



FREDERICK P. CLARK ASSOCIATES, INC.

PLANNING, TRANSPORTATION, ENVIRONMENT AND DEVELOPMENT
RYE, NEW YORK FAIRFIELD, CONNECTICUT

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MEMORANDUM

To: Supervisor Dana Levenberg and the Ossining Town Board

Date: July 25, 2016

Subject: **Draft Planning and Zoning Analysis**

We are pleased to submit this draft memorandum report regarding the planning and zoning analysis which we have been conducting in connection with the eight remaining issues in the Future Development and Dedevlopment Chapter of the Town's Comprehensive Plan.

1. *Issue: Evaluation of the buffer requirements for commercial uses and the transition setbacks for non-residential uses adjacent to residential areas, and recommendations as to whether the provisions are sufficient or need to be updated.*

Recommendations: Although the buffer and setback requirements in a variety of the non-residential zoning districts in the Town appear to be quite sufficient and have been performing their function properly over the years, we believe that the buffer and setback requirements for non-residential uses in the General Business (GB), General Business-1 (GB-1) and Neighborhood Commercial (NC) Districts could be improved upon and recommend that the Town Board proceed with same.

Analysis: The GB District provisions contain the following setback and landscaping regulations for non-residential uses that are contiguous to residentially used or residentially zoned lots in Section 200-18.D of the Zoning Law:

- “D. Setback and landscape requirements for nonresidential uses that are contiguous to residentially used or residentially zoned lots.
 - (1) All nonresidential buildings and structures shall be set back at least 30 feet from the lot lines of a contiguous residentially used or residentially zoned lot.

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PLANNING, TRANSPORTATION, ENVIRONMENT AND DEVELOPMENT
RYE, NEW YORK
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- (2) Between any nonresidential use and a residentially used or residentially zoned lot, an area at least 15 feet wide with landscape screening shall be provided. Such plantings shall be a mix of evergreen shrub and coniferous tree species, shall have an initial height of at least six feet, and shall be planted close enough to create a buffer and adequately screen views of the nonresidential use. A six-foot-high wall or fence, suitable in appearance to the surrounding area, may be substituted for the landscape plantings. Proper maintenance of all fencing and landscape plantings shall be a continuing requirement. All fences shall be installed with the more attractive side facing neighboring properties.
- (3) Driveways for any nonresidential use shall be located at least 15 feet from a residentially used or residentially zoned lot.
- (4) Parking areas for any nonresidential use shall be located at least 15 feet from a residentially used or residentially zoned lot. Such parking areas shall be screened from adjoining lots with a mix of evergreen shrub and coniferous tree plantings having an initial height of at least six feet, a depth of eight feet, and planted close enough to form a visual barrier. A six-foot-high wall or fence, suitable in appearance to the surrounding area, may be substituted for the landscape plantings. Proper maintenance of landscaping shall be a continuing requirement. All fences shall be installed with the more attractive side facing neighboring properties.”

The General Business-1 District provisions contain the following setback requirements at Section 200-18.1.C(2):

- “(2) Front, side and rear setback requirements otherwise applicable may be increased up to a factor of two, reduced or eliminated to the extent deemed appropriate by the Planning Board in their sole discretion on site plan review pursuant to Article XI hereof, based upon the topography, slopes, grades, site distances and highway conditions and configurations as found by the Planning Board and upon a finding by the Planning Board that any such increase, reduction or elimination shall not adversely impact adjacent or abutting properties in considering visual, economic, environmental, ecological, safety and health effects.”

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The Office-Research Business (O-RB) District provisions include the following landscaping requirements at Sections 200-19.E(1) and (2):

“E. Special requirements.

