



Village of Nyack
Planning Board
9 North Broadway
Nyack, New York 10960

TO : Village Board
FROM : Peter Klose, Chairman; Daniel Jean-Gilles; Alan Englander; Glen E. Keene;
Peter Voletsky [Seth Kestenbaum-Alternate; Donald Wilen-Alternate]
DATE : July 9, 2015
RE: : ***TZ Vista, LLC.. Referral from Village Board for an advisory recommendation (VON Code 360-5.6) regarding proposed text amendments within Waterfront (WF) development district.***

This matter comes before the Planning Board as a Referral from the Board of Trustees for comment and recommendation relative to several “text change” amendments in the Waterfront (WF) zone. From the Planning Board’s perspective, we are at a critical juncture to enhance the Village through positive development designed to enhance the WF zoning code, encourage access to the Hudson River waterfront, and to gain valuable amenities for all concerned. We see this zone change to be a positive way to protect, enhance and preserve the unique qualities of our Hudson River community, and hope to convey our recommendations below.

In this case, the Petitioner owns the last major parcel to be developed within the WF District, which includes Section II of the Clermont Condominium complex a low-rise (4-story) and mid-rise (12-story) building directly to the south. The current WF regulations were adopted after construction of Clermont II, largely as an effort by past Trustees of the Village to ameliorate the perceived negative impacts of the Clermont development, to wit, interference with view corridors, asymmetry of design elements, and the privatization of waterfront access to the Hudson River at the base of Main Street.¹ As a result of the zoning regulations enacted after Clermont II, the current WF zone, in our view, unnecessarily limits the character and nature of what can be accomplished by this Petitioner, and others, in the WF zone. We encourage the Village Board to conceptualize what is possible, and to vigorously encourage amendment to the Zoning Code to enhance our community through responsible development. Similarly, before the public blindly bemoans development, we encourage all citizens to review this report, consider the possibilities, and make constructive suggestions to improve our community. We must understand and convey that development of the WF is critical to the future of Nyack, have the imagination to foresee what is possible, and work with the elected officials to develop this WF district for the benefit of all concerned.

¹ According to the Comprehensive Master Plan, “Waterfront zoning focuses on forestalling the out-of-scale development previously allowed, and promoting public enjoyment for views, parks and boating.”

Rather than seek area and use variances from the existing regulations, Petitioner has proposed several amendments to the Village of Nyack Code (VON Code) which, if adopted, offer some creative solutions to this waterfront development, parking, view corridors and building footprints. In the view of the Petitioner, the “improvements” to the VON Code could yield more public access to the waterfront, a reduction in the amount of waterfront land devoted to parking, and an increase in the width of the view corridors that are to be provided. After various hearings, scoping sessions, and consideration of the proposals, the Planning Board agrees that, with some creativity, cognitive flexibility, and reasonable accommodations in the VON Code, the Village would be in a far better position to embrace development of the WF zone through a zone change, rather than accepting current regulation, and demanding a “variance” application.

With this stated, we will address each of the proposed amendments to the VON Code, and make specific recommendations to the Village Board on the following proposals:

- (1) To permit an increase in the maximum building width to correspond to the greater number of view corridors;
- (2) To increase the maximum available FAR in return for permanent contextual requirements for
 - (a) public access,
 - (b) provision of public art (**pocket park**),
 - (c) monetary contributions for waterfront improvements;
- (3) To increase the maximum building height, while requiring structured underground parking.

The text of the proposed amendments is attached within this Report, and contained within the Petition, and is reprinted solely as a guide to be modified, amended and drafted by legal draftsmen.

VON Code § 360-5.6 (c) (1) (text amendments) sets forth the “Criteria,” for consideration of Text Amendments, as follows: In considering a proposed amendment, the Planning Board and Board of Trustees shall consider the following items:

- (1) Text amendments.
 - (a) Whether such change is consistent with the aims and principles embodied in this chapter as to the particular districts concerned.
 - (b) Which areas and establishments in the Village will be directly affected by such change and in what way they will be affected.
 - (c) The indirect implications of such change in its effect on other regulations.
 - (d) Whether such proposed amendment is consistent with the aims of the Comprehensive Plan of the Village.

