

Hastings on Hudson Planning Board Advisory Report on Proposed Zoning Changes for Senior Housing

7/31/17

This report reviews the Zoning Amendment and its required State Environmental Quality Review (SEQR). The SEQR form, the Environmental Assessment Form (EAF,) documents the Board of Trustee's (BOT) review of environmental impacts from the Zoning Amendment's changes according to the State's standards. The Village's consultant, Chazen Company (the consultant) prepared both.

The Planning Board cannot recommend adopting the proposed Zoning Amendment based on the following reasons.

1 Consistency with Comprehensive Plan and Zoning

In recommending the adoption or rejection of the proposed Zoning Amendment, the Planning Board must consider whether and how the proposed amendment is consistent with the Comprehensive Plan and Zoning.

1.1 Goals of Comprehensive Plan and Zoning

The Comprehensive Plan's main goal is to balance, by good planning, future change with preservation of community character. According to the Comprehensive Plan, planning should:

.. protect those assets, which make the Village such a desirable community to live in while planning for and responding to potential impacts to its community character.

The Comprehensive Plan defines the Village's community character by its assets:

The Village's assets include: location, population diversity, historic architecture, natural resources and tree-lined corridors and small town feel.

The Village's Zoning provides these statements of purpose:

To protect, maintain, conserve and enhance the value of land and buildings and the social, economic, aesthetic and environmental stability and viability of all parts of the Village...

And

To preserve and maintain the natural beauty of the physiography, geography and plant material of the Village; to preserve significant views and vistas of natural and man-made beauty or interest; to protect the Village against unsightly, obtrusive and obnoxious land uses and operations; to enhance the aesthetic aspect of the natural and man-made

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elements of the Village; and to ensure appropriate development with regard to those elements.

1.2 Omission of Community Character and Fiscal Impact

In the EAF, the goals of the Zoning Amendment are expressed by quotes from the Comprehensive Plan that are edited to eliminate references to Community Character and Fiscal Impact. From the EAF:

The 2011 Comprehensive Plan specifically addresses senior uses in Chapter 4, Large Tracts, and Chapter 8, Quality of Life. The Plan suggests that **appropriate zoning be developed for large tracts to allow tax-generating uses**, including senior-only housing. In Chapter 8, Quality of Life, the Plan recommends in Objective 1 that **to protect and enhance the quality of life in the Village, the Village should ensure that the Village remains affordable to a wide variety of residents.** (Emphasis added.)

The referenced sections of the Comprehensive Plan, however, read as follows:

Chapter 4, Large Tracts

Develop appropriate zoning for the properties listed below from single-family residential zoning to those uses (including, for example, commercial use, senior only housing and clustered housing) **that will protect community character while encouraging land uses that have the potential to generate greater tax revenues than costs to the Village.** (Emphasis added.)

Chapter 8, Quality of Life

The Village should consider Zoning Amendments designed to allow seniors to remain in the community. These zoning initiatives should be structured to conform to the development parameters that have been cited elsewhere in the Comprehensive Plan, for example maintaining **Village scale, encouraging sustainable design, and only permitting revenue positive developments.** (Emphasis added.)

Recommendation:

The Planning Board believes that without considering the impact on Community Character and on Village financial resources and services, the Zoning Amendment cannot be consistent with the goals of the Comprehensive Plan and Village Zoning. As recommended in the Comprehensive Plan for another large-scale zoning effort, the Planning Board believes the Village needs a Fiscal Impact Analysis¹ that would compare the Village's incurred costs against revenues associated with the Zoning Amendment changes.

¹ https://extension.unh.edu/resources/files/Resource002700_Rep3989.pdf
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The analysis should review the Zoning Amendment's demand on the Police Department and the volunteer Fire Department and Ambulance Corps.

1.3 Other Community Goals

1.3.1 Affordable Housing

The Village's affordable housing requirements are a key tool to support a diverse community.

Recommendation:

The Planning Board recommends that there be affordable housing requirements for any residential use. There is an example of affordable assisted living in Westchester that may be a model. The Ambassador of Scarsdale is an assisted living facility that has affordable units available through Westchester County.²

1.3.2 View Preservation, Steep Slopes and Gateways

View Preservation and Protection of Steep Slopes requirements are important tools to protect the character of the village.