- (1) The entire lot, except for areas covered by buildings or surfaced as parking or service areas, shall be suitably landscaped. All landscaping shall be properly maintained throughout the life of any use on said lot. Existing retaining walls, trees or landscaping located within 20 feet of any street or lot line shall not be removed except upon written approval by the Planning Board, nor shall existing grade be disturbed except with such approval.
- (2) There shall be planted along lot lines of the subject lot trees or shrubs of such type and spacing as shall be required by the Planning Board to adequately screen all operations on the lot from the view of adjoining properties. Screening shall also be required for the purpose of ensuring that the glare from headlights of vehicles in off-street parking and truck loading or maneuvering areas shall not cause safety problems for drivers on adjacent highways. Generally, such screening shall not be less than three feet where:
 - (a) The lot lines of the subject lot coincide with those of another lot in residential use; or
 - (b) The lot abuts, or is traversed by a residence district boundary line.”

Similarly, the Business Education (BE) District contains the following provisions at Section 200-19.1.D(1) and (2):

“D. Special requirements.

- (1) The entire lot, except for areas covered by buildings or surfaced as parking or service areas, shall be suitably landscaped. All landscaping shall be properly maintained throughout the life of any use on said lot. Existing retaining walls, trees or landscaping located within 20 feet of any street or lot line shall not be removed except upon written approval by the Planning Board, nor shall any existing grade be disturbed except with such approval.

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RYE, NEW YORK FAIRFIELD, CONNECTICUT

- (2) There shall be planted along lot lines of the subject lot trees or shrubs of such type and spacing as shall be required by the Planning Board to adequately screen all operations on the lot from the view of adjoining properties. Generally, such screening shall not be less than three feet nor more than eight feet in height, where:
 - (a) The lot lines of the subject lot coincide with those of another lot in residential use; or
 - (b) The lot abuts or is traversed by a residence district boundary line.”

The Office-Research Education (O-RE) District contains the following provisions at Section 200-19.2.D(1) and (2):

“D. Special requirements.

- (1) The entire lot, except for areas covered by buildings or surfaced as parking or service areas, shall be suitably landscaped. All landscaping shall be properly maintained throughout the life of any use on said lot. Existing retaining walls, trees or landscaping located within 20 feet of any street or lot line shall not be removed except upon written approval by the Planning Board, nor shall any existing grade be disturbed except with such approval.
- (2) There shall be planted along lot lines of the subject lot trees or shrubs of such type and spacing as shall be required by the Planning Board to adequately screen all operations on the lot from the view of adjoining properties. Generally, such screening shall not be less than three feet in height where:
 - (a) The lot lines of the subject lot coincide with those of another lot in residential use; or
 - (b) The lot abuts or is traversed by a residence district boundary line.”

Further, the Neighborhood Commercial (NC), General Business and General Business-1 Districts have no side and rear yard requirements, except along any Residence District

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RYE, NEW YORK FAIRFIELD, CONNECTICUT**

boundary, in which case the side and rear yard requirements are 30 feet, respectively. These requirements are provided for in Section 200-23 of the Zoning Law.

Section 200-24 of the Zoning Law contains dimensional requirements pertaining to the Office-Research Business, Office-Research Education and Business Education zoning districts. They are as follows:

“A. Minimum required.

<u>Dimension</u>	<u>O-RB,</u> <u>O-RE</u>	<u>BE</u>
Lot area (acres) ¹	10	40
Lot width (feet) ¹	300	300
Lot depth (feet) ¹	300	300
Front yard (feet) ¹	100	100
Side yard (feet) ¹	100	100
Side yard for lots along any residence district boundary (feet)	200	150
Rear yard (feet)	100	100
Rear yard for lots along any residence district boundary (feet)	200	150

¹Parking and loading areas in an O-RB District are to be located not less than 200 feet from the boundary of any residence district in the Town of Ossining or any adjoining municipality and not less than 100 feet from any other lot line. Furthermore, in parking lots of one acre or more, at least 5% of the area of the parking lot shall be devoted to landscaping within the interior of the parking area.....