The Comprehensive Master Plan and Existing Regulations

VON Code 360-5.6 (c)(1) (Text Amendments) requires both the Planning Board and the Village Board to review of the goals and commands of the Village of Nyack Comprehensive Master Plan adopted January 11, 2007. According to our own roadmap,

The comprehensive plan looks at ways to preserve and improve the Village over the next ten to twenty years. It looks to spread the responsibility around for funding recommendations to various entities, not just the Village of Nyack. It also will enhance Nyack's business environment and bolster the Village's tax base, thus helping provide needed services. Most important, it will enhance the attractiveness and desirability of Nyack as a place to live—the reason so many people choose to live and stay in Nyack.

[CMP, pg. 96].

Specifically, the CMP identifies various goals to be to improve connections between downtown Nyack and the rest of the Village, particularly the waterfront (pg. 6); to protect views and improve connections between the waterfront and the rest of the Village, particularly downtown; to provide additional waterfront parks and access opportunities; and to make Nyack more of a destination for low-impact boating and other water-oriented activities (pg. 7); to enhance views of the Hudson River from Broadway and Main Street (pg. 29); and to encourage and increase the use of fringe parking areas towards the waterfront by downtown visitors (pg. 30).

The CMP recommends that we preserve and enhance views of the Hudson River from throughout the Village; that we amend the zoning regulations in the low-density areas along the northern and southern waterfront to eliminate the possibility of land assemblage for cluster development and higher-density uses; expand recreational and park resources; support cultural and commercial amenities that bring people to the waterfront; create a "Riverwalk" along the entire length of the waterfront in the Village; connect the waterfront segments along the first inland public right-of-way; promote additional small "viewing point" parks at the foot of Fourth Avenue, Second Avenue, First Avenue, and the northern tip of Gedney Street; enact a transfer of development rights (TDR) program to preserve recreation on waterfront properties; allow and promote additional water-oriented activities, such as watercraft rentals, water taxi stops, tours, boat launches, beaches *etc.* at Memorial Park and other locations north to Second Avenue, and at the Hook Mountain Yacht Club site (pgs. 44-47); accentuate the waterfront by providing additional opportunities for use of the water; modify the zoning designation for Burd Street from Broadway to the waterfront to permit ground floor retail uses along this section of the street (pg. 80).

In short, our planners have encouraged Waterfront development that increases opportunities for attracting additional visitors to the Hudson River's edge with water-dependent and water-enhanced uses, as well as increasing connectivity to downtown and the rest of the Village. This request for a zone change has that potential and all of us should work toward adopting meaningful solutions to the exciting new project.

To an extent the CMP has been made part of our regulations. For example, the WF zoning regulations indicate that they are to:

- (a) Maximize the utilization of waterfront land by water-oriented uses which require a waterfront location.
- (b) Regulate uses that may be enhanced by a location along or near the shoreline but do not require a waterfront location.
- (c) Maximize physical public access from the land to and along the Hudson River shoreline.
- (d) Protect water quality, fish and wildlife, scenic views and natural vegetation and enhance aesthetic resources to the greatest feasible extent.

VON Code § 360-2.5.B(1); VON Code § 360-2.5.B(2)(a) (view preservation); VON Code § 360-2.5.B(2)(b)(building massing); VON Code § 360-2.5.B(2)(c)(incentives are granted if, respectively, building width is reduced, an additional view corridor is present, and public waterfront access or amenities are made available).

With these code provisions in place, and with a full contingent of the Planning Board commenting on the provisions, we will address each proposed amendment and suggest additional amendments to the existing VON Code. Specifically, the Petitioner proposes (1) an increase in the maximum building width to correspond to the greater number of view corridors; (2) an increase in the maximum available FAR in return for more public access, provision of public art, and monetary contributions for waterfront improvements; and (3) an increase in the maximum building height in return for structured underground parking.

First Amendment

Because this is a unique property, there are multiple view corridors that are impacted by the size and scope of the project. Accordingly, the Petitioner proposes to “an increase in the maximum building width to correspond to the greater number of view corridors.” [See Petition]. The first amendment is intended to recognize those situations where more than one view corridor is available. Here, there are three “view” corridors which must be protected.

To ameliorate the existing condition, the Petitioner suggests amending the VON § **360-2.5B(2)(b)[1]**, as follows:

Building width may be increased to a maximum of 60% of the width of a parcel if the parcel provides two view corridors, and 70% if the parcel is impacted by more than ~~one~~ two view corridors, as required in § **360-2.5B(2)(b)[4]**.