The Gateway Cluster Overlay District recently adopted by the Board of Trustees requires significant buffers to protect the green gateways into the village. They are triggered, however, only by subdivision for single-family homes.

The proposed Zoning amendment allows parking in the front yards for Nursing Homes, Assisted Living and Senior Housing. The EAF's Table 3 lists the Potentially Developable Parcels. Items 1, 2, 3 and 13 are covered by this Overlay District.

Recommendation:

The Planning Board recommends revising the Gateway Cluster Overlay District to apply to all development not just subdivision. Allowing parking in the Gateways goes against the spirit of this new law.

2 SEQR- State Environmental Quality Review

2.1 Purpose of SEQR review

Under State Law, when making a decision to approve or not certain decisions, the BOT must consider environmental impacts equally with social and economic concerns.

2.2 Community Character

Preserving Community Character is not only important for village residents; it is also a key topic for SEQR.

² <http://homes.westchestergov.com/the-ambassador>

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The EAF strikingly fails to evaluate this topic, “Consistency with Community Character”. One question that topic would consider is, whether the Zoning Amendment is consistent or not with the predominant architectural scale and character.

Related to this, in considering the topic, “Consistency with Community Plans”, this question was not asked. Are the uses, setbacks, size and overall scale and intensity different from, or in sharp contrast to, current surrounding land use pattern(s).

2.3 Impacts

In their SEQR review, after defining the proposed “action” to be evaluated, the BOT needs to identify Village resources affected by the action and determine the magnitude of that impact.

In this EAF, no resources are flagged as significantly impacted by the zoning changes. None needs further study. However, SEQR sets some thresholds to measure an impact and to determine the need for further study. The EAF projects possible population and traffic increases that exceed these SEQR thresholds and should have further study.

In providing a rationale for not flagging any impact for further review, the consultant repeatedly states that all projections are a “gross exaggeration” and therefore can be ignored. In addition, the consultant repeatedly states that further review of the impacts of the Zoning Amendment will occur in a SEQR review of specific projects. This assurance is misplaced. NYS in its guidelines for Local Municipalities calls for the opposite approach:

Keep in mind that rezoning itself may be more significant from the standpoint of SEQR than the individual permitting of projects since a zoning change triggers a change in the allowable use of land and ostensibly individual projects consistent with that change will be considered in the future in the rezoned area.

The State goes on to recommends a more in-depth and inclusive review process than what the BOT has chosen.

The use of a generic EIS (environmental Impact Statement) is the best SEQR-tool to analyze the rezoning actions for large-scale or significant changes.

In the EAF, it is stated that the impacts on Community Character were considered,

...how the proposed changes allowing different development types and densities may affect the small-scale character of the Village, especially as they pertain to large tracts of land that are considered underdeveloped.

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When the Planning Board asked how, for example, the densities were determined and asked to see backup for their recommendations, the consultant did not have an analysis. In addition, none has been provided to date. The consultant defended the densities as those needed for economic feasibility for future developers. The Planning Board does not support presumed economic feasibility solely as a foundation for zoning change.

Recommendation:

Impacts need to be reasonably evaluated and not dismissed. Reliable projections need to be established. Without them, the Planning Board believes the community is unable to evaluate the Zoning Amendment's impact. The Planning Board recommends that the BOT take a "hard look" as required by SEQRA at the impacts of the Zoning Amendment by considering Community Character and following the DEC's guidelines and preparing a generic EIS.

3 Proposed Zoning Amendment

3.1 Appropriateness

The Zoning Amendment proposes significant changes to where uses can go, to the size and character of buildings, and how they can be built - changes that may adversely affect the village character. More multifamily and commercial uses are permitted in single-family areas.

General recommendation

The Planning Board recommends that zoning start at a reasonable level and fit the use and district. The specifics of a site may allow modification. The Board has seen inventive applications and dealt with misfit zoning for certain areas. The Board respects the creativity of a determined developer and has learned not to give assured statements on whether this or that is possible. The best protection is to have what is right for the community in place at the start.

3.2 Review of Proposed Changes by Use

3.2.1 Senior Housing: Senior enriched/independent living

Current:

Senior housing: Senior enriched/independent living is a multifamily use permitted in two mixed-use, non-single-family districts. In practice, this type of housing cannot be built today.

