/1,000 gfa	1/400 gfa or 2.5/1,000	1/400 gfa Or 2.5/1,000 gfa
Arts/Crafts Studio	1/200 gfa or 5/1,000 gfa	1/400 gfa or 2.5/1,000	1/500 gfa Or 2/1,000 gfa
Personal Services	1/200 gfa or 5/1,000 gfa	1/400 gfa or 2.5/1,000	1/400 gfa Or 2.5/1,000 gfa
Retail sales & service	1/200 gfa or 5/1,000 gfa	1/400 gfa or 2.5/1,000	1/400 gfa Or 2.5/1,000 gfa

gfa = gross floor area    sf = square feet

### COMPARATIVE APPROACHES IN OTHER COMMUNITIES

Many Rockland communities have parking requirements established for an auto oriented suburban lifestyle, with requirements for individual uses and separate driveways for adjoining uses and buildings. In some cases, shared parking was allowed for uses that do not operate at the same time – an example of this would be a movie theatre that draws most of its customers in the evening after some other businesses in the same site are closed. Some locations in Rockland and Westchester counties have downtown pedestrian shopping and walking similar to that of Nyack. A description of several locations follows.

The Village of Suffern has a downtown shopping district that encourages pedestrian traffic, having installed new curbs and sidewalks in the past 5 years. The downtown area, like Nyack, has a combination of retail and service businesses and mixed use commercial / residential units. Suffern does not have on-street metered parking. Village parking is under a parking authority which is responsible for maintenance operations and enforcement of on-street (1 hr. parking zones etc.) and municipal parking. The Parking Authority works with the Village Board in creating new parking, or re-allocating spaces between commuters and shopping/merchants, tenants, etc. The Planning Board attempts to obtain at least some off-street parking when reviewing site plans and may allow payment of a fee-in-lieu of providing parking, with the fee determined by the Village Board. Parking permits are available for commuters and merchants.

The Village of Tarrytown provides municipal and on and off-street metered parking and also requires off-street parking. In some situations, site plan approval has not been granted for uses that cannot provide off-street parking. In the downtown commercial area off-site parking may be provided within 300 feet, and shared parking may be allowed on a case by case basis by the Zoning Board of Appeals. For a change of use in the downtown area when site plan approval is generally required because of parking, if the additional required parking is less than 5 spaces, site plan approval may be waived by the Building Inspector.

If parking is provided by a property owner and is later dedicated to the Village for municipal parking, the parking facilities are deemed to continue to serve the properties.



The Village of Scarsdale has established a Village Center Zoning Map, which allows modifications to parking requirements of the zoning code. For a use or structure legally existing at the time of adoption of the zoning law amendment, there is no requirement to provide additional parking to meet new code requirements. In special parking districts an applicant may request the Planning Board to accept a cash payment to the Village for parking spaces within the district in which the property is located. The Planning Board may waive up to one third of the required parking spaces in a mixed use development where there are anticipated variations in the times of peak parking demand. No new driveway or parking space may be designed in a way that would require a vehicle to back out onto a county or state highway.