[See Exhibit A Revised Code, Exhibit B Coastal Assessment Form w/annotation by Village Planner and Exhibit C for a summary of FAR, density and height for existing Properties along the Waterfront].

Comment - Encourages the provision of added view corridors on the same property to enhance view sheds from upland areas as specified in the LWRP Policy 25 - Scenic Quality. The project does not appear to hinder the achievement of LWRP Policy 25A, “Protect and enhance views from Route 9W, Tallman Place, Fourth Avenue, Second Avenue, First Avenue and Memorial Park.” The width of view sheds should be defined as part of the legislation, otherwise, it may not be realized as part of a future site plan. The width of view sheds should also have an impact on the amount of FAR (building area) that can be realized on the site. Increased number of view sheds and width of such view sheds will also have an impact on the views from the River.

What are the Benefits for Village - Enhancement of views from the Village’s public streets near the waterfront, wider view sheds theoretically should provide smaller building footprints.

What are the Negatives/Impact on other WF Properties - There is only one additional property, namely, the Nyack Boat Club north of the petitioner’s site which would be the last remaining property to be developed. The site would benefit from the added view corridors on the petitioner’s adjacent property. Residential properties on Gedney would be more or less impacted depending upon the siting of the buildings, the maximizing of view sheds and architectural design of the buildings. – First Ave homes and other also impacted, not just those on the actual street and corridor in question.

- (a) *Whether such change is consistent with the aims and principles embodied in this chapter as to the particular districts concerned.*
- (b) *Which areas and establishments in the Village will be directly affected by such change and in what way they will be affected.*

- (c) *The indirect implications of such change in its effect on other regulations.*
- (d) *Whether such proposed amendment is consistent with the aims of the Comprehensive Plan of the Village.*

Recommendation. Based upon the above analysis of the First Amendment the Planning Board recommends that the Village Board embrace increased view sheds from public streets, and we would encourage the Village Board to take discretionary steps to make the public view corridors wider, longer, and more valuable to the community. We do not believe that this proposed code change would have any negative impacts and approve the concept of wider view sheds at the ends of the intersecting Avenues. With that said, we also encourage the Board to consider the ideas developed at the end of this Report detailing the Transfer of Development Rights, with the intent to expand public view sheds and site corridors as proposed by this Amendment.

Second Amendment

The second amendment proposed would allow an increase in Floor Area Ratio (FAR), in return for a “doubling” of the amount of land devoted to public access, providing public art, and making monetary contributions toward waterfront improvements. [See Petition for Zone change].

Specifically, the Petitioner seeks to amend the existing VON § 360-2.5B(2)(c)[3]&[4], as follows:

[3] Floor area ratio may be increased to no more than 0.90 under the conditions as follows: the provision of special waterfront improvements open to the public, such as but not limited to park or plaza facilities, boat-launching facilities or off-street parking in addition to the parking required for the use intended for the site.

Floor area ratio may be increased to no more than 1.75 under the conditions as follows:

- Provision of public access to at least twice the land area required in § 360-2.5B(2)(e) and with special waterfront improvements listed in this paragraph; ~~or~~ and
- Provision of a publicly accessible pocket park and walkway, publicly accessible artwork, sculpture, monument or other permanent aesthetic structure on a development site ; ~~or~~ and
- Contribution in the amount of \$2.50 per square foot of bonusable gross floor area (from 0.9 FAR to 1.75 FAR) to be used on a development site for improvements to the public area of waterfront, such as walkways, landscaping, railings, walks, or artwork; and

- **Use of structured underground parking in lieu of surface parking for 90% of the required parking. Applicant's parking will include an additional 10 percent of parking over and above required parking to be available to the Village for the use of the public. The highest elevation of structured parking roof shall be at, or below the mean elevation of the adjacent street line, and such roof shall not be utilized for parking; and**
- **Provision of space for water-enhanced commercial activities such as restaurants, retail space, boat launches, watercraft rentals, water taxi stops, tours, and similar activities; and**
- **Project should be certifiable under LEED certification at the Silver Level as a minimum or similar program.**

Comment The language used by the Petitioner allows the developer to select only one of the conditions above to achieve a significant increase in FAR. This should be changed from “or” to “and.” *The Petitioner should be required to meet all of these conditions in exchange for a significantly increased FAR (essentially going from 0.9 FAR to proposed 1.75 FAR). This represents almost a doubling of the allowable FAR in the WF district.* Underground parking which has been highlighted above has been added in this section since it is more closely aligned with FAR than with an increase in height. Even if the Village Board does not approve an increase in height (which it should), the development at 45 feet with increased FAR would not work without underground parking. In our view, the Petitioner understands that underground parking is necessary, regardless of the height.

