

Date: December 7, 2022

To: Pleasantville Village Board

Cc: Eric Morrissey, Village Administrator
Robert Hughes, Building Inspector

From: Susan Favate, AICP, Principal, Jennifer Gray, Village Attorney

Subject: Potential Zoning Moratorium on Development in the Central Business A-1 District

This memo summarizes the legal context, planning and zoning basis, and basic parameters for a potential zoning moratorium on development in the Village of Pleasantville's Central Business A-1 district, including the Central Business A-1 Subarea. We understand that, given several significant developments in and around the downtown area in recent years, there are community concerns on the potential for additional development and resulting impacts on public safety (e.g. fire and ambulance), traffic, and water.

Background and Context

As the Board will recall, the Village's 2017 Master Plan identified a number of underutilized sites in the downtown and supported zoning changes to facilitate their revitalization and further the plan's overarching goals, including supporting Pleasantville's business districts as thriving activity centers, increasing the tax base, promoting a diversity of housing choices, creating a more cohesive downtown streetscape, and promoting strategies that increase bicycle and transit use (i.e., transit-oriented development). Subsequent to the plan's adoption, BFJ Planning worked with the Village to craft zoning revisions that mitigated identified impediments to mixed-use development in the Central Business A-1 district (e.g. land area per unit and parking ratios), and that created incentives for density based on provision of active ground-floor uses and/or public open space, as well as conformance with design guidelines. In addition, the revised zoning allowed for buildings of up to 4 stories in an area bounded by Memorial Plaza to the east, Cooley Street to the west, Manville Road to the north, and Bedford Road to the south (the Central Business A-1 Subarea).

Largely as a result of the revised zoning, the Village has seen several mixed-use developments constructed on underutilized sites in the downtown: 70 Memorial Plaza (which was specifically identified in the Master Plan as a site for revitalization) as well as 39 Washington Avenue and 52 Depew Street. These developments are in addition to the 68-unit Enclave at Pleasantville complex on Washington Avenue just north of the downtown, which was approved as part of a rezoning process that pre-dated the Master Plan. Meanwhile, in the wake of the pandemic, the region has seen unprecedented market demand for housing, which has fueled development interest not previously contemplated in the Master Plan and subsequent zoning process.

Given these factors, it makes sense for Pleasantville to take a “pause” on residential development in the downtown while the Village assesses whether changes are warranted in the Central Business A-1 district to ensure that potential development is appropriate to its existing scale and can be supported by infrastructure.

Legal Basis for a Land Use Moratorium

A land use moratorium suspends a landowner’s right to obtain development approvals while the community considers changes to its comprehensive plan and/or its zoning regulations to reflect new circumstances not addressed by its current laws. A moratorium preserves the status quo while the municipality updates its land use and zoning regulations. The purpose of a moratorium is to halt development temporarily, pending the completion and possible adoption of more permanent, comprehensive regulations. A moratorium is appropriate to address long-range community planning and zoning objectives. The enactment of temporary restrictions on development is a valid exercise of a municipality’s police power where the restrictions are reasonable and related to public health, safety or general welfare. The police power has been defined generally as the power to regulate persons and property for the purpose of securing the public health, safety, welfare, comfort, peace and prosperity of the municipality and its inhabitants.

The Village’s land use moratorium must satisfy the following five (5) key elements:

- 1) The moratorium shall only be in place for a reasonable time frame as measured by the action to be accomplished during the term. The moratorium must express a relatively short but specific duration, and the duration must be closely related to the municipal actions necessary to address the underlying planning and zoning concerns.
- 2) The moratorium must have a valid public purpose justifying the suspension of certain land use approvals. A moratorium on land uses or development will be considered a valid interim measure if it is reasonably designed to temporarily halt development while the municipality performs studies, considers comprehensive zoning changes and the enactment of measures to specifically address matters of community concern. The moratorium must be narrowly tailored and shall not be broader than necessary to avoid a chilling effect on development that is not intended to be covered and achieve its purpose.
- 3) The Village must show that the burden imposed by the moratorium is being shared substantially by the public at large, as opposed to impacting a minority of landowners. The advantages to the Village must outweigh the potential hardships to landowners.
- 4) The Village will adopt the moratorium as a local law. As such, the Village must strictly adhere to the procedural requirements for local laws pursuant to the New York State Municipal Home Rule Law. A moratorium on zoning approvals is also subject to referral to the Westchester County Planning Board pursuant to General Municipal Law § 239-m and the Village Planning Commission. The Village must hold a duly noticed public hearing on the proposed moratorium. A moratorium on land development

or construction is considered a Type II action under the State Environmental Quality Review Act ("SEQRA"), and as such no environmental review is required.