Any parcel in the O-RB District or the O-RE District which has an area of 10 acres or more may be subdivided and subsequently sold or leased. Each subdivision shall be subject to the Subdivision Regulations of the Town of Ossining and the following special requirements:

- (1) Minimum lot size.
 - (a) Within the O-RB District and the O-RE District, each principal building, together with its accessory buildings, shall be located on a lot having at least two acres.
- (2) Required yards.

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PLANNING, TRANSPORTATION, ENVIRONMENT AND DEVELOPMENT
RYE, NEW YORK FAIRFIELD, CONNECTICUT

- (a) No principal or accessory buildings shall be located:
 - [1] Less than 200 feet from the boundary of a residence district in any municipality and less than 100 feet from the boundary of any commercial district.
 - [2] Highways.
 - [a] Less than 100 feet from the right-of-way of a limited-access highway, except that when the distance from the property line of the lot to the pavement of the limited-access highway is in excess of 50 feet, the minimum setback from the property line shall be 50 feet.
 - [b] Less than 100 feet from any other highway or public street right-of-way, except for a local street located entirely within and serving only properties within the O-RB District or the O-RE District, for which the minimum setback shall be 50 feet.
 - [3] Less than 50 feet from any other lot lines.
- (b) No accessory off-street parking and truck loading or maneuvering area shall be located:
 - [1] Less than 200 feet from the boundary of a residence district in any municipality or less than 50 feet from the boundary of any commercial district. Notwithstanding the above, the Planning Board may allow a maximum of a fifty-foot reduction in the above-specified two-hundred-foot dimension, where it has been clearly demonstrated to the Planning Board that adverse impacts will not result from such reduction, because of such mitigation matters as

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topography or natural screening, and/or such man-made screening as the Board directs.

[2] Less than 10 feet from the boundary of any adjacent lot within the O-RB District or the O-RE District.

[3] Highways.

[a] Less than 75 feet from the right-of-way of a limited-access highway, except that when the distance from the property line of the lot to the pavement of the limited-access highway is in excess of 50 feet, the minimum setback from the property line shall be 50 feet.

[b] Less than 40 feet from the right-of-way of any other highway or public street, except for a local street located entirely within and serving only properties within the O-RB District or the O-RE District, for which the minimum setback shall be 20 feet.

[4] No truck-loading facilities of any type, including platforms, shall be permitted along the wall of any building where such wall faces a limited-access highway or street.

[5] No parking facilities shall be located within 10 feet of the wall of any building where such wall faces any street or highway.”

Section 200-29.D of the Zoning Law provides the following regulations for parking spaces adjacent to the lots in any residence district:

“D. Regulations for parking spaces adjacent to lots in any residence district.

(1) Wherever a parking area of over five spaces abuts or is within 15 feet of the side or rear lot lines of a lot in any residence district, said

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RYE, NEW YORK FAIRFIELD, CONNECTICUT

parking lot shall be screened from such adjoining lot by a substantial wall, fence or thick hedge, approved by the Planning Board. Generally, such screen shall be not less than three nor more than eight feet in height.

[Amended 9-16-1969 by Ord. No. 73]

- (2) Whenever a parking area of over five spaces is located across the street from other land in any residence district, it shall be screened from the view of such land by a thick hedge, wall or fence, approved by the Planning Board, located along a line drawn parallel to the street and a distance of 20 feet therefrom, such screening to be interrupted only at points of ingress and egress. Generally, no such screening shall be less than three feet nor more than eight feet in height. The open area between such screening and the street shall be landscaped in harmony with the landscaping prevailing on neighboring properties fronting on the same street. Two identification and directional signs located on the street side of such screening shall be permitted; however, they shall not exceed an area of three square feet each.”

2. *Issue: Consideration as to whether to change the zoning of the Maryknoll Seminary and adjacent undeveloped properties from R-40 (40,000 square foot minimum lot; less than one acre) to two acre residential.*

Analysis and Recommendations: The Maryknoll Seminary and the Sisters of St. Dominic properties are shown in Figure 1 on the following page. These are quite substantial properties with the Maryknoll Seminary being approximately 76 acres in size and the Sisters of St. Dominic property being approximately 23 acres in size. Consequently, these two properties could accommodate quite a significant amount of residential development. While the current owners of the subject properties may not be contemplating their sale at the moment, we are aware of instances where for economic reasons or otherwise, large properties such as these have been unexpectedly sold to developers.