With respect to the proposal to fund set asides, we believe that the Petitioner must explain the economic projections and rationale as to why Petitioner is only proposing small amounts of money or set asides (\$2.50/sq. ft). Here, the Petitioner is likely to develop the public aspect of this property to include at least twenty-four (24') feet because it improves the project, the privacy of the potential owners, and is likely unbuildable anyway. Despite this, having a fund of money to preserve the public right of way running through the lot encourages the future development of a public access path along the Hudson River as envisioned and encouraged by the CMP.

The Funding improvements “on site” should go to the Village, and perhaps there should be some sort of parkland or riverfront fund for the protection of this corridor. The Amendment should grant an easement or dedicate a park with certain features already constructed by the Petitioner, and include a viable plan to maintain such improvements.

At the same time, prior to adopting any dollar amount for the “set aside,” the Village must engage consultants to seriously study the proposed amount of \$2.50, sq. ft., because it seems below standards. Only qualified appraisers can offer such “opinions,” but these types of trade-offs for development in this district might conceivably cost the developer 15%-20% of the anticipated sellout price. [See additional considerations TDRs, proposed below]. The Planning Board recommends that a fairly priced set-aside be examined and recommended by qualified experts. Any such set aside MUST be paid to a Village Fund, and not controlled by the Petitioner.

What are the Benefits for Village. Currently, the Code requires 12 feet of public access along 75% of the river frontage to obtain the 0.90 FAR. The above condition for increased FAR would require 24 feet for 100% of the river frontage to be part of the conditions required for the proposed FAR bonus. Additional amenities include the provision of public art and dedicated space for increased public access, encouragement of water-enhanced activity at the waterfront including restaurants, boat launches, boat tours and other attractions that will draw people to the waterfront.

In addition to considering what types of uses might be appropriate, we would encourage the Village Board to adopt regulations that require that any developer provide at least ten percent (10%) of the parking area (spots) for non-resident, non-permitted visitors or public patrons. This is to allow the public to take advantage of the increased public access and activities along the waterfront.

What are the Negatives/Impact on other WF Properties - The last remaining property, the Nyack Boat Club, is 1.6 acres or some 70,000 square feet, approximately ½ of the TZ Vista property. It would appear unlikely that this property is of the size that could support underground parking and the other amenities conditioned on increasing FAR. The total amount of floor area of 70,000 square feet produces approximately 63,000 square feet of building area under the 0.90 FAR in the current code. Required parking on the surface would limit potential development even with a successful request for a variance. FAR at the adjacent 101 and 103 Gedney properties are both 1.5. The Phase I and Phase II of the Clermont have FARs of 1.9 and 4.15 respectively. *Exhibit C shows the FAR, density and height for existing Properties along the Waterfront.*

After serious discussion, inquiry of the Village Planner, comparison of the various other developments in the WF, we are hard pressed to see or understand what the negative impact would be of larger apartments at this location. In fact, it appears to be a prime location to develop luxury living, encourage responsible development and to enhance our community.

Additional Comments - Recent waterfront development in Westchester and Rockland have been developed at approximate FARs of 1.5. This includes Harbor Square in Ossining (u.c), and the new Ginsberg Riverside development in Haverstraw. Hudson Harbors in Tarrytown does not use an FAR; the Village uses height and other bulk requirements only. This development consists of townhouses and now two 5-story apartment buildings (Lookout North and South) with a maximum of 52-55 feet. The Tarrytown waterfront is level and the developments at Hudson Harbors are not as prominent from the River, is separated from the rest of the Village by the Metro-North Hudson

rail line with no adjacent residential neighborhoods. Based on other discussions with planners familiar with waterfront development in the Westchester/Rockland area, the 1.5 FAR appears to be more common. Any FAR over 1.5 appears to work only if structural parking is used.

The Petitioner's architect has provided case studies from their Market Study of other waterfront communities including Hudson Harbors (Lookout North and South), Knickerbocker Bay Club in Port Washington and The Avenue Collection at Port Imperial in Weehawken. This is being provided under separate email. Information on average sizes of units is included which, in the opinion of the Petitioner's architect, supports the FAR of 1.75 to allow for competitive unit sizes.