- 5) The moratorium must set forth a time certain when the moratorium will expire. The duration cannot be unreasonable.

The moratorium must contain a mechanism that allows landowners to apply for relief from the moratorium. In the event the moratorium causes a severe financial hardship to a property owner, an application may be made in writing to the Village Board of Trustees requesting an exemption from the provisions of the moratorium. After due notice and a public hearing on such application, the Board may grant an exemption upon a finding that the severe financial or economic hardship was directly caused as a result of the application of the provisions of the moratorium. The exemption may also be granted with such conditions as the Board may deem reasonable and necessary.

Proposed Moratorium Parameters

Based on our discussions to date, we suggest the following parameters be considered to ensure that the moratorium is narrowly tailored in response to the Village's specific concerns:

- Area: Central Business A-1 district, including the Central Business A-1 Subarea
- Term: 6 months
- All applications for building permits, variances, special use permits, site plan and subdivision submitted on or after November 16, 2022, except those listed as exempt. During the moratorium, such applications may be heard and reviewed by the Planning Commission and/or Zoning Board of Appeals, as applicable, at the request of the applicant and at the applicant's own risk. However, such boards may not issue any SEQRA determination or final decision on the application while the moratorium is in effect.
- Exempt applications:
 - o All applications for building permits, variances, special use permits, site plan and subdivision approval submitted before November 16, 2022
 - o Area variance(s) for 1-family or 2-family dwellings
 - o Building permit applications for work that does not require approvals from a Land Use Board
 - o Applications of any kind which involve work that the Building Inspector reasonably believes is being performed primarily for health or safety reasons, or which will be undertaken in existing commercial or retail structures having a gross floor area of less than 3,000 square feet.

Zoning Study Process

During the moratorium, the Village would analyze development potential in the Central Business A-1 district under the current zoning, including the Central Business A-1 Subarea, and assess the potential

impacts of such development on traffic, water supply, and the provision of emergency services. We outline below the anticipated steps to this process:

Build-Out Analysis

Often, a theoretical build-out analysis is undertaken to arrive at a maximum potential development scenario. However, we do not recommend this approach for Pleasantville. While there are a number of buildings that could accommodate additional floor area based on their underutilization of height (such as along Wheeler and Washington Avenues), most of these parcels are quite small, without on-site parking, and would thus be precluded from significant residential or mixed-use development. Instead, we would suggest working with the Village to identify “soft sites” – parcels that are both underbuilt and that have sufficient land area to accommodate on-site parking. A build-out analysis of these sites would yield a maximum number of units allowable under existing zoning, from which residential population could be extrapolated.

Timing of Build-Out

No build-out is ever fully executed because of a myriad of real estate ownership issues and the state of the marketplace. We typically take a percentage of the build-out over the next 10 years. We would work with the Village and use our knowledge of the local market to make a reasonable estimation of the percentage of build-out that is likely to occur in the near term.

Incremental Build-Out

The next step of the analysis is to determine the incremental build-out, or the build-out above what was allowed under the previous (pre-2017) zoning. This will give a sense of the remaining potential build-out if the current zoning is left in place, versus what was possible under the prior zoning.

Mitigation Proposals

Based on the above analysis, the Village could determine the potential development impacts on traffic (trip generation), water supply (additional demand in gallons per day), public safety (additional calls to police, fire, and ambulance services), and the school district (generation of school-aged children). With this information, the Village would assess whether such impacts can be accommodated.

We anticipate that the soft sites build-out analysis would identify the need for zoning changes to the Central Business A-1 district (including the Central Business A-1 Subarea), which could include changes to area and bulk provisions as well as “sunsetting” of the density incentives. We note that the focus should be on the incremental build-out, i.e., the difference between current zoning vs. pre-2017 zoning, because considering more significant changes beyond what existed in the prior zoning could make a number of existing buildings or sites non-conforming. If there is consensus on the need for such changes, the Village Board would need to implement them through a standard local law process, including SEQR compliance.

Next Steps

In the event the Village Board of Trustees chooses to move forward with consideration of a local law adopting a moratorium, as discussed herein, the following are the next step that should be accomplished:

- Introduce the proposed local law at the Village Board of Trustees' December 28 meeting.
- Refer the proposed local law to the Village Planning Commission and Westchester County Planning Board at the Village Board of Trustees' December 28 meeting
- Schedule a Public Hearing on the proposed local law
- Hold Public Hearing
- Adopt local law
- Moratorium becomes effective upon filing with the Secretary of State.