Creating a single-family residential zoning district with a minimum lot size of two acres (or 80,000 square feet) and rezoning the subject properties to this district would make the zoning of these properties match the zoning of adjacent lands in the Town of New Castle, and would reduce the number of potential residential lots which could be constructed on the subject properties if the land were ever sold for development. This rezoning would reduce

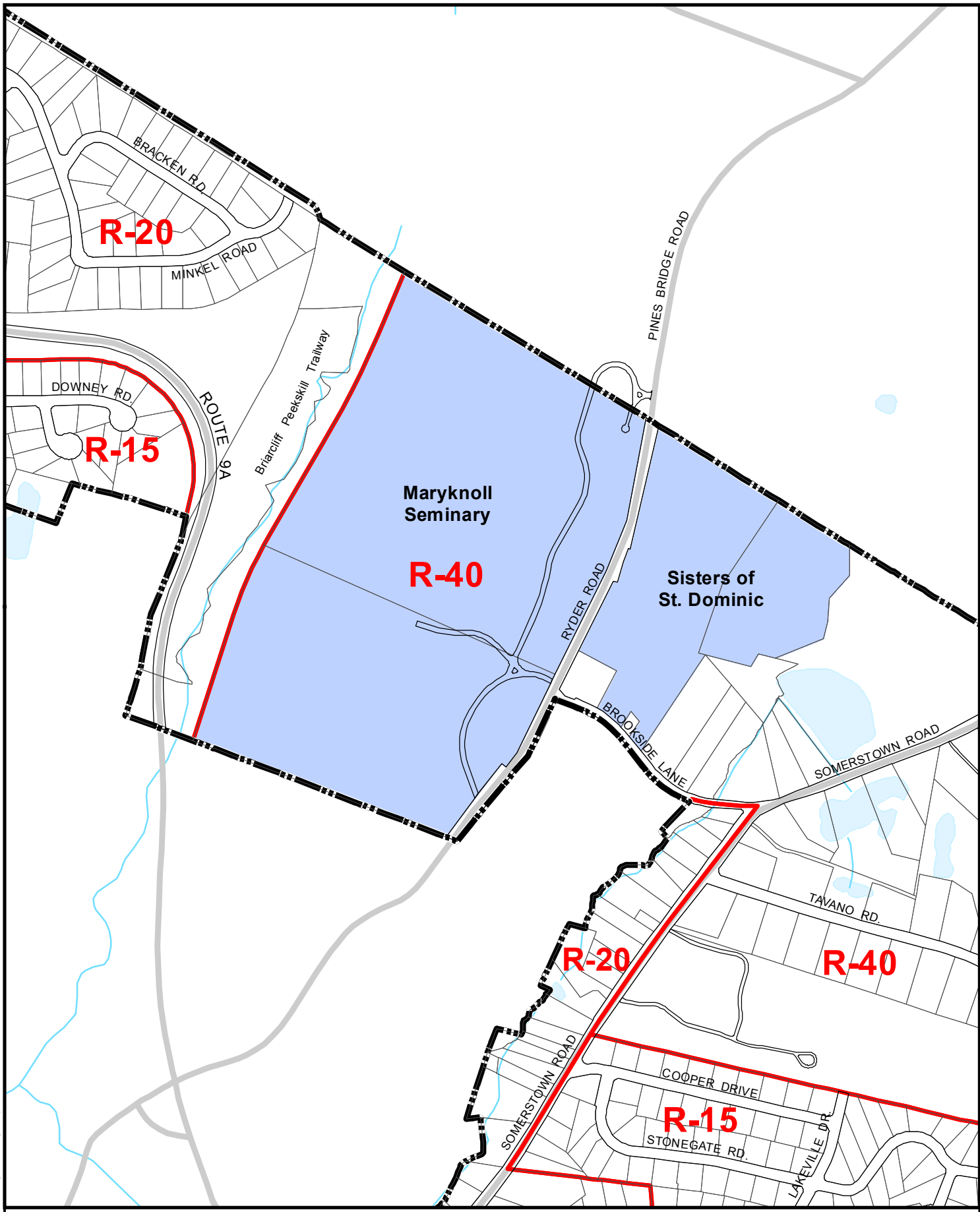
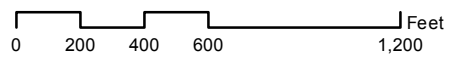


