

Village of Irvington  
Zoning Board of Appeals

**Minutes of Work Session held November 15, 2007**

A work session of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M., Thursday, November 15, 2007, in the Trustees' Meeting Room, Town Hall, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman  
Bruce E. Clark  
Joy S. Goudie  
Christopher Mitchell  
Arthur J. Semetis

Mr. Lustenberger acted as chairman and Mr. Mitchell as secretary of the work session. The session's purpose was for the Board to meet with members of the Off-Main Street Zoning Committee (OMSZC), appointed by the Village Board of Trustees. During the meeting, ZBA members were asked to comment on the OMSZC's "Proposed Amendments to Two-Family District," dated October 23, 2007 and provided to the ZBA on that same date. Members of the Off-Main Committee present included Douglas McClure (Chair), John Canning, Andy Lyons, and John Malone. ZBA members Lustenberger and Mitchell are also members of the OMSZC.

Mr. Lustenberger welcomed the Off-Main Committee members, as well as the members of the general public who were present as observers. He outlined an informal procedure under which ZBA members who did not also sit on the OMSZC would be invited to comment on the "Proposed Amendments," and then to enter into colloquies with Off-Main Committee members about the issues raised.

The proceedings began with Mr. McClure recalling that the village center had been laid out in the mid-19<sup>th</sup> century, with most parcels measuring 25 feet by 100 feet. At present, however, 5,000 square feet is the required minimum lot size in this district. Mr. McClure presented diagrams that were included in the "Proposed Amendments" (following the three colored figures). These diagrams first depicted a generic structure that could be built\* under current zoning on 2,500-square-foot parcels in the present 2F district. Given required setbacks, Mr. McClure noted, the structure would have to be unworkably narrow (measuring five feet). Current zoning, he stated, means that any proposed change to an existing residence sets off a long process of applying for a variance, since the structure partly occupies setbacks that are called for by the Village Code. Mr. McClure's second series of diagrams addressed the same issue in relation to 5,000-square-foot lots, presenting images of structures that could be built on parcels of that size, under current zoning regulations. He said that at present in the 2F district, there is a rule by variance, rather than a rule by code.

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\* Assuming that a zoning variance were granted, given the current 5,000-square-foot requirement on lot size.

On the specific theme of setbacks, Mr. Canning observed that when some houses on Irvington side streets had been built at the front of the available lots, that had been a reasonable choice, maximizing private space at the back of the parcels involved.

Mr. Clark stated that a view had gained currency that there had been a lot of variances in Irvington's core village, but that this view was not accurate. Mr. McClure responded that the present situation is not proper zoning practice. At this point Mr. Canning and Mr. Semetis conducted a brief colloquy in which Mr. Canning endorsed Mr. McClure's assertion about burdensome approval processes. Mr. Semetis stated that in his view only anecdotal evidence had been brought forward that many property owners on Village side streets were disadvantaged by any frequent need to request zoning variances.

Mr. McClure continued, presenting diagrams (included in the same series mentioned earlier) showing structures and placements that would be permitted under the proposed new zoning. He noted that required side yards would measure three feet, for a total of 6 feet between structures; on a 2,400-square-foot parcel, permitted coverage would be set at 1,000 square feet, and rear-yard setback would be established at 20 feet. Both Mr. McClure and Mr. Malone stressed that the proposed zoning would include multiple controls, dealing with setbacks, coverage, and floor area ratio (FAR). The combined effects of these controls, they stated, were likely to counteract efforts to create excessively bulky structures under the proposed new zoning regulations. (Mr. Malone also noted that there were no guarantees that the residential shape shown on these panels – a two-story structure with a simple pitched roof – would be chosen by property-owners or architects, if the "Proposed Amendments" are enacted.) Mr. McClure observed that one objective of the new zoning proposal was to encourage housing that would be more affordable – a desirable outcome.

Mr. Canning said that he hoped constructive suggestions would come out of this consultation process. Mr. Malone echoed that sentiment, and noted that the 20-foot backyard setback was one area of the OMSZC proposal for which revision has recently been discussed.