According to the Petitioner, development of the TZ Vista property will be expensive due to a number of factors including the capping used in the O&R remediation which will require extensive engineering for the foundations and the underground parking. According to the projections of the Petitioner, underground parking will cost at least \$35,000 per space. The developer's concept envisions very large, expensive condominium units. It should also be noted that the recommended conditions for obtaining increased FAR are far-ranging, will entail significant "givebacks" to the Village and result in a potentially better project.

While site plans have not been submitted, it appears that the Petitioner and his team will spend significant resources to blend the conceived "townhouses" along the river with the slope of the hillside. Upon adopting any zone change, the Village Board should encourage mixed use, access to the Hudson River and adoption of local streetscapes to provide a Village look and feel to Gedney Street, one that is in keeping with Village character.

- (a) *Whether such change is consistent with the aims and principles embodied in this chapter as to the particular districts concerned.*
- (b) *Which areas and establishments in the Village will be directly affected by such change and in what way they will be affected.*
- (c) *The indirect implications of such change in its effect on other regulations.*
- (d) *Whether such proposed amendment is consistent with the aims of the Comprehensive Plan of the Village.*

Recommendation. Based upon the above analysis of the Second Amendment (as enhanced), the Planning Board recommends that the Village Board embrace, as modified (or enhanced), the proposed zone changes to encourage better amenities for the public. We do not believe that this proposed code change would have any negative impacts, and believe that the amendment will increase the benefits for all concerned. With that said, we also encourage the Board to consider the ideas developed at the end of this Report detailing the Transfer of Development Rights, with the intent to expand public use, access and benefit in the WF district.

Third Amendment

The third amendment proposes a greater building height in return for underground structured parking, to reduce the footprint of parking areas permit intelligent and efficient Stormwater management, and to make more aesthetically pleasing.

Development incentives. In order to encourage development which promotes the purposes for which the WF District has been established and to achieve the benefit of preserving the view shed to and along the Hudson River, the following exceptions to the bulk requirements set forth above and in the lot and bulk regulations for the WF District may be permitted by the Village Board. **All development incentives are subject to review and approval of a special permit by the Village Board. Approval of the special permit is contingent upon submission of a design report including computer visualization to the Village Board that shows the benefits of the proposed height increase in terms of view sheds, building design, and open space. Any development incentives approved by the Village Board are applicable only to the special permit and site plan application for which they have been approved.**

Specifically, the Petitioner seeks to amend the existing VON § 360-2.5B(2)(c)[4], as follows:

[4] Building height may be increased by 20 feet for a project with structured underground parking in lieu of surface parking for a minimum of 90% of required parking spaces. The highest elevation of structured parking roof shall be at, or below the mean elevation of the adjacent street line, and such roof shall not be utilized for parking.

To accomplish this, the Applicant proposes amending the VON Code bulk:

VON § 360-2.5B(2)(b) Special bulk requirements. The following requirements shall apply to all development within the WF District:

[1] Building height. No buildings or structures shall be erected to a height in excess of 35 feet, except as provided in § **360-2.5B(2)(c)[1], [4] & [5].** Grade plane level for Building Height determination shall be the mean elevation of Gedney Street measured at the Front Lot Line of the lot or lots on which the structure is located.

Comments. By way of independent investigation from the fourth floor of Clermont II, it would appear that any height changes that limits the total height of the proposed buildings (including parapits, equipment, elevators, roof decks, etc.) to the height of the existing Gedney Street buildings would put the top roof of these buildings at approximately the height of the brick building at the

bottom Lydecker Street. Indeed, that is not very tall in relation to the surroundings, and would yield a building that is consistent in height with its surroundings.

If the Petitioner sought variances from the ZBA for any of these changes, there would be no opportunity to realize any of the additional amenities incorporated into the proposed Zone Change legislation. The use of a special permit with specific conditions is a legislative tool that would guarantee the provision of these amenities. The Special Permit process is also a more flexible tool facilitating negotiations with the potential developer.

The approval of all Development Incentives will require a Special Permit issued by the Village Board with the specific conditions included in the legislation. This is a new text change highlighted in red that has been recommended by the Village Planner. It provides more control over the incentives provided to future developments. An approval of the special permit is contingent upon submission of a design report including a computer visualization to the Village Board that shows the benefits of the proposed height increase in terms of view sheds, building design, and open space. This is provided in the Tarrytown code, which was used in their review of the Hudson Harbors project.