FIGURE 1
PLANNING & ZONING ANALYSIS
 Town of Ossining, New York

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NOTE
 This map was compiled from multiple datasets with different scales and projections and should only be used for general planning purposes.



July 25, 2016

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RYE, NEW YORK FAIRFIELD, CONNECTICUT

the overall environmental impact of the development of these properties and would thereby enhance the quality of life for the residents of the Town.

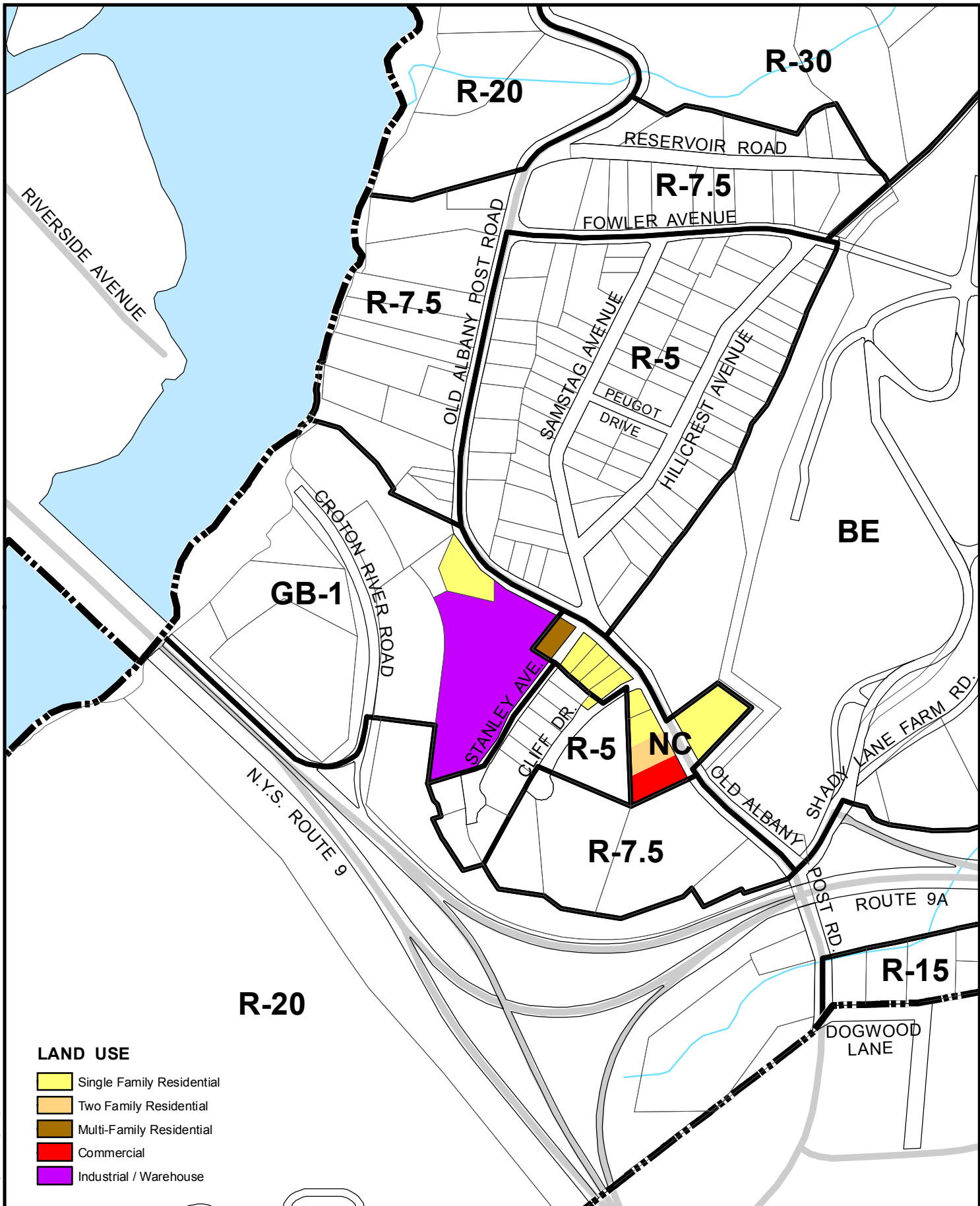
3. *Issue: Consideration as to whether to change the zoning designation and permitted uses for the General Business-1 (GB-1) and Neighborhood Commercial (NC) districts to a One-Family Residence District (R-5 or R-7.5) so that these areas are more consistent with the surrounding residential uses and zoning districts in Crotonville.*