Proposed:

The Zoning Amendment removes Senior housing: Senior enriched/independent living from the mixed-use districts and adds it to two single-family districts and four multifamily districts. The lot size is decreased from 7 to 5 acres. The density is increased from 6 dwelling units to 12.

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Comment:

None of the proposed multifamily districts has a lot of the required size, so the only possible locations are in single-family districts. There is no explanation given for why a multifamily use would be appropriate in a single-family district.

Recommendation:

The Planning Board would like to see examples of this housing to understand how the age criterion is managed. It seems unregulated and therefore provides an opportunity for developers to build multifamily buildings in now restricted parts of the village.

The Planning Board recommends not changing Senior housing: Senior enriched/independent living at this time. (See Section 4 Next Steps.)

3.2.2 Nursing Homes

Current:

The use is included with hospitals.

Proposed:

The use is separated out from hospitals. The lot size is decreased from 20 to 5 acres. The current setbacks of 75' and building coverage of 15% are kept. Height is increased to 40 ft. from 35 ft. Parking is permitted in front yards. Density is capped for the first time at 40 beds per acre.

Recommendation:

The Planning Board recommends keeping the current 20-acre lot size and 35' height. There is no reason to extend a medical use in the village. Density will be discussed below.

3.2.3 Assisted Living

Current:

Assisted Living is a new commercial use.

For comparison, it is considered similar to convalescent housing, which is covered in in the code.

Proposed:

The Zoning Amendment decreases the lot size from 5 to 2 acres. Currently, the 75' setbacks and 15% building coverage apply no matter which district the lot resides. The Zoning Amendment proposes that setbacks and building coverage vary based on the district. Parking is permitted in front yards. Height is increased to 40 ft. from 35 ft. Density will be discussed below.

In its memo to the Zoning Board dated June 30, 2017, the consultant provided a list of Assisted Living facilities for comparison in Table 1. Table 2 listed facilities raised by the Planning Board.

Comment:

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Is it appropriate to permit Assisted Living in single-family areas? Perhaps, if the lot size is such that there are generous setbacks, buffers and space to locate parking behind the building. The zoning needs to be evaluated.

In Figure 1, the current and proposed Assisted Living zoning was illustrated in R-20 and R-10 districts. To support the need for evaluating the zoning, there was an unexpected result from the examples. As proposed, an Assisted Living building in an R-10 district can be larger than one in an R-20 district, because the building coverage is 25% in R-10, while 15% in R-20. Because the setbacks vary by district, that larger building in R-10 can be closer to the adjacent lots than in R-20. The Same use has a much different impact on its neighbors.

In the EAF, the consultant provided a list of possible sites for Assisted Living facilities. The Planning Board is concerned that the consultant has not found all the probable sites. The 2-acre lot size is too small. Sites can be assembled with determination and the means. Westchester County is a desirable location for Assisted Living developers. The Village is setting itself up for new development without understanding the extent.

In Table 1, the list of facilities provided by the consultant does not appear to be relevant to the Zoning being proposed. The facilities are not in residential areas, as is being proposed for the village. They are in commercial areas, business parks, next to major highways, shopping centers, large parking lots, a town park and its library facility, etc. They are very different places than all or almost all of the Hastings locations identified by the consultant.

Recommendation:

Planning Board recommends not changing the lot size, height, setbacks and coverage of convalescent homes for Assisted Living. The current zoning seems out of scale. However, it is important to evaluate that zoning to see if it provides adequate protection to the neighboring community.

A side note, the definition should be revised to describe more accurately NYS requirements and remove references to medical terms. From Greenburgh:

ASSISTED LIVING FACILITY

A residential facility for individuals who require some assistance with daily living, with units that may contain kitchenettes, that is operated by an entity licensed by the State of New York to operate an assisted living residence or assisted living residence with an assisted living program component. The facility will combine dwelling units with provision of services, including, but not limited to, communal dining, medication supervision, personal care, physical therapy, and assistance with the activities of daily living such as bathing, dressing, grooming, eating and/or ambulation for persons who do not need the skilled medical care provided by a nursing home or convalescent care facility.