Concluding his presentation, Mr. McClure referred to a diagram depicting the application of new zoning on 5,000-square-foot parcels in the proposed 2FD district. He noted that one intention of the Off-Main Street Committee was to encourage slightly off-center placement of structures on such plots, to provide more open space and variety. A good many Village houses constructed prior to the institution of zoning, he observed, had been placed to one side on their parcels, for the same purposes.

Mr. Clark began his comments by expressing appreciation for the time and efforts of the OMSZC members, in producing the draft proposals. He inquired about how the provision for a three-foot side-yard minimum had been arrived at. Mr. Canning stated that the Irvington Fire Department had cited the need for a five-foot passage between buildings for safety and to facilitate fire-fighting; the Off-Main Committee had opted to increase that to six feet (three feet on each side of the property line).

Mr. Clark cited a phrase that occurs in the "Proposed Amendments," in § 224-16.b.B.1.d.: "town homes." (The full text of that item is: "Side yards may be 0 feet in the case of town homes. If a side yard is provided it must be 3 feet.") Mr. Clark asked what

“town homes” are, as mentioned here? Mr. McClure observed that this item has been brought up by other persons who have read the draft. Mr. Malone stated that this provision was designed to address the two existing sets of attached homes on North Ecker and North Buckhout Streets, and that perhaps this item needs clarification. It was also stated that Ed Marron, the Village Building Inspector, had communicated to the OMSZC his view that the need for firewalls between any new attached buildings should be emphasized to all involved.

Mr. Clark said that he worried about the building that would probably take place if and when this revision passes, on fully 22 new lots (allowing for the credit of 4 lots caused by the proposed up-zoning of the Main Street School property). He observed that fully 78% of the properties in the proposed 2FD district now conformed to a thirty-foot backyard setback; thus, he continued, any need to produce greater conformity on that score was not a big problem. Mr. Clark expressed his view that the “town home” concept was amorphous, and might not find wide backing in Irvington. He observed that there are many intelligent people in the village who were likely to be energetic in finding all buildable scraps of land, and utilizing any provision included in the Code that might offer an opportunity for added development.

Mr. Malone stated that it would be significant to know whether there was a broad consensus in favor of town homes in the region near Main Street. There might not be such a consensus, he noted. There are two existing examples of town homes on Village side streets, he added; Mr. Lyons observed that, looking to future construction, the development of town homes might be a reasonable method to utilize. Mr. Clark stated that just about any block in the Village could end up with town homes, if they are permitted. Mr. Semetis added that apartments in such structures might well be valuable, citing a project (to remodel an existing commercial structure on North Astor Street) that was recently granted variances by the ZBA, and whose developer estimated that flats might be sold for approximately \$1 million each.

Mrs. Goudie noted that in 2004 the Irvington Historic District Committee had conducted a survey showing opposition among Village residents to the town home concept. Mr. Malone stated that the OMSZC would have conducted a consensus-building phase, consulting residents, if the Committee had set out to change the Village’s character.

Mr. Clark went on to express worries about the proposed coverage on 5,000-square-foot lots; a 66% increase in coverage is contemplated for such parcels, from 1,200 to 2,000 square feet. He said he expected that these parcels will be built upon, and that this coverage provision runs right in the teeth of the Village’s recently-passed flood control legislation. The Off-Main Committee’s plan also, in his view, threatens green space, adding that many Irvington residents had purposely left such density behind in New York City.

Mr. Malone stated that the “Proposed Amendments” effect on coverage may balance out to produce little net change, since allowable coverage on smaller lots would be reduced. Mr. Canning said that if dry wells were constructed, they would deal with part of the flood problem, which he recognized as a real concern.

Mr. Clark also asked why grandfathering existing non-conforming lots and structures was not a preferable solution, rather than the Committee's proposals. Mr. Mitchell recalled that grandfathering had been set aside by the OMSZC since it would provide no guidance for future construction or other revisions.