Analysis and Recommendations: Figure 2 on the following page is a current land use inventory of the parcels which comprise the GB-1 and NC zoning districts in the Crotonville area. The land use map shows that except for two parcels, all of the other lots in the NC and GB-1 Districts which have access to Old Albany Post Road and Stanley Avenue are residential in usage. We recommend that the NC District be changed to a one-family residential zone to make the zoning more consistent with the existing land use. Further, for the purpose of protecting the residential development in Crotonville, we recommend that the Town Board give serious consideration to rezoning the two parcels in GB-1 District to a single-family residential district as well. If the zoning of these non-residential parcels were changed to a one-family residential district, the non-residential uses on these parcels would be grandfathered and would be allowed to remain subject to the provisions of Article VII, Grandfathered Uses and Noncomplying Buildings and Uses, of the Zoning Law.

4. *Issue: The GB-1 zone refers to the GB district for most of its permitted uses, and the GB uses have changed materially in recent years. As analysis and recommendations as to whether the uses currently permitted in the GB-1 zone are appropriate.*

Recommendation: Many of the uses which were added in 2011 to the General Business zoning district are inappropriate for inclusion in the GB-1 District. The uses which were previously permitted in the GB and GB-1 Districts were limited in nature, and the purpose of the GB-1 District was to designate an area of the Town where warehouse and storage facilities and related business offices (and a limited number of GB uses) could be located.

This thinking is further bolstered by the fact that the Comprehensive Plan Update suggests that the Town consider changing the zoning designation of the GB-1 zone in Crotonville to a one-family residential district so that these parcels are more consistent with the surrounding residential uses and zoning districts. We recommend that the permitted uses in the GB-1 zoning district be much more limited than is currently the case.

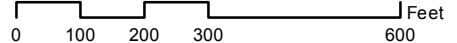


- LAND USE**
- Single Family Residential
 - Two Family Residential
 - Multi-Family Residential
 - Commercial
 - Industrial / Warehouse

FIGURE 2
PLANNING & ZONING ANALYSIS
 Town of Ossining, New York

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NOTE
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July 25, 2016

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RYE, NEW YORK FAIRFIELD, CONNECTICUT

Analysis: Besides permitting “warehouse and storage facilities and related business offices, provided that there is no outdoor storage of any kind,” the GB-1 zoning district permits all of the following uses as permitted and regulated in the GB District:

- “(1) Retail stores and shops, and fully enclosed storage, warehouse and assembly activities which also have a substantial retail component, but excluding:
 - (a) Construction material supply yards, lumber yards, or construction equipment sales or rental establishments servicing contractors or the construction industry.
 - (b) The sale of bulk or loose materials such as, but not limited to gravel, mulch, sand, soil, etc.
- (2) Personal service establishments.
- (3) Eating and drinking establishments, excluding fast food establishments, and provided that no live entertainment or live music is supplied or dancing permitted, unless a cabaret license has been issued by the Town Board in accordance with Chapter 68 of the Town Code.
- (4) Business, professional and governmental offices, and banks.
- (5) Public utility structures.
- (6) Theaters (except drive-ins), bowling alleys and other commercial recreation facilities conducted within a fully enclosed building.
- (7) Clubs and fraternal lodges.
- (8) Funeral homes.
- (9) Buildings and uses owned and operated by the Town.
- (10) Child-care and elder-care facilities.

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RYE, NEW YORK FAIRFIELD, CONNECTICUT

- (11) Galleries, museums, performing arts centers, and other cultural facilities or institutions.
 - (12) Spas.
 - (13) Dance studios or other instructional facilities.
 - (14) Indoor recreational facilities.
 - (15) Fully enclosed animal hospitals.
 - (16) Private preschools and elementary schools.
 - (17) Dog or cat day and overnight care, provided that there are no outdoor areas on the lot for said animals unless the lot abuts or is directly across the street from an existing dog or cat care establishment with outdoor facilities, in which case the proposed use may have outdoor facilities but not to include the outdoor housing of said animals or the keeping of them outside for extended periods or overnight.
 - (18) Self-storage facilities and related business offices, subject to the following special requirements:....
 - (19) Multiple dwellings and row or attached dwellings, subject to the following provisions:....
[Added 7-22-2014 by L.L. No. 2-2014]
 - (20) Mixed use, as defined in this chapter, subject to the following provisions:....
 - (21) Assisted living facilities on lots of at least one acre in size.”
5. *Issue: Consideration as to whether to change the zoning designation and permitted uses for the steep sloped area (which descends to the Croton River) on the western side of the GB-1 District in Crotonville to a zoning which is more protective of the environment.*

Analysis and Recommendations: Given the desire of the Town to be environmentally protective, we believe that the steep sloped area descending to the Hudson River on the western side of the GB-1 District in Crotonville is an area which should be protected in

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**PLANNING, TRANSPORTATION, ENVIRONMENT AND DEVELOPMENT
RYE, NEW YORK FAIRFIELD, CONNECTICUT**

order to enhance and preserve the ecology of the Croton River. This should be accomplished either by changing the zoning designation and permitted uses for this area so as to result in less environmental impact to the Croton River or an overlay zoning district could be created which leaves the zoning and permitted uses intact but which contains rules and regulations to protect the immediate watershed. In either case, the goal would be to ensure that contamination from fertilizers, pesticides, oils, etc. from land use do not contribute to the degradation of the Croton River.

6. *Issue: Determination as to which pertinent uses and terms need to be defined (or better defined) such as, for example, in the difference between wholesale and retail commercial operations.*

Analysis and Recommendations: After reviewing the definitions in Section 200-53 Definitions, of the Zoning Law, we find that there were 35 definitions added and/or amended as recently as 2011. As a result, the definition section of the Zoning Law is more up-to-date than previously expected and the only definitions which possibly need to be amended are retail store or shop, wholesale establishment, bed-and-breakfast establishment, inn, and height. We also believe there needs to be a definition provided for a service establishment.

7. *Issue: Evaluation of the existing standards for cabarets, restaurants with music, and bars to determine whether they need to be amended.*

Analysis and Recommendations: The following are the land use-related provisions of Chapter 68, Cabarets, of the Town code at Sections 68-6.B, 68-16 and 68-20:

“B.no license shall be granted unless the premises where the proposed cabaret is to be located are soundproofed or provision is made so as to prevent any sounds or noise which may be produced in or from the premises from exceeding the sound levels at the adjoining property established by Chapter 130, Noise, of this Code;....”

