

TO: Village Trustees
FROM: Howard Smith
DATE: September 8, 2020
SUBJECT: Draft SAO

I want to begin by expressing appreciation for what village government officials have accomplished with regard to riverfront development under the existing zoning regulations. And that is essentially my point ... look at what you have accomplished under the existing regulations! I recognize that your experience has led you to believe that a more contemporary approach to zoning is called for. While some updating is probably needed, I believe the approach you are taking will lead to regrettable, albeit unintended, long term consequences. What follows is an elaboration of my concerns along with some recommendations for addressing them.

Timing, Process, and Priority of SAO Adoption

Problem - As I write this on the Tuesday morning after Labor Day, there are only a handful of cars in the lot immediately west of the tracks, a couple of cars in the east section of the lot in front of the rec center, and the lot north of Village Hall is about 30% full. Metro North has announced that without access to additional federal funds, they may have to cut train service by as much as 50%. Employers in the City are making allowances for their employees to work from home indefinitely and are being very cautious about committing to a return to a pre-pandemic workplace environment. Locally, small businesses and restaurants on Main Street are struggling and hundreds of square feet of retail space along North Broadway remain vacant.

During the past few months, discussion of the SAO has proceeded via Zoom, a medium that is not universally accessible to all members of the community. Furthermore, the Zoom medium has the effect of controlling, sanitizing, and minimizing the impact of public participation compared to what the Trustees would otherwise experience if people could attend their meetings in person. The climate in a room crowded with animated citizens is far different from the climate of a meeting attended virtually by individuals confined to little boxes in a Zoom format. The harmful implications for the democratic process are significant and any major decision made in a Zoom environment will be suspect.

Recommendation - Given the current circumstances and associated uncertainties, is now really the time to be moving towards adoption of a radically different approach to zoning that is anchored around the concept of "Transit Oriented Development?" Trustees should hit the Pause button until there is greater clarity regarding the future of Tarrytown as a major transportation hub and citizens can once again attend meetings in person. The intervening period of time should be devoted to further study and public engagement regarding the question of whether the SAO concept is really the best approach to zoning in such a critically sensitive area of the community. Several different zoning concepts should be developed in anticipation of different

potential long-term scenarios that could unfold after the spread of the virus has been contained. For the time being, the village would be best served if the energies of village officials were focused on supporting struggling local businesses and reaching an agreement with the relevant parties on a North Broadway redevelopment concept that includes parking provisions desperately needed, not only for North Broadway, but for the Music Hall and Main Street restaurants along with the emerging Central Ave arts district.

Scorecard

The scorecard approach is no doubt intended to provide an objective framework for use in evaluating development proposals relative to considerations that are important to the community. However, it is naïve to harbor the illusion that the complexities of zoning decisions can be successfully addressed by an attempt to quantify the community values that ostensibly serve as the basis for making changes in the existing regulations. Here are some of the ways in which a scorecard approach is problematic:

- Arbitrarily assigning equal weight to each of the criteria in the scorecard implies that they are all of equal importance/significance. This is clearly not the case. The proposed scorecard is not proportionately reflective of the community values expressed in the Comprehensive Plan. Further, upon review of the criteria, different community members would assign different weights to various criteria ... and therein lies the problem. I personally believe greater weight should be assigned to preservation of views and the historic river town character of the village (which currently only merit a maximum of 6 and 3 points respectively on the 100-point SAO scorecard). Other folks undoubtedly have different priorities.
- A scorecard system places counterproductive and frustrating constraints on both those putting forth a proposal and those evaluating it. As a veteran of many grant applications that were subject to a scoring system, I can attest that the scoring forces those preparing the proposal to come up with absurdly contrived elements that are not backed by a sincere level of commitment. It effectively invites efforts to game the system in order to achieve the target score. As someone who has also applied scoring systems in evaluating grant proposals, I can attest that there is no escaping a certain level of subjectivity in assigning scores. Also, I have seen quality proposals fail because they did not achieve a high enough score and I have seen questionable proposals move forward simply because, on paper, they did achieve a high enough score.
- The fact that a Bonus Point system even exists is a testament to the shortcomings of a scorecard approach, particularly with regard to its potential for constraining creativity. Yet, if all of the elements represented by the scorecard are truly valued, then where is the justification for allowing for up to 40 out of 100 points worth of criteria to be overridden by a developer with the means to write the village a big enough check up front? I use this as an example because my understanding is that, as long as no category receives a 0, a proposal scoring 60 could be elevated to a passing score of 85 if all of the possible Bonus Points are awarded.