Mr. Clark summed up his comments, touching briefly on the "town home" issue, the rear-yard setback question, and the matter of permitted coverage on larger plots. With 22 lots to build on, the proposed revisions would affect the whole village, and the ten-foot contemplated reduction in required backyard setback will lead to new construction by many homeowners. Mr. Malone noted that it might be important to move beyond a focus on "conformance" to emphasize residents' "desire" as well.

Mr. Semetis commented, stating that he was not a fan of the proposed zoning changes. He focused on the assertion that the OMSZC sought to preserve the village's character, saying that he knew of no case where a property owner has faced hardship due to the need for zoning variances. He discussed the development of zoning regulation in Irvington, stating that when the village side streets were zoned in the 1950's, the legislators probably sought to preserve the character of the community by ensuring that there would be a review if denser development were proposed. That statute has avoided, he said, "clear-cuts" that had affected other, neighboring villages. Non-conformity, in his view, bothers no one. Mr. Semetis also distributed a set of written comments on the zoning proposal, which he requested be preserved and distributed with the minutes for the work session.

Mr. McClure said that 1950's zoning may not have been so sophisticated, and some streets have indeed changed, with porches being filled in, and houses extended with structures facing their rear yards. In a discussion, Mr. McClure agreed with Mr. Semetis that it was not possible to say whether zoning variances had resulted in those structural alterations.

Mr. Semetis stated that the allowable FAR for buildings on village side streets was being doubled under the "Proposed Amendments," to 0.8, as against 0.43 for other sections of the village. Mr. Malone responded that some houses dating from the 1890's may have FAR ratings higher than 0.8. Mr. Semetis reported that he had obtained the Town of Greenburgh's property cards describing houses on Mr. Malone's street in Irvington's center and that, according to that source, a majority of those houses had FAR ratings of less than 0.6. How would it be possible to know, he asked, whether an FAR of 0.8 is a good target for the village center? Mr. Malone noted that it had not been feasible for the OMSZC to survey FAR in the area it was asked to focus on, since such a survey would require extended access to homes in the district. The level of 0.8 was not chosen in order to expand the structures on Irvington side streets. Rather, the planning firm that advised the Committee had estimated that an FAR of 0.8 would well describe the present density, and contribute to increase conformance under revised zoning.

In a discussion with Mr. Canning, Mr. Semetis stated that he believed the zoning in the current 2F district should not be changed, and asserted that he was deeply troubled about the proposed revision. He mentioned studies conducted in 2002 (by the Land Use Committee) and in 2004 (by the Irvington Historic Committee) that he asserted showed a public desire for neighborhood preservation in the Irvington's core village. Mr. Malone

observed that an historic zone might indeed be desirable, but that zoning is a different thing. No zoning authority in Irvington has the powers that would be conferred by an historic-preservation ordinance, he noted.

Mr. Clark stated that one aspect of zoning in the center of Irvington affects everyone, and that is parking. The current Code calls for off-street parking to be provided for new structures in what would be the 2FD district, and the Committee's proposal makes no change in that provision. However, OMSZC members were agreed that actually providing that parking would be difficult. Lots would be too narrow to afford the needed side setback for parking, and curb-cuts to allow for access to new private parking would sacrifice on-street parking spaces. Members of the Committee, however, noted at this point that maintaining the Code's provision-of-parking requirement might serve in a positive way, to deter denser construction in the village's center.

Mr. Clark stated that the conflict between the Code's call for parking and the other parts of the Committee's proposed changes were an "inherent incongruity." He was concerned that the parking requirement might be set aside by governmental authorities. Mr. Malone and Mr. Canning agreed that a tension was present in this area, and that in the future it might be necessary to eliminate the parking requirement in the 2FD district. On the other hand, Mr. Clark said, one might eliminate the additional density (by not approving the proposed zoning changes).

