

MEMORANDUM

TO: Mayor Wiegman
Village Trustees

FROM: Robert Luntz
Planning Board Chairman

DATE: December 13, 2011

RE: Harmon Rezoning

The proposed revised Harmon/South Riverside Gateway Overlay District Zoning Amendment, Local Law Introductory No. 3 of the year 2010 (October 2011 version), hereinafter referred to as the “Amended Law,” was referred to the Planning Board at the Village Board meeting on October 17, 2011. The Planning Board had previously, in the late summer and fall of 2010, discussed its predecessor (hereinafter referred to as the “Previous Law”), which this amended version thereof is intended to replace, at several meetings as well as a Special Work Session, and delivered a memorandum thereon dated October 28, 2010 to the Village Board.

The Amended Law was reviewed and discussed by the Planning Board at its meeting on November 22, 2011. In connection therewith, the Planning Board also reviewed the July 15, 2010 Environmental Assessment Form (“EAF”) prepared by Saccardi & Schiff relating to the Previous Law; an addendum to the EAF dated October 12, 2011 (the “EAF Addendum”) prepared by VHB Engineering, Surveying and Landscape Architecture, P.C., successor firm to Saccardi & Schiff (“VHB”) relating to the Amended Law; and a Coastal Assessment Form dated October 12, 2011 (“CAF”) prepared by VHB relating to the Amended Law.

The Planning Board reviewed the proposed Amended Law as required by Section 230-180 of the Village Zoning Code and offers the following comments and recommendations.

(1) Concerning a proposed amendment to or change in text of the chapter:

(a) Whether such change is consistent with the aims and principles embodied in the chapter as to the particular districts concerned.

The proposed Harmon/South Riverside Gateway Rezoning will change the text of the zoning code for an area currently zoned C-2, General Commercial. A portion of the area to be affected is currently also within the Harmon/South Riverside Gateway Overlay District, and a portion of the area to be affected would be added to the Harmon/South Riverside Overlay District. The aims and principles of the C-2 district is to provide “mostly retail, service and professional businesses designed to serve the local village population” Comp. Plan page 37. The purpose of the Gateway Overlay District is to “establish standards that upgrade the image and function of gateway areas, strengthen the overall visual identity of the Village, and improve pedestrian/linkages to adjacent residential neighborhoods” Section 230-20.1.C. The C-2 is one of two general commercial districts in the Village that permits a variety of uses such as personal

service establishments, office use, restaurants and by Special Permit retail uses and mixed occupancy uses. The proposed Harmon/South Riverside Gateway District text amendments will permit the same uses as the underlying C-2 zone, as modified by the overlay regulations. Mixed occupancy will still be permitted subject to the obtaining of a Special Permit from the Village Board. The proposed text changes are not out of character with respect to the existing zoning. Subject to our comments at the end of this memorandum, the Planning Board believes these changes will foster the Gateway purposes by encouraging properties to be upgraded in keeping with enhanced design guidelines.

(b) Which areas and establishments in the Village will be directly affected by such change and in what way will they be affected.

The proposed text amendments for the Harmon/South Riverside Gateway Rezoning could have an affect on adjacent residential areas especially on and around Benedict Boulevard and possibly on other commercial areas of the Village. The proposed higher FAR of .80 can potentially lead to more dwelling units and additional residents. The EAF analyzed 3 different development scenarios and for the most likely scenario anticipated a maximum of 46 residential units and approximately 10,000 sq. ft. of commercial space which in the opinion of the Planning Board does not present the potential for a significant adverse impact on adjacent residential or commercial areas.

(c) The indirect implications of such changes in its effect on other regulations.

The Planning Board couldn't identify any other regulations that the proposed zoning text changes might effect.

(d) Whether such proposed amendment is consistent with the aims of the Comprehensive Plan of the Village.

The Comprehensive Plan for the Village was adopted in January 2003 and is a long range planning document providing guidance and goals, objectives and recommendations for the long term growth of the community. The first three (3) Chapters of the Plan are the introduction, History and Existing Conditions. Within these three (3) Chapters the Planning Board finds several sections that are consistent with the proposed Harmon/South Riverside Gateway Rezoning including:

Section 1.4 - The overall goals of the plan which are "preserving traditional qualities, strengthening assets and protecting resources." Specifically mentioned in this section are protecting and enhancing convenient transportation and pedestrian access, economic diversity, and expanding the tax base. The new Harmon zoning is specifically designed to do all these things.

Section 3.3 (a) - This section discusses, on page 37, the lack of available office space in the Village and the need for more to relieve pressure to create home offices. The new Harmon zoning, which would permit more office use, is consistent with this.

Section 3.5(b) - This section deals with the Village examining ways to encourage lower cost, smaller sized, single or multi-family dwellings in order to maintain the demographic diversity of the Village. The proposed Harmon rezoning is consistent with this section. This section talks about the lack of suitable, affordable housing for aging residents (i.e. empty nesters) and young couples without children, which would be the primary markets for the proposed new residential units.