In the Nyack WF district, there are no maximum stories only height. In addition to a required Design Report, computer visualization and impacts as indicated above, a condition of a special permit by the Village Board for any increase in Nyack's WF District should be tied into an expansion of the view shed.

As mentioned previously, potential height increases have little to do with the provision of underground parking. It is more correlated to FAR increases. We recommend that the potential for height increase should be tied into the provision of wider viewsheds. If the height of the building increases then the resulting footprint should be reduced allowing for wider viewsheds. An expansion of the width of viewsheds should be incorporated into the legislation with the following suggestion:

The current viewshed requires 50 feet at street level and 100 feet at a distance of 300 feet from such street level. At the maximum height increase of 20 feet the viewshed would be required to be 90 feet at street level and 150 feet at a distance 300 feet from such street level. ~~The Village Board should also have the option of limiting the height increase to 10 feet (which is the maximum allowed in Tarrytown). At this height increase of 10 feet, the required viewshed would be 75 feet at street level and 125 feet at a distance 300 feet from such street level.~~

Current Heights along Existing Waterfront Properties - The Building Department has received a survey of properties along Gedney indicating their average heights as measured from Gedney Street. Gedney Street slopes up almost 20 feet going south. The following average heights are listed below and are included with other FAR and density calculations for these existing properties:

- 103 Gedney - 68.5 feet
- 101 Gedney - 60.5,/64.3/67.3 feet (3 buildings)
- Clermont Phase 2 (Tower) - 117.1 feet

The proposed maximum height of 65 feet is in line with 101 and 103 Gedney and below the Clermont. However, one needs to take into account that Gedney slopes up approximately 20 feet from 101 Gedney to the TZ Vista property. THE PLANNING BOARD ESPOUSES A CAP IN HEIGHT AT THE TOTAL HEIGHT OF THE GEDNEY BUILDINGS, REGARDLESS OF HOW IT IS DEFINED. Stated differently, nothing should be taller than any existing building, regardless of how it is measured.

What are the Benefits for Village Potential height increases have little to do with the provision of underground parking. It is more correlated to FAR increases. If the height of the building increases then the footprint should be smaller allowing wider viewsheds. The Developmental Incentives proposed and recommended in the legislation provide significant benefits for increased access, improvements along the waterfront, a linked public riverwalk along the Nyack waterfront, and potential for bringing life to the waterfront. Benefits include the provision of affordable housing units which could result in significant funding for Housing Development fund for off-site development/rehabilitation of affordable housing, and funding for public waterfront improvements plus developer funded waterfront improvements on-site.

What are the Negatives - The proposal needs careful site plan and architectural review. The request for height increases is one of the most contentious issues surrounding the proposed text amendments, however, with appropriate consideration and conceptualization, there is no need for the controversy. There is no doubt that this Zone change should only be effected with an understanding of what the resulting structures might look like if permitted after careful site planning and architectural review. The final project needs to provide significant “site improvements”, enhanced view corridors, sustainable landscaping and design features as well as blending in the project with the hillside environment and adjacent Gedney Street frontage.

- (a) *Whether such change is consistent with the aims and principles embodied in this chapter as to the particular districts concerned.*
- (b) *Which areas and establishments in the Village will be directly affected by such change and in what way they will be affected.*
- (c) *The indirect implications of such change in its effect on other regulations.*
- (d) *Whether such proposed amendment is consistent with the aims of the Comprehensive Plan of the Village.*

Recommendation. Based upon the above analysis of the THIRD Amendment (as enhanced), the Planning Board recommends that the Village Board embrace, as modified (or enhanced), the proposed zone changes to encourage responsible development and increase in the height of the buildings to encourage underground parking and on site amenities for the Public. We do not believe that the increase in height (as controversial as it might be) should be a concern for the

public if developers are bound by the other legal constraints of the zone amendment, including underground parking, public givebacks and improvements. With that said, we also encourage the Board to consider the ideas developed at the end of this Report detailing the Transfer of Development Rights, with the intent to expand public use, access and benefit in the WF district.