- Although a score card may be intended to reduce the likelihood of litigation, it could just as likely encourage litigation. A developer with deep pockets whose proposal falls just short of the required minimum score, or whose proposal is rejected in spite of achieving the minimum score, will be inclined to pursue litigation alleging various kinds of discrimination in the scoring or decision making process along with various technical flaws in the scoring system and/or its implementation.

Recommendation – Trustees should not restrict either developers or themselves to the confines of a scoring system. Therefore, the scorecard approach should be eliminated. Instead, a process should be initiated for engaging the community in reviewing the criteria represented in the scorecard with the goal of achieving a more accurate alignment between the criteria and the values expressed in the Comprehensive Plan. The resulting revised set of criteria should be designated as “Guidelines” appended to the regulations for use in reviewing development proposals. These guidelines would serve as a transparent expression of community values for developers to consider in putting forward a proposal. Instead of a Bonus Point system, the new zoning regulations should simply invite developers to include innovative elements for the benefit of the community at large that would be taken into account in evaluating their proposals. The regulations would allow for a rigorous waiver process in consideration of public benefit elements included in a proposal. This would keep the door open to creative approaches, such as those that have been taken in the development of the riverfront thus far, unencumbered by the artificial constraints of a scoring system.

Density

Problem – The SAO allows for a potential increase in population that, if fully realized, would generate an unacceptable increase in traffic congestion and other demands on village infrastructure. The inner village of Tarrytown is already densely populated and our neighboring village to the north is about to become significantly more densely populated. People heading to Edge on Hudson from the south or heading from Edge on Hudson towards the south will most likely want to avoid North Broadway and Beekman Ave. Instead they will use Main Street, Depot Plaza, West Franklin and Riverview. People heading to and from new development in the SAO zone will also use the same streets, along with Central Ave. and Wildey. Our street widths are fixed, so increased traffic will result in traffic being backed up and additional air and noise pollution from idling vehicles. The Washington Irving School is already overcrowded and cannot accommodate more students. In summary, increased population density will have harmful side effects that will negatively impact the quality of life for village residents.

Recommendation – More robust residential density increase protections need to be incorporated into any new zoning regulations.

Viewscapes

Problem – The relatively expansive views of the river from a number of public vantage points in the village are a truly distinctive feature of our community. They represent an important legacy, and once blocked, they will be gone for generations to come. Identifying appropriate public vantage points is a challenging exercise and more work clearly needs to be done in this regard. For one thing, the current approach does not do justice to the quality of the views from vantage points that are closer to the river. The SAO, along with Trustee work session discussions, make it clear that blockage of views is considered to be an acceptable byproduct of development and has taken you down the rabbit hole of attempting to determine what percentage of blockage is acceptable. As will be the case with the scorecard, this will only serve as an invitation for developers to attempt to game the system and will lead to time consuming and costly conflicts over the issue of technical compliance.

Recommendation –

- Identified vantage points need to be expanded to be more inclusive of the many public view points that are not only enjoyed by community residents every day, but reinforce the identity of the village as a river town for visitors to the community, along with potential new residents. Additional view points should include, but not be limited to, the Main Street intersections of Bayliss and Windle Park.
- Developers should be required to provide a 3D digital rendering of their proposed project to scale on a digital map provided by the village. Appropriate village personnel should evaluate the view scape impact and require the developer to submit a visual impact waiver request if the proposed structure blocks any portion of any designated view scape. This avoids the complicated and cumbersome approach of attempting to predetermine acceptable percentages of view obstruction. Instead, it would allow for specific evaluation of the potential tradeoffs between view impact and public benefit associated with the project and leave the trustees with the authority (following a mandatory opportunity for public review and comment) to make a determination unrestricted by arbitrary scores or percentages.

Conclusion – Adoption of any major change in local zoning regulations, particularly one organized around the concept of “transit oriented development,” should be deferred until such time as the uncertainties arising from our current pandemic circumstances can be properly evaluated. Even if the timing was not problematic, the proposed SAO approach will create more problems than it solves, particularly with regard to the use of a scoring system that includes a Bonus Point provision. It appears to reflect a pro development bias driven by greater concern for the impact on tax revenue of future development than its impact on quality of life. Rather than protecting the historic river town character of the village, it appears to leave it more vulnerable. Converting the scorecard to a set of guidelines would help, but other refinements are needed as well. Please slow down and take the time that the significance of what you are contemplating deserves.