Section 3.8(a) - This section states, in discussing Croton's shopping areas, including Harmon, that "the general consensus in the Village is that the types of establishments need to be diversified to better meet the needs of residents and encourage local shopping, and that higher quality aesthetic standards will help attract shoppers to these areas." The next paragraph states that "...the appearance of these centers is key to the image of the Village for residents and to visitors." Clearly, zoning which intends to revitalize and greatly improve the appearance of an area which has extensive vacancies is fully consistent with these expressed aims of the Plan.

Section 3.8(a)- The specific discussion of the Harmon/South Riverside shopping area contains some of the strongest evidence of the Harmon rezoning consistency with the Plan. On page 67, there is discussion of the needs for improved and extended sidewalks, improving the appearance of unscreened parking lots and the lack of a strong architectural identity.

Chapter 4 of the Comprehensive Plan begins the Recommendations Section of the Plan Goals, Objectives and Issues Section. Specific Recommendations of the Comprehensive Plan that the Planning Board feels are consistent with the proposed Harmon/Gateway Rezoning include:

4.2 Village Wide Recommendations

- #3 Maintain Economic Diversity
- #6 Improve the visual quality of Croton-on-Hudson
- #9 Improve Commercial Areas
- #10 Creation of additional appropriately scaled office space
- #11 Enhance the pedestrian connections within the Village

4.3 Commercial Districts

The plan specifically notes that "A number of underlying goals for the Plan, noted in Section 1.4, focus on the need to improve the quality, function and appearance of the following major commercial retail and office districts in the Village, so that residents can be better served:

Upper Village
Municipal Place/Croton Commons
North Riverside
Harmon/South Riverside
North End Office District

The plan talks about specific strategies to focus on business attraction, pedestrian access, retail mix and visual quality all of which the Planning Board feels are consistent with the proposed Harmon/South Riverside Gateway Overlay.

(2) Concerning a proposed amendment involving a change in the Zoning Map:

(a) Whether the uses permitted by the proposed change would be appropriate in the area concerned.

The underlying zoning of the area is C-2 General Commercial. The proposed Harmon/Gateway Rezoning would continue to permit mixed use occupancy buildings by special permit of the Village Board. Retail stores would still need a special permit in C-2 areas not within the Harmon/South Riverside Gateway Overlay Area. The area is currently a mixed use area. The proposed zoning amendment would not introduce inappropriate uses.

(b) Whether adequate public school facilities and other public services exist or can be created to serve the needs of any additional residences likely to be constructed as a result of such change.

According to the EAF Part 3 report prepared by Saccardi and Schiff the likely level of development, Scenario #1, would produce 46 residential units. Using the Rutgers University Center for Urban Policy Research, approximately 4 new students (K-12) would be generated by 46 one bedroom apartments, and according to the EAF Addendum if 10% (the percentage of affordable units which would be required by the County of Westchester Model Ordinance provisions for developments with 10 or more units) of the units were “affordable housing,” there would be approximately 6 new students generated. The EAF analyzed a mix of 1 and 2 bedroom apartments and found that the likely development scenario could generate approximately 8 new students and according to the EAF Addendum if 10% of these units were affordable housing, there would be approximately 10 new students generated. In addition, the EAF analyzed an existing apartment complex in Croton, Bari Manor, and found that 25 school age children are generated from the 82 apartments which are a mix of 1, 2, and 3 bedroom units which is in keeping with the estimate of 8-10 children generated from 46 1 and 2 bedroom units. In the opinion of the Planning Board this number of students will not put an undue burden on the school system.

A traffic study was also completed for the proposed rezoning by the RBA Group that found based on the likely level of development there will be no adverse traffic impacts.

The Planning Board finds these to be reasonable conclusions.

(c) Whether the proposed change is in accord with any existing or proposed plans in the vicinity.

This section could be interpreted as to apply to more macro level plans such as transportation plans, bike/ped plans, infrastructure plans, etc. and to more site specific plans pending for development. The Planning Board is not aware of any macro level plan the proposed rezoning is in conflict with. The Planning Board is aware of two pending

developments that do not conform with the proposed rezoning but under the Amended Law same are grandfathered.

(d) The effect of the proposed amendment upon the growth of the Village as envisaged by the Comprehensive Plan.

As stated above the Planning Board feels the proposed Harmon rezoning is consistent with the Comprehensive Master Plan for the Village.

(e) Whether the proposed amendment is likely to result in an increase or decrease in the total zoned residential capacity of the Village and the probable effect thereof.

The proposed Harmon/South Riverside Gateway Overlay will clearly increase the residential zoned capacity of the Village. Given the analysis completed by Saccardi & Schiff in the EAF, which anticipates a likely development scenario of 46 new residential units, the Planning Board did not feel this increase was likely to have adverse impacts.