Additional Comments - The following information has been provided by the Petitioner's architect, and is provided for purposes of background and information, with no comment by the Planning Board:

- 1- The TZ Vista property has 148,589 square feet of land area above the Mean High Water Line. (MHWL). This represents 3.411 acres. The number of units proposed would be 126 including both townhouses and apartments. There are 16 townhouses on the river side with 11 Townhouses on Gedney and 99 apartments. The apartments would be in three buildings on both the Athene and Helmer properties. The base density would be 82 with 32 bonus units using the green infrastructure incentives and 12 affordable bonusable units. The average size of all units would be 2,063 square feet. With a loss factor of 25%, the average size apartment would be 1,547 square feet. *More commonly, loss factors run approximately 20% in multi-family buildings.*
- 2- The Petitioner also indicates the following features which he believes supports the need for increased FAR. These include: considering an indoor aquatic facility as opposed to the outdoor pool. The facility would add a minimum of 5,000 square feet to the FAR calculation. The addition of townhouses along Gedney which tend to be larger than apartments and require additional floor area for indoor stairs. The Petitioner also notes that the difference between an FAR of 1.65 and 1.75 is 14, 859 square feet or 4,953 square feet per building. If this was calculated using an FAR of 1.6 (which was what I had originally proposed), the difference becomes 22,288 square feet or 7,493 square feet per building.
- 3- The architect also shows his latest layout with an increased viewshed of 60 feet at Gedney and 125 feet at a distance of 300 feet. He comments that the same drawing shows that the buildings are even smaller than the increased viewsheds, especially the building at the corner of Gedney and Main due to the irregular spacing of the Village streets. This will also be provided to the Planning Board in a separate email.
- 4- Finally, the Village Board will be selecting a consultant team for the Updating of the Village's Comprehensive Plan (funded through NYSERDA). Waterfront design and development are part of the work tasks for this team. It may be helpful to have the consultant briefly review the Petitioner's proposal from a design viewpoint and provide comments to the Village Board.

**Additional Options to Consider:
the Transfer of Development Rights (TDRs)**

In light of this exciting project, one area that the Planning Board would like the Village Board to study and consider, using planning consultants, is the ideal of Transferrable Development Rights (“TDRs”). Based upon preliminary investigation, the Planning Board believes that various development professionals, academic observers, and segments of the public believe that that TDRs represent an all-purpose zoning tool that might unlock unused floor area, increase development and densities, and generate revenue for a range of public purposes – from parks to public housing.

According to Governor Andrew Cuomo’s 2010 technical manual,

The transfer of development rights (TDR) provides municipalities in New York State with a very effective and flexible technique for land use control. A legal procedure designed to preserve or protect natural or man-made property resources for the public's benefit, TDR results from a recognition that land ownership has two distinct components, in that the right to develop land is an independent aspect of land ownership.

TDR is a land use regulation technique that can be used to ensure that the open space requirements of the municipality's planning goals are met without causing a financial burden to landowners or restricting needed development. A well thought out and administered TDR program ultimately generates development that is more cost-effective and efficient. The use of TDR reduces the prospect of litigation over preservation policies; it avoids the use of municipal funds to purchase land while helping to ensure preservation goals; importantly, it means that the municipality can increase its tax base, but does not have to settle for less preservation than it really wants.

See, Transfer of Development Rights, JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES, published 2010. As the article explains:

In essence, TDR permits all or part of the density potential (established in the local zoning law or ordinance) of one tract of land to be transferred to a noncontiguous parcel or even to land owned by someone else. The development rights become a separate article of property, which can be sold to a landowner whose property is better suited to greater densities. After selling the development rights, a landowner still retains title and all other rights to his land. These other rights permit farming, forestry, some recreational uses, and other non-intensive uses. In addition, the owner may sell or exchange the title to the land just as if the development rights had not been transferred.

TDR involves attaching development rights (the right to develop land) to specified lands desired by the municipality to be kept "undeveloped" and permitting these rights to be transferred from that land, so the development they represent may occur somewhere else. The rights are considered severable for the land ownership so that they may be sold. The "somewhere else" would be lands for which more development and higher density would be acceptable.

The use of the TDR technique is specifically authorized by Town Law ' 261-a; Village Law ' 7-701; and General City Law ' 20-f. These sections were added to the zoning enabling legislation in 1989 and will be discussed in detail below. These statutes define TDR as the process by which development rights are transferred from one lot, parcel, or area of land in a sending district to another lot, parcel, or area of land in one or more receiving districts.