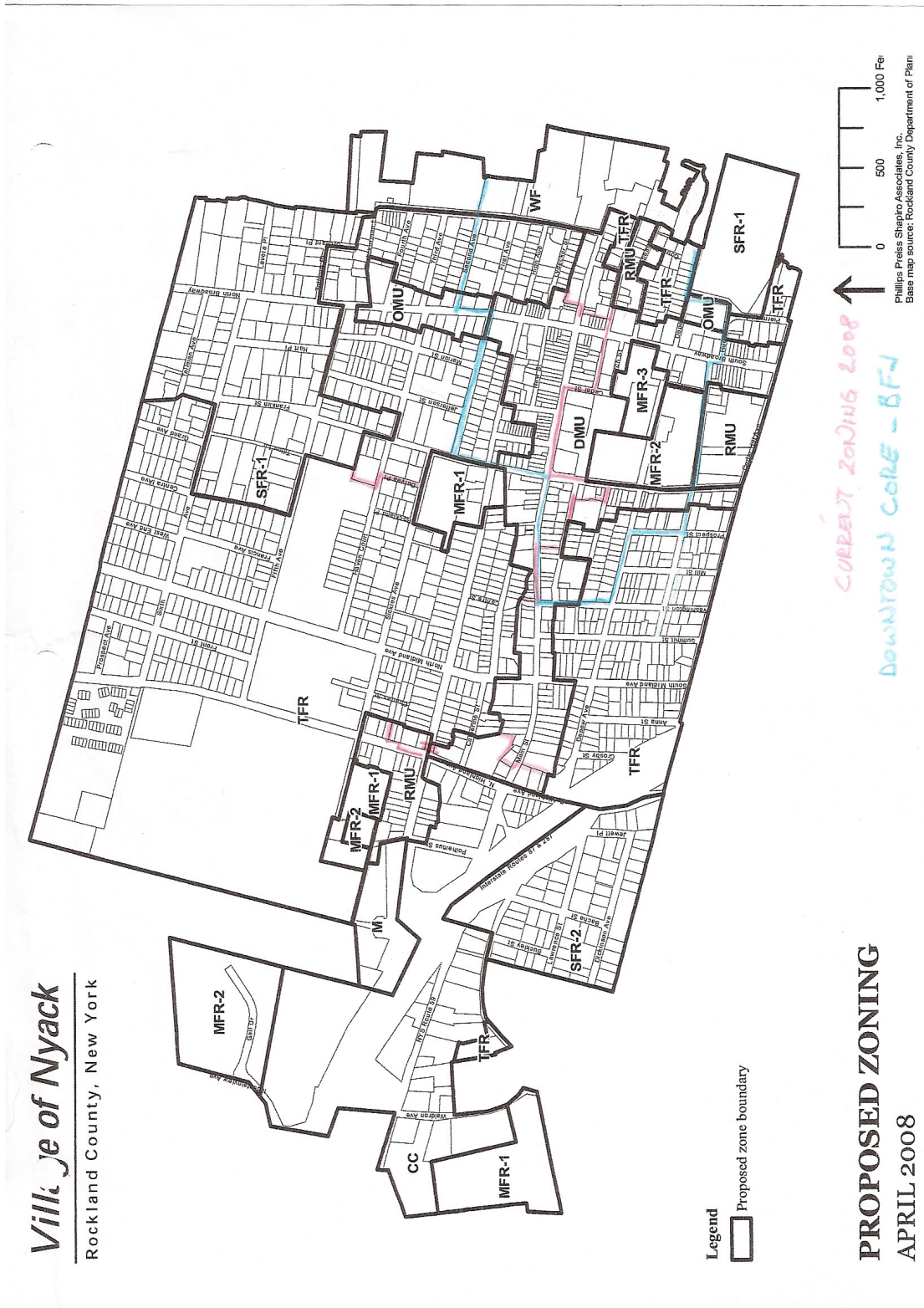
#### PARKING RECOMMENDATIONS :

- The boundaries of the referenced areas in the central business portion of the Village are not coincident with each other. A comparison of the Proposed Zoning Map (April 2008) boundary for the Downtown Mixed Use District (DMU) is not the same as the Downtown Core Boundary (Fig. 5.1) of the BFJ Study. The latter includes, for example, much of the waterfront area and the multi-family areas south of Main Street and west of South Broadway. See Figure 2 on page 25. The Village Board will have to decide where the boundary will be for properties with reduced parking requirements. This is the most significant finding in this

comparison review of the parking requirement in the proposed code and the parking study.

- While not directly related to this Zoning review, it is noted that individual parking meters were in place when the BFJ study was made. The Village now has unimeters, and some updating of parking space usage, revenue, and similar factors should be examined as other parking improvements are considered.
- If the reduction in ratio is to be applied to privately owned lots individually reserved parking spaces should not be permitted, because they reduce the efficiency of open shared parking. If the characteristics of the business necessitate individually reserved spaces, then there should be no reduction in the parking ratio.

Figure 2. Village of Nyack Zoning Map – Comparison of Downtown Core Boundary



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### **C. FLOOR AREA RATIOS FOR RESIDENTIAL BUILDINGS**

The Draft Code introduces the Floor Area Ratio (FAR) concept to residential zoning districts, while it has been applied in non-residential districts for some time. The Draft Code also provides the Building Inspector with discretion to waive the FAR in certain (small additions) specified situations. Is this unnecessarily complicating the land use process?

The Village has been concerned for some time about the recent and increasing practice of building large houses on relatively small residential lots, whether by tear downs of older homes or after the subdividing of larger parcels by owners or developers. These newer homes, sometimes referred to as “McMansions” are typically out of scale with the homes in established neighborhoods. A method of better regulating the size of additions and new homes is sought. The size of a dwelling in relation to its neighbors is a significant element of neighborhood character.