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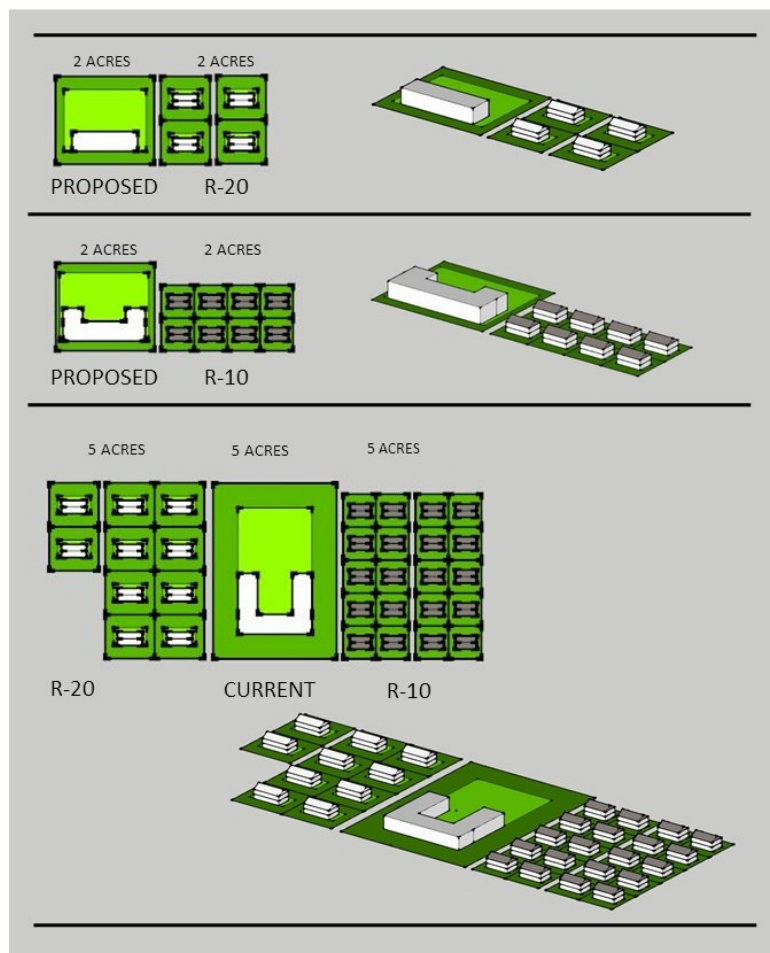


Figure 1 Existing and Proposed Assisted Living Zoning in R-20 and R-10 districts.

3.3 Density

3.3.1 Increases

Proposed:

The Zoning Amendment proposes to increase the permitted number of residents for these uses.

Senior housing: Senior enriched/independent living's density doubles from 6 dwelling units per acre to 12. Nursing homes are given a cap, for the first time, of 40 beds per acre. Assisted Living's density goes from 5 beds per acre to 40 beds per acre.

Comment:

The Planning Board and community members, who spoke at the different boards' meetings, are concerned that these densities are too great. Clearly, the densities of single-family areas in Hastings are far different from those resulting from an Assisted Living facility built at 40 beds per acre at 40 feet in height and with parking in the front yard.

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The Planning Board does not have the answer to what is an appropriate density, but suggests these factors be considered when establishing one that is appropriate for our community.

3.3.2 Factors

What is the Actual Density?

EPA's Smart Growth tool, by using census data and mapping tools, identifies the Village's density as 1 to 4 housing units per acre for the predominantly single-family area east of Broadway and 4 to 7 housing units per acre for the area to the west.