“§ 68-16 Noise; behavior of patrons; compliance with police.
[Amended 9-28-1982 by L.L. No. 2-1982; 1-25-2005 by L.L. No. 1-2005]

The owner, proprietor, manager and person in charge of the premises shall use due care and diligence to ensure that persons entering or leaving the premises do not cause disturbances and vehicles arriving or departing the premises do not make excessive or unnecessary noise. In the event that the police intervene to prevent

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RYE, NEW YORK FAIRFIELD, CONNECTICUT

disturbance or to maintain order and prevent unnecessary noise, the owner, proprietor, manager and person in charge of the premises shall comply with police instructions and directions.”

“§ 68-20 Hours of operation; music.

[Amended 1-22-1980 by L.L. No. 1-1980; 1-25-2005 by L.L. No. 1-2005]

- A. No cabaret shall be open any day between the hours of 3:00 a.m. and 11:59 a.m. In addition, the Town Board, in accordance with § 68-7 hereof, may further limit the hours of operation of such cabaret. If any cabaret is found open between the prohibited hours, the person owning, managing, operating or conducting the cabaret shall be held responsible for a violation of the provisions of this chapter in relation to such closing.
- B. No cabaret shall have amplified music outdoors at any time, nor shall such music be played indoors after 11:00 p.m. Sunday through Thursday nights, nor after 12:00 midnight on weekends.”

Although the land use-related provisions of Chapter 68 are not extensive, before we can come to a conclusion as to whether they should be enhanced, we need to discuss with the Town Board the experience which the Town has had utilizing these provisions, and the Town Board’s perception as to whether these provisions have been effective in protecting neighborhood character.

8. *Issue: Consideration as to whether to amend the bulk regulations section of the Zoning Law to ensure that adequate standards are included to address the potential “Monster Homes/McMansions” being constructed in residential areas.*

Analysis and Recommendations: The dimensional regulations which control the size of homes in the single-family zoning districts of the Town are the front, side and rear yard setbacks, as well as the maximum building height and maximum building coverage standards. Effectively, it is a combination of the maximum building coverage standard and economics which dictate the maximum size of a home on a lot.

As an example, the R-40 One-Family Residence District has a minimum lot size of 40,000 square feet. The maximum building coverage standard in this zoning district is 18 percent. Therefore, a 40,000-square foot lot in this zone could accommodate a building footprint of 7,200 square feet, which at two stories in height would equal a total amount of floor area of 14,400 square feet. The required minimum yards in this district would not be violated by

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RYE, NEW YORK FAIRFIELD, CONNECTICUT**

such a structure. However, this home would be out of keeping with other homes in the neighborhood and would potentially be considered a “monster home” or “McMansion.” This situation would be similar in the other single-family residential zoning districts in the Town as shown in the table which follows:

DISTRICT	R-40	R-30	R-20	R-15	R-10	R-7.5	R-5
Minimum Lot Size	40,000	30,000	20,000	15,000	10,000	7,500	5,000
Maximum Building Coverage	18%	20%	22%	25%	27%	30%	30%
Maximum Footprint	7,200	6,000	4,400	3,750	2,700	2,250	1,500
Maximum Floor Area	14,400	12,000	8,800	7,500	5,400	4,500	3,000

Although the table above indicates that much more floor area than may be desired could conceivably be built on single-family residential lots in the Town, there does not appear to be a current problem in the Town with people subdividing properties or tearing down modest older homes to build McMansions. While one theoretical solution to the hypothetical problem presented above could be the incorporation of floor area ratio (FAR) limitations, we have found that the introduction of such (or similar limitations) can be highly controversial due to the perception by residents that their property rights and the value of their properties is being diminished significantly. We therefore recommend that at this point in time this issue be held in abeyance.

* * * * *

I look forward to discussing this memorandum with you.

David H. Stolman, AICP, PP
President