At the present time the size of a dwelling is regulated by yards/setbacks, lot coverage, and height requirements. A dwelling on a lot that is oversized for the zoning district in which it is located may be much larger than its neighbors and be code conforming. In this situation the size of the dwelling is regulated but its relationship to its neighbors is not part of the evaluation process. The ARB looks at this relationship to neighboring homes but has limited authority without a code provision.

One method of regulating the size and bulk of a building on a lot is the use of Floor Area Ratio (FAR) in a code, in addition to such regulations as required yards and setbacks, minimum open space, building height, and development coverage (the amount of impervious, or paved, surface on a lot – such elements as roofs, driveways and walkways, etc.). The current Nyack code defines Floor Area Ratio as “the floor area in square feet of all buildings on a lot divided by the area of such lot in square feet”.

Floor Area Ratio is the relationship of the amount of floor area in a building to the area of the lot. Setting aside for a moment the other regulations referred to above, a FAR of 1.0 would allow a building to have as many square feet as the lot, so a FAR of 1.0 would allow, for example, a 5,000 square foot lot to have a building of 5,000 square feet, which could be on one or more floors. A FAR of 0.50 would allow a building of 2,500 square feet on one or more floors on a lot of 5,000 square feet. Since the other requirements referred to above also apply, the design of a building and its location on a lot must take into account all of the factors that apply to the particular situation.

The current Nyack code uses FAR requirements in non-residential zoning districts including those that permit residential mixed use. The FAR in these districts range from a low of 0.5 to a maximum of 4.5, so the hypothetical 5,000 square foot non-residential lot, depending on the zoning district, could have from 2,500 square feet to 22,500 square feet of floor area, assuming all other requirements could be met.

One characteristic of the use of FAR as described above is that the size of a building is

directly tied to the size of the lot. If all the lots in a neighborhood are about the same size, and the zoning requirements, including FAR, are the same, the residential buildings should be generally proportional in size to one another. If a lot is much larger than the others in the area, and the zoning requirements are the same, a resulting building could be much larger than others in the area. In theory at least the larger building would be on a larger lot, so its larger size would be somewhat offset by larger setbacks.

### DOES THE PROPOSED CODE REFLECT THE OBJECTIVES OF THE CMP?

The Comprehensive Master Plan has as one of its residential objectives to “Enhance and protect Nyacks' Village scale and historic charm”. This is one of several objectives directed toward retaining Nyacks’ sense of community – its quality of life, and one that supports another of the Villages’ qualities – its walkability, which provides an opportunity to appreciate the cohesiveness and sometimes subtle variety in the residential environment.

The CMP has as a residential recommendation to “Promote compatibility in scale, density, and orientation between new and existing development. Permitted densities and building heights should be reduced where appropriate”.

The proposed code utilizes a relatively new approach to the use of the FAR concept. Rather than the conventional approach of applying a single FAR to an entire zoning

district, no matter the size of the lot, the new approach sets up a graduated FAR based on the individual lot size. See sec 59-4.3.F(p. 63) of the proposed zoning code. In concept this approach is being used in the Villages of Tarrytown and Scarsdale, NY, where changes in the zoning code have taken place to address the same concerns of Nyack of compatibility of new development with existing development. The changes in these codes has been recent and in concept seem to attain the desire to ensure compatibility. The Scarsdale amendment is about 6 years old, while the Tarrytown amendment was adopted nearly a year ago.

The numerical values for lots of various sizes are the same in all three codes. However, the areas to be included in the measurement of the FAR differ somewhat. For example, some may include portions of basements, garage space that is part of the dwelling but not separate freestanding garages, open porches, roofed porches, etc. These differences typically represent an effort to avoid creating totally new definitional standards, and to encourage or discourage certain features of importance to a community (free standing garages for example).

The proposal to use the newer version of Floor Area Ratio is consistent with the intention of the Comprehensive Master Plan.

The proposed version of Floor Area Ratio introduces a form of regulations to the Nyack Zoning Code that is more difficult to apply than most of the other provisions of the code.

There are several reasons:

- It requires analysis of three dimensional elements of a building, (length, width and height of each story), whereas many of the other requirements are two dimensional in nature – i.e. building setback and yard requirements as a distance from the street.
- Because of the building elements (habitable area, non-habitable area) that must be considered to calculate the square footage of a proposed building, the construction and grading plans for a building would need to be more advanced than is typical for a subdivision, sometimes more than is needed for a site plan or ARB approval.

