

# **MEETING NOTICE**

## Village of Scarsdale

A Work Session of the Scarsdale Village Board of Trustees is scheduled for Monday, October 7, 2019 at 5:30 PM. The meeting will be held in the Third Floor Meeting Room located on the second floor in Village Hall.

### **Agenda**

1. Land Use – Scarsdale Improvement Corporation Proposed Village Center Development – 5:30 PM – 6:00 PM
2. Bulk Review Committee - Presentation of Report to Mitigate Bulk in new Construction – 6:00 PM – 7:30 PM

CS: 10-1-19

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cc: Lobby Bulletin Board



## VILLAGE OF SCARSDALE

### **Memorandum**

**To:** Stephen M. Pappalardo, Village Manager

**From:** Daniel Steinberg, Chair, Planning Board  
Jeffrey Watiker, Chair, Board of Appeals  
Elizabeth Marrinan, Village Planner

**CC:** Jessica Kourakos, former Chair Board of Architectural Review  
Shelby Miller, Assistant Planner

**Date:** July 19, 2019

**Re:** Bulk Review Committee Report

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After a series of Village Board meetings regarding land use issues and, upon review of the Municipal Zoning Survey dated October 12, 2018, the Village Board requested that the “bulk issue” be discussed further. The Village Board asked the Chairs of the land use boards to work with staff to:

1. Define the bulk issue, if possible.
2. Discuss zoning tools which might be studied and/or implemented to address the bulk issue.
3. Explore non-zoning alternatives to address the bulk issue.
4. Define potential next steps including developing a scope of work for a consultant and/or identifying minor code changes which could be adopted without extensive further study.

The Bulk Review Committee (the Committee), consisting of Jessica Kourakos, former Chair of the Board of Architectural Review, Daniel Steinberg, Chair of the Planning Board, and Jeffrey Watiker, Chair of the Board of Appeals, met three times: January 28, 2019, March 27, 2019 and May 8, 2019. The Committee discussed many factors that appear to contribute to the problem of bulk in new construction. The discussions encompassed the effort made by the Board of Architectural Review (BAR) to encourage design elements that mitigate the impact of large homes. The Committee also identified and explored a variety of methods by which the problem of bulk might be addressed. To a significant extent, these included modest adjustments to the zoning code which, if enacted, would help to reduce bulk in new houses and large additions. However, the Committee also considered non-zoning alternatives to encourage the preservation of existing homes rather than demolition and replacement with new larger houses. A full account of the Committee’s work is presented below.

## **A. Defining the “Bulk Issue”**

The “bulk issue” is not easily defined. It refers to the phenomena of a new or enlarged home that is significantly larger than, and out of character and scale with, the surrounding homes of the neighborhood. The bulky home appears massive compared to those around it and, consequently, may be viewed as detrimental to the aesthetics and desirability of the neighborhood, as well as the goal of maintaining pleasing sight lines and the “village in a park.”

Many factors contribute to the appearance of bulkiness. The square footage of a home matters, but there are design elements that can exacerbate or minimize the perception of bulk. Ten-foot ceilings that have become a desirable feature of new homes can yield a home that appears materially larger than those built years before, while complex roof designs, stepped-back exterior walls, and various exterior finishes can mitigate what might otherwise appear massive. How a home is situated on a property impacts the perception of bulk. Homes built closer to the street than other nearby homes, or which appear to tower over neighboring homes, will appear bulkier. Homes with larger side yards can appear less bulky, and homes with lower roofs do not appear as massive. The removal of mature trees from properties can also contribute to the appearance of bulk.

The construction of bulky homes is a function of demand by homeowners for large homes and the economics which enable developers to construct such homes and achieve greater profitability. Thus, so long that there remains a demand for such homes, the problem of new bulky homes is unlikely to abate.

## **B. Recommended Incremental Adjustment of the Zoning Code**

Much of the Committee’s discussion about reducing undesirable bulk in new homes and large additions centered on modest changes to the zoning code. The Committee focused on changes that were (a) each individually modest, but which taken together and overtime, would reduce the appearance of excessive bulk in the Village, (b) easy for the public to understand and would, where possible, clarify and/or simplify the zoning code and the application and permit processes, and (c) reasonable to adopt and implement in the near term with minimal disruption to Village homeowners.