Mr. Semetis expressed his view that the Master Plan adopted by Irvington in 2003 should receive more attention in the present connection. The Master Plan, he said, calls for "controlling and managing growth," a goal he did not believe was served by the Off-Main Committee's proposal. He expressed support for a 30-foot rear yard setback in the district, along with his doubts that village residents favor "new urbanism," a phrase that was mentioned (perhaps as a goal) in the minutes of one OMSZC meeting. He also requested that the Master Plan and the OMSZC proposal should be made available to the public on the Village's Web site, together with the 2004 Draft Historical Subcommittee Report. Mr. Malone agreed that the Master Plan ought to be available at that location.

Mr. McClure addressed the issue of public hearings, which had been mentioned during the evening's discussion. He observed that a period for open hearings had always been planned as a stage in the Committee's work, and that that stage was beginning now. He expressed his wish for all to be comfortable with the process of considering zoning revisions.

A colloquy took place regarding the degree to which the viewshed in the village, west of Broadway, was or might be protected in law. Mr. Lustenberger stated his belief that the Village Code mentioned views as a desirable but not enforceable consideration, when property development and zoning variances were being contemplated. In law, the general tradition was that property-owners could not have views by right, he said. On the other hand – he and other participants in the meeting concurred – the ZBA's practice had been to take views into consideration, and if possible to encourage project modifications which might mitigate the loss of specific views. Mr. Lyons stated that the Planning Board routinely considered the potential impact on views, in considering site plans. Mr. Clark

stated that preserving the incidental views that are now available from within the core village should receive consideration.\*

Mrs. Goudie commented, saying that she was also troubled by the Committee's proposal, but that she was also now confused, following the discussion. She could not see how the proposed zoning changes would both preserve the neighborhood character, and promote variety among buildings' appearances, as members of the OMSZC had indicated (in discussing the somewhat varied placement of structures on lots that would be permitted within a new 2FD district). Mrs. Goudie said it seemed that just about every lot in the village center had been fully built-out under existing regulations; she could think of only four lots (other than the school parcel) where new houses would be permissible under current zoning regulations. All she could surmise, she said, was that the proposal's goal was to allow further build-out, and/or new, denser construction.

Mr. Canning responded that many existing houses are small, but that growing families need more space. Even a property-owner who simply wished to renovate his basement, to provide additional living space, might face the need to request a zoning variance, because of some needed outside change involving access to the basement space. This constitutes a burden and an expense, for those who can least afford it.

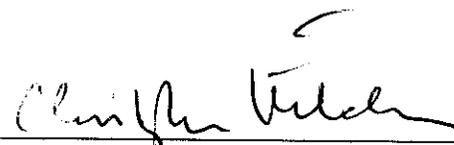
Mr. McClure observed that variances undermine a zoning code, and Mr. Malone expressed doubts that the 1950's zoning was very well thought-through. The drafters of the zoning sections of the Village Code may simply have placed village side streets, where lots were small, in the 5,000 square-foot-category, since that was the smallest lot size permitted in Irvington's zoning system.

Mrs. Goudie said that Mr. Canning had answered her question: some residents want to build out their houses, but without providing rights for the surrounding neighbors. She also said she was concerned about a future legislative mis-step on the matter of parking: changing an existing law in order to satisfy a new law.

Mr. McClure observed, at the meeting's conclusion, that the Village Trustees had given a charge to the Off-Main Street Zoning Committee to address the current situation, since only four properties in the center-village 2F district conform to required zoning.

Mr. Lustenberger thanked all participants, and said that he believed the process of receiving these and other comments would enable the Off-Main Committee to submit a superior, thoroughly-pondered draft revision to the Village Trustees. He said he assumed that the OMSZC would meet again after receiving comments from all the relevant Village boards.

Respectfully submitted,

  
Christopher Mitchell

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\* Later in the meeting, Mr. Clark reported after consulting the Village Code that viewsheds were mentioned there as a consideration in relation to Wireless Telecommunications Service Facilities (§ 224-108.D.5), and in Article XXIV, on "Viewshed Preservation Overlay Districts."