#### RECOMMENDATIONS TO PROPOSED CODE - FAR

- The definition of Floor Area Ratio in the proposed code differs somewhat from the existing code, suggesting an intentional modification. The proposed code refers to the “net floor area” of the lot. We did not find a definition of “net floor area” or a reference to it elsewhere in the code. The use of the term should be clarified before adoption of the proposed zoning code. “Net floor area” may refer to the area of the lot to be counted after deduction of the area of any portions of the lot with environmental constraints.
- The proposed code refers to “yard” and “setback” and as referenced seems to be the same. If both terms have the same meaning, one should be dropped. If they have different meanings a clearer distinction should be made. See definition of



both terms in Sec. 59-6.1. See use of terms in Article 4: development standards, Sec. 59-4.2.B, Table 4-1 and its notes (p.62).

- This review recommends the adoption of the Floor Area Ratio as included in the proposed code with the modifications described below, with the reason for these recommended changes (the recommended changes occur on pgs. 62 and 63 of the proposed zoning law with the relevant sub sections presented below):
  - Exclude patios from FAR as they do not affect the bulk of a building (A(1)(2)). A more appropriate place to regulate patios would be as part of the coverage requirement.
  - The reference to exterior exposed walls along the front façade should include the phrase “above pre-development grade” to reduce the potential for site grading and the elevating of a site to create a pedestal appearance of a structure (B.(1)(2)).
  - Provide more direction to the measurement of structural headroom in an attic (C.(1)). See proposed language below.
  - Include a provision that requires an application must be made to the Zoning Board of Appeals for a special permit for total floor area greater than allowed by the FAR.
  - Provide that the Zoning Board of Appeals may request an advising opinion from the ARB for a special permit for a dwelling which exceeds the code limit. In reviewing such applications the ZBA shall consider the code criteria for special permits and variances.

Recommended Code Changes to FAR are Highlighted in RED (pgs. 62 and 63 of proposed code)

(m) Maximum Floor Area Ratio in Residential Districts SFR-1, SFR-2, and TFR. In the calculation of maximum floor area ratio in SFR-1, SFR-2, and TFR residential zones the following apply:

A. Patio, decks, and porches

(1) ~~Pervious~~ Patios shall be excluded from the calculation of the FAR.

(2) Unroofed decks ~~and impervious patios~~ shall count as 25% in the calculation of the FAR.

(3) A roofed, unenclosed, one-story front porch, extending not more than six feet from the front wall of the building does not count in the calculation of the FAR. Other square footage of unenclosed porches count as 25% in the calculation of the FAR.

(4) Enclosed porches shall count 100% in the calculation of FAR

B. Basement, cellars and garages

(1) Cellar space with structural headroom of less than 7½ feet and exterior exposed wall or walls of the front facade average less than 3 feet ~~above pre-development grade~~ do not count in the calculation of the FAR.

(2) All the remaining portions of the floor area of cellars, basements or basement garages, where the height of the exterior exposed wall or walls of the front facade are three feet or more ~~above pre-development grade~~ shall be included in the FAR.

C. Attics or space under sloping roof

(1) All attic space, finished or unfinished, with structural headroom of 7½ feet or more ~~as measured from the floor of the attic (or floor of the space under a sloping roof) to the underside of the roof structure~~ shall count 100% in the calculation of the FAR.

(2) Attic space, finished or unfinished with structural headroom less than 7½ feet shall not count in the calculation of the FAR.

D. Accessory buildings including detached private garages

(1) Detached accessory buildings shall not count in the calculation of the FAR.

E. Floor height

Any interior space with a floor-to-ceiling height in excess of 12 feet shall be counted twice in the calculation of the FAR.

F. Minor Alterations and Additions to Existing Dwelling

For minor alterations and additions to existing dwellings, the Building Inspector shall determine whether the calculation of floor area ratio is required and may waive floor area ratio calculation for alterations and additions that, by his estimations, do not appear to result in the building exceeding the maximum FAR and add 300 or less square feet.

The Maximum Floor Area Ratio of single and two-family dwellings in the SFR and TFR districts for the principal building shall be as follows:

Lots over 50,000 square feet shall have a maximum FAR of 0.1450.

~~Application for any dwelling which exceeds 15,000 square feet or where total floor area exceeds the maximum permitted FAR shall be required to obtain a special permit from the Zoning Board of Appeals. The Zoning Board of Appeals may seek an advisory opinion from the Architectural Review Board. The Zoning Board of Appeals shall consider the criteria of the code for special permits and area variances.~~

### **III. SUMMARY RECOMMENDATIONS**

Following is a summary of our recommendations:

#### **A. Land Use Boards – Recommendations to Zoning Code - ARB**

- Accept the proposals of the October 2008 draft of the zoning code, which combines the ARB and Historic Districts and Landmarks Preservation Commission; provides that the ARB provide an informal review of site plans (and add subdivisions) for the Planning Board on request; provides recommendations to the Village Board on request; provides recommendations to the Planning Board with respect to requests for demolition permits.
- An alternative would be transferring the responsibility of the ARB to the Planning Board and the appointment of one or two additional members with training or experience in design, unless this background is already represented on the Planning Board. This would eliminate the “stepping on toes” and unclear lines of authority and overlapping responsibilities in reviewing an application. It would require changes to the proposed zoning code.