In Nyack, the Village Board should consider the TDRs as a bundle of unbuilt Square Footage on a property that can be traded between property owners. Each lot gets a defined amount based on the existing zoning code. As there are already restrictions on building massing (and as a maximum FAR can be established); allowing TDRs to be traded within the WF district, can effectively:

1. Limit the TOTAL SF being developed within the WF Zone but allow one site to be more densely built than another. As rights are transferred from one site to another, the transferring site no longer has the potential to be built out to the same level. Average density in the zone would not increase. The lot that sold its rights now would have reduced development potential that "runs with the land."
2. Maintain more views and greenspace (via preset maximum FAR and height restrictions that would be incorporated into the program and are similar to the current code)
3. Obligate multiple lot owners in the TDR program to place view restrictions on their properties (which will run with the land) if they are to obtain a special permit allowing the transfer of development rights.
4. Remove certain liabilities from them municipality in making decisions that are fundamental to any proposed "buy rights from the village" program.

For Example, A Nyack Waterfront Zone TDR program goes in place. Each lot within the zone has restrictions on how much can be constructed (matching the current code with potentially a little bonus for height if a lot owner enters into a TDR program). Lot A's owner would like to build more than what he has rights to build. Lot B has excess development rights. With TDRs, the right to build additional SF can be traded between owners (with municipal approval under certain conditions). The respective owners

negotiate a price for Lot A to purchase development rights from lot B without guidance from the municipality. These parties obtain a permit approving the transaction (perhaps both are now obligated to having wider view corridors and other items and perhaps costing a fee). Lot A can now build a larger building (total SF and height) than they would have be able to build previously. Lot B can no longer build as large of a building in total SF (but can potentially benefit from more height) as they could have previously. Both lots now are obligated to provide wider view corridors and meet the other obligations of the program. If both sites are then FULLY constructed, the total FAR is the same as it would have been without the TDRs changing hands; however, Lot A has a larger building than previously allowed and Lot B has a smaller building than previously allowed. This is similar to cluster housing and lot mergers except that ownership of ONLY TDRs is transferred and all parties are now obligated by the conditions (view corridor and such) set under the program.

Here are some links to a discussion of TDRs in NYC.

<http://www.nyc.gov/html/dcp/html/tdr/tdr-1.shtml>

Conclusion

We recommend a serious study of these useful amendments, and careful consideration of how to encourage both the Petitioner to complete this project and the Village Residents to accept the opportunity of Waterfront development.

Respectfully submitted,

Peter Klose
Chairman,
Village of Nyack Planning Board

EXHIBIT C

**Comparison of FAR, Density and Height
For Existing Properties on the Waterfront in Nyack, NY and Proposed TZ Vista in Nyack, NY**

Address	Site Area	Floor Area (1)	FAR		Density		Avg. Height from Gedney Street
103 Gedney St.	81,200 sf = 1.86 Acres	96 DUs x 1,250 sf = 120,000 sf	120,000/ 81,200 =	1.5	96 DUs/1.86 =	51.6	68.5 ft.
101 Gedney St.	131,800 sf = 3 Acres	163 DUs x 1,200 sf = 195,600 sf	195,600/ 131,800 =	1.5	163 DUs/3 =	54	Bdlg.1 = 67.3 ft. Bdlg.2 = 64.3 ft. Bdlg.3 = 60.5 ft.
Clermont Phase 1	49,432 sf = 1.13 Acres	78,000 sf + 16,000 sf = 94,000 sf	94,000/ 49,432 =	1.9	61 DUs/1.13 =	54	N/A
Clermont Phase 2	25,518 sf = .59 Acres	24,870 sf + 40,121 sf = 64,991 sf	106,000/ 25,518 =	4.15	40 DUs/.59 =	67.8	117.1 ft. *
Proposed	148,589 sf = 3.411 Acres	260,030 sf	260,030/ 148,589 =	1.75	126 DUs/3.411	37	65 ft.

(1) Excludes garage, balconies and terraces from FAR calculations

* Average height for Clermont Phase 2 (Tower) is measured from River Street grade level.

Note: Calculations for Site Area, Floor Area, FAR and Density are based on information developed by TZ Vista and reviewed by the Building Department. Average height is based on fieldwork conducted June 18, 2015 by Heidecker Land Surveying, PLLC presented in *Building Height Survey* prepared for DCAK-MSA Architecture & Engineering dated June 19, 2015.