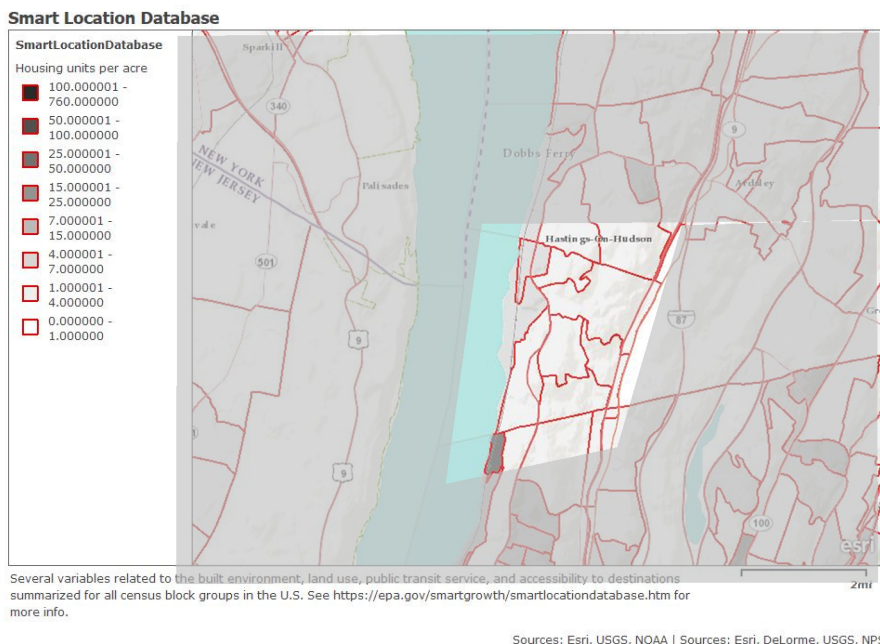


Figure 2

Compare to Zoning's Permitted Density?

For most of the village, the density is 2 to 4 dwelling units per acre. While the zoning permits multifamily densities greater than 2 to 4 dwelling units per acre, they are in a small part of the village. For example, the total MF-2.5 district covers only 25.5 acres and MF-1.5 covers only 34 acres.

District	Dwelling Units/Acre
R-20	2
R-10	4
MR-2.5	16
MR-1.5	27
MR-0	23 (Max 8 DU)

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3.3.3 Beds per acre or Dwelling Units per acre?

General

The Planning Board believes that the comparables are questionable as a guide for density because many on the list are providing a mix of services, such as assisted living, independent living, Memory Care, etc. Each service can have a different unit size. Some units are more like an apartment and others like a bedroom. There are different configurations of common areas as well, dining rooms, activity areas, etc. Considering the building square footage per bed, the range is from 334 sf/bed to 1,704 sf/bed. Without more information about the facility and the mix of units, it is hard to use the comparables as guidance to determine density for the Village.

In addition, when considering the lot size, some comparables understate the lot size and so inflate the density. From the consultant's memo, in Table 2, Artis Bethesda is listed with a higher density than what is actual. That facility is on 4.39 acres. The developer was required to place approximately 2 acres in conservation and build nature trails.³ The consultant calculated the density after excluding the conservation acreage. It is a 4.39-acre lot not 2.39. The effective density is significantly lower than the 36 per acre listed by the consultant.

Also listed in Table 2, without acreage information, is the Artis Princeton Facility.⁴ It appears to be on approximately 4 acres. This would place its density at less than 20 per acre.

The details of the comparables make a difference.

Nursing Homes

For a nursing home, it may be more reasonable to measure density in beds per acre since there is more regularity in the unit sizes. To follow an example in the current code, for Senior Housing, the number of beds is twice the number of dwelling units.

Using that approach and the EPA's numbers, the possible density for Nursing Homes would be 8 to 14 beds per acre.

Assisted Living

The assumption has been that Assisted Living zoning can permit greater density for those facilities because the units are smaller than a typical apartment and have no kitchens or kitchenettes and there are common living spaces. However, the combination of 40 beds per acre at 40 feet in height and with parking in the front yard is too much even given the likely smaller units used for Assisted Living. The proposed Zoning would result in densities far above that of the residential development in the adjacent sites.

It is misleading to use beds per acre. These facilities provide a variety of unit types and sizes and shared spaces. The definition should include what shared spaces need to be

³ The facility is bordered on three sides by the conserved area and is limited to one story (15 feet) as there were three nearby homes on the forth side. The parking is underground.

⁴ It is two floors and is surrounded by large parking lots and a commercial building.

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provided in order to reduce the area for an assisted living unit below the minimum area for a multifamily dwelling unit.

Recommendation:

Hastings cannot rely on the idea that just one such facility will be built and only on the most suitable site. In considering this Zoning, it is important to envisage more than just one facility in Hastings and whether the effect of that on Hastings is worth the benefits from the first facility.