If a decision were to be made to combine the ARB with Planning Board this would not be consistent with the CMP but operationally may eliminate the issues that currently exist between the two Boards. It would increase the Planning Board workload and may require additional meetings.

- The ability of an ARB acting in its capacity to review certificates of appropriateness for construction involving historic buildings and in attempting to preserve historic buildings is often limited because of a lack of funds or insufficient public interest in supporting preservation. The condition of an old building may be such that, on first examination, it would appear that the cost or time involved in carrying out preservation efforts would be too great.

One way to attempt to address this issue would be to provide in the code for a “breathing period” of a specified length of time to allow the ARB and the building owner to work on a collaborative basis to seek grant or loan funds, a public or private partnership, alternative uses, special zoning consideration, community support or other methods that may lead toward a positive solution. If after the specified time period no solution has been found, the owner would be allowed to proceed with the original proposal.

- The Comprehensive Master Plan includes as an objective to “protect views and improve connections between the waterfront and the rest of the Village, particularly downtown Nyack”. The accompanying recommendation is to “preserve and enhance views of the Hudson River from throughout the Village”. The Plan recommends that maintaining and improving views be supported by Village policy. The proposed zoning code includes a plan of proposed view protection corridors, which include most of the east-west streets in the Village.

The proposed code also provides that the ARB advise the Planning Board regarding view protection relating to site plan (and presumably subdivision) reviews (see Sec. 59-4.4.B) and adoption of a View Protection Overlay District. The proposed code does not have an identified map of such a proposed district. A map and view standards should be prepared for review and adoption.

- The General Development Review Procedures (Sec. 59-5.4.D(2)) of the proposed code includes the procedural “road map” for development applications, in this order:

Building Inspector  
County Planning Board  
Architectural Review Board  
Planning Board  
Zoning Board of Appeals  
Board of Trustees

It is recommended that this order be modified to place the Planning Board after the Building Inspector. Where any informal review is deemed to be desirable, depending on the nature of the application, the Planning Board may informally refer the application to the ARB for an informal review relating to view preservation or any other subject generally within the purview of the Planning Board. It has been our general experience that because the Planning Board has the broadest jurisdiction that is the best agency to begin the review process.

## **B. Parking Recommendations**

- The boundaries of the referenced areas in the central business portion of the Village are not coincident with each other. A comparison of the Proposed Zoning Map (April 2008) boundary for the Downtown Mixed Use District (DMU) is not the same as the Downtown Core Boundary (Fig. 5.1) of the BFJ Study. The latter includes, for example, much of the waterfront area and the multi-family areas south of Main Street and west of South Broadway. See Figure 2 on page 25. The Village Board will have to decide where the boundary will be for properties with reduced parking requirements. This is the most significant finding in this comparison review of the parking requirement in the proposed code and the parking study.
- While not directly related to this Zoning review, it is noted that individual parking meters were in place when the BFJ study was made. The Village now has unimeters, and some updating of parking space usage, revenue, and similar factors should be examined as other parking improvements are considered.
- If the reduction in ratio is to be applied to privately owned lots individually reserved parking spaces should not be permitted, because they reduce the efficiency of open shared parking. If the characteristics of the business necessitate individually reserved spaces, then there should be no reduction in the parking ratio.

### **C. FAR Recommendations to Proposed Zoning Code**

- The definition of Floor Area Ratio in the proposed code differs somewhat from the existing code, suggesting an intentional modification. The proposed code refers to the “net floor area” of the lot. We did not find a definition of “net floor area” or a reference to it elsewhere in the code. The use of the term should be clarified before adoption of the proposed zoning code. “Net floor area” may refer to the area of the lot to be counted after deduction of the area of any portions of the lot with environmental constraints.
  
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- Provide that the Zoning Board of Appeals may request an advising opinion from the ARB for a special permit for a dwelling which exceeds the code limit. In reviewing such applications the ZBA shall consider the code criteria for special permits and variances.

Recommended language of code changes to FAR are found on pg. 32 of this report.