In addition to reviewing the proposed rezoning as required by Section 230-180 of the Village Zoning Code the Planning Board offers the following comments:

1. The Planning Board appreciates that the Village Board, in drafting the Amended Law, accepted our proposed changes regarding apartment size, access between adjacent parcels, permission of third floor "commercial use," and grandfathering of pending applications. However, as set forth in paragraphs 2 and 3 below, there are two significant changes in the Amended Law which the Planning Board does not agree with and recommends returning to the original provisions thereof set forth in the Previous Law.
2. The first change is the provisions of Section 4 of the Amended Law requiring a Special Permit of the Village Board for mixed use. By a vote of 4-0 (with one abstention), the Planning Board recommends, for the reasons hereinafter set forth, that the Village Board reinstate the provisions of the Previous Law allowing mixed use as of right.

Requiring a Special Permit for mixed use will introduce significant uncertainty and delay to the development process, and in the minds of developers uncertainty means risk and delay means added expense. It will also, we believe, increase the difficulty of obtaining construction financing, which is already very difficult in the current economic climate. All of this will, we believe, reduce the pool of developers willing to invest in Harmon, and result in any willing developers offering lower prices to Harmon property owners due to this added risk and expense caused by the Special Permit process.

The Planning Board notes that the committee reports and studies done prior to the circulation of the Previous Law took the strong position that mixed use development was clearly the best, and perhaps the only practical, way to revitalize the Harmon area. The Village Board clearly agreed with this conclusion in circulating the Previous Law. To backtrack and hedge on this conclusion, as the Amended Law does by requiring

consideration of mixed use for each project seems, to the Planning Board, to be both illogical and counterproductive. If the Village Board still believes that mixed use is the solution to revitalize Harmon, it should allow same as of right to encourage developers, not discourage and disincentivize them. If the Village Board no longer believes mixed use is appropriate, then it is difficult to see the need for this legislation.

It is also difficult for the Planning Board to understand how and why one mixed use project in the Harmon gateway area would be appropriate and deserving of a Special Permit, which another proposed mixed use project in this area would not (assuming both otherwise complied with the requirements of the Amended Law).

Furthermore, from a legal viewpoint, once a Special Permit had been granted for a mixed use project, the Planning Board believes it would be very difficult (and an invitation to litigation) to deny a Special Permit in a subsequent mixed use project that otherwise complied with the requirements of the Amended Law.

Summing up, the Planning Board believes that this mixed use Special Permit requirement is illogical, impractical, counterproductive to the desired redevelopment of the Harmon Gateway, and likely to result in reduced property values for existing owners, and therefore should be removed from the Amended Law.

3. The second change to the Amended Law the Planning Board recommends (by a 3-2 vote) is removal of the provision allowing the Village Board to increase parking requirements as part of its special permit determination. This provision will greatly exacerbate the elements of risk, uncertainty, delay and expense discussed in paragraph 2 above. A developer who cannot be certain that the amount of parking his engineers/architects are able to lay out for a proposed development will be found acceptable (even though it meets the specified requirements of the legislation) will be far less likely to want to do a deal in Croton rather than in another town where he knows exactly what the requirements are and that he will be able to proceed as of right if he meets them. Thus, most of the reasoning and conclusions set out in paragraph 2 above would apply.

In this regard, once again the studies and committee reports as well as the EAF all believed the specified parking required by the Previous Law (and the Amended Law) would be adequate, and the Village Board concurred in circulating the Previous Law. As with the related Special Permit requirement, the Planning Board believes it would be inappropriate and counterproductive to hedge on this issue in the Amended Law.

The Planning Board would also like to point out that, based on advice of counsel, it (the Planning Board) would have the power, as part of its regular site plan review, to require additional parking if special circumstances clearly warranted the need for same. We believe this inherent power renders unnecessary this parking provision in the Amended Law.

4. There was one other change in the Amended Law that one Planning Board member (the other four did not agree) felt should not be made; namely the deletion of the prohibition

on fast food restaurants. This member did not agree with Paragraph (d) of the EAF Amendment, and was concerned that the mere prohibition of drive-through windows would not be sufficient to deter a national fast food chain from locating in Harmon since there are no fast food chain outlets within at least a 3-4 mile radius of Harmon and a Croton location would be very desirable to them. A fast food restaurant in Harmon would be a result that would make many if not most Croton residents quite displeased. The dissenting member was mindful of the difficulty of defining a “fast food restaurant” in a manner to exclude McDonald’s, Burger King, KFC, etc. while allowing establishments such as Mex-i-go, take-out Chinese, and pizzerias. However, he felt a workable definition could be achieved (by referring to pre-prepared foods, no table service, more than 20-25 seats, etc.), and that the risk of removing the prohibition (and possibly ending up with a McDonalds’s or similar competitor in the Village) was not worth taking.

(3) Recommendation

Our Board recommends that the proposed text and map amendments be enacted with consideration being given to the modifications discussed in this memorandum.