The Planning Board cannot support the Zoning Amendment as it results in too much risk to the Community Character of the Village and in many cases could adversely affect adjacent residents in residential districts. If Hastings wishes to go forward with this, many provisions, such as 40 beds per acre, 40 feet height limit and parking in the front yard, need to be significantly reduced and changed, with the base case at a level that reduces the adverse effect on the adjacent residents. While, no one believes that these facilities will actually end up next to them, the community needs to examine what such facilities would look like at a representative number of the consultant's sites and others. As mentioned below, perhaps with lower densities, we could have tradeoffs to allow for higher densities where the site can accommodate them.

The Planning Board also think more study is needed for the use of the so-called 'industry norm' of beds per acre in residential neighborhoods, particularly at the levels being proposed (or ultimately adopted) as compared to the current limits (which were low). As noted earlier, the Comprehensive Plan had a quite different low scale concept to accommodate our residents needing "assisted living housing". This needs to be take into consideration.

The beds per acre concept also needs to be examined if it is proposed for use where nursing homes, assisted living and independent living senior housing are being combined on the same site. As the square foot numbers provided in Table 1 show, mixes of these different uses produce vastly different sized buildings measured on a per bed basis.

3.4 Increasing density on case-by-case basis

Proposed:

The consultant stated at a Planning Board meeting that it is best to set a high density that can be lowered on a case-by-case basis by the Village.

Comment:

The Planning Board believes this a risky approach and that density or other criteria should be set to levels that are realistic and protect the community's character.

Recommendation:

The Board believes adjustments should be negotiated up, not down. Incentive zoning can be used to grant adjustments to zoning requirements such as density in exchange for community benefits. This has been successfully used by the Village in the past. From NYS Municipal Law,

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Community benefits or amenities shall mean open space, housing for persons of low or moderate income, parks, elder care, day care, or other specific physical, social, or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized

Elder care is listed as a community benefit, which should be researched to see how it might apply to senior uses.

3.5 Allowing Different Uses on the same Lot

Proposed:

The Zoning Amendment for the first time allows different uses to be on the same lot outside of the districts, such as Downtown, where mixed-use buildings are permitted.

Comment:

When different uses are permitted on the same lot, there is no process described to determine for the uses what is the density, setbacks or building coverage.

Recommendation:

The Planning Board recommends evaluating options from other communities. It makes sense for the most restrictive guidelines to set the maximum number of beds for all uses combined.

3.6 Special use permit

Proposed:

The Zoning Amendment proposes dividing the duties of reviewing Special use permits among several boards, Zoning for most special permits, Planning for those related to this amendment and the Board of Trustees for review of heights for nursing homes.⁵

Recommendation:

It only makes sense that the duties stay with one board and not be split among three.

The Planning Board believes that the Zoning Amendment is weak because the requirements for permitting a special use are not outlined. From NYS Municipal Law,

(Special use is permitted) subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.

⁵ Chazen memo to Planning Board pg. 5 footnote 2
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Greenburgh has set up a range for different zoning tools to protect the neighborhood. That would help any board set limits when considering variations. The following is for setbacks. Ranges can be developed for buffers, height and location of parking.

No building shall be located less than 100 feet from any street or lot line.
Where topography and landscaping or other site conditions provide
adequate screening, the (special use approving board) may reduce this
setback requirement no closer than 50 feet.

3.7 Suggestions from discussions

By restricting possible sites to those that front on State and County roads, this may focus development to where the community would like it.

Height restrictions should include roof top mounted equipment.

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4 Next steps

4.1 Senior Housing

The Zoning Amendment does not address the goals of the Comprehensive Plan for supporting seniors remaining in the community.

Recommendation:

The Planning Board recommends the establishment of a task force to provide guidance to address the goals of the comprehensive plan for supporting seniors remaining in the community. Senior housing: Senior enriched/independent would be reviewed.

4.2 Precedent for Waterfront Zoning

Zoning is complex, takes time, and requires significant community input. As the Village starts rezoning for the Waterfront, the Planning Board would like to see more public outreach and dialog than there was in this process to modify Senior Housing zoning.

Recommendation:

The Planning Board recommends the BOT engage only planning consultants who have a record of accomplishment in community engagement.

The BOT should engage with the community regarding the process of rezoning for the Waterfront and the fiscal analysis that is underway.