To inform the Committee’s discussions, staff pulled data (plans, FAR forms, zoning tables and lot coverage forms) concerning four new homes which received Certificates of Occupancy in 2018. The data enabled limited testing of various zoning change scenarios on a small sample of new homes on different lot sizes. The properties were located in the A-1 (1 acre), A-2 (20,000 sq. ft.), A-3 (10,000 sq. ft.) and A-5 (5,000 sq. ft.) zoning districts.

The Committee identified and proposes that the Village Board adopt five zoning changes:

1. Height - Reduce the maximum permitted height to 32 ft. from 35 ft. (measured to the mid-point of the roof).
2. Reduce the Floor Area Ratio (FAR) side yard setback “bonus” by 30.0%.

3. Eliminate the FAR requirement that, in order to qualify for the side yard setback bonus, additions to existing homes must be built at the rear of the house.
4. Clarify the code to specify that the FAR garage credit applies to the square footage of the floor level of the garage where cars are parked, but not to space on upper floors.
5. Require Planning Board site plan approval for single family residential projects involving more than 15,000 sq. ft. of gross floor area rather than a Special Use Permit from the Board of Appeals.

An explanation concerning each of these proposed changes follows:

**1. Height -- Reduce the maximum permitted height to 32 ft. from 35 ft.**

In Scarsdale, height is measured from the average existing or final grade, whichever is lower, to the mid-point of the roof (*i.e.*, the midpoint between the roof ridge and the top plate of the wall). At present, the maximum permitted height is 35 ft. According to the 2018 Municipal Survey, all of the surveyed municipalities regulate the maximum permitted height of single family houses and range from 28 to 35 ft.; however the method of measuring height differs. Committee members believe the public is often concerned about the total height, not the height to the mid-point, and suggested that applicants be required to provide both measurements on land use board applications.

The Committee considered the four sample houses which ranged from 27 ft. 4 in. to 30 ft., again measured to the mid-point of the roof. Staff related their belief that most applications do not approach the 35 ft. height limit. The Committee discussed the possibility of reducing the maximum permitted height and the potential of rendering existing houses non-conforming. The Committee also considered second story additions, concluding that most homes likely could add such an addition without exceeding 32 ft. and that, if necessary, a variance could be sought from the Board of Appeals in non-customary situations. The Committee also discussed possible “unintended consequences” relating to the design of new homes, including the possibility of awkwardly designed shorter houses or houses with flatter roof slopes which might exacerbate the perception of bulk.

Ultimately, the Committee perceived that reducing the maximum height of roofs will help to mitigate the appearance of bulk with adverse consequences being unlikely. The Committee recommends, therefore, that the Board consider amending the code (Ch. 310-25 and other related chapters) to reduce the maximum permitted height to 32 ft. from 35 ft. (measured to the mid-point between peak and). It also is suggested that the Building Department begin requiring that applications to land use boards include total height to the top of the roof as well as the height to the mid-point of the roof.

## **2. FAR – Reduce the side yard setback bonus by 30.0%**

The Committee looked at three different options to reduce the FAR: Reduce the maximum permitted FAR by 5% for all lot sizes; reduce the side yard setback bonus by 30.0%; and/or eliminate the garage “credit.” After reviewing the data from the sample houses and discussing the issue, the Committee felt the side yard setback bonus reduction would be the best approach as it predominantly would affect new houses and large additions and reduce bulk incrementally, while still encouraging side yard setbacks greater than the minimum required by the code.

The Scarsdale FAR regulations incentivize increased side yard setbacks by permitting a limited amount of additional floor area above a base maximum. Known as the “side yard setback bonus,” an additional 100 sq. ft. of floor area is allowed above the base maximum for each foot a house is set back beyond the required side yard setback. The “bonus” is capped at 1200 sq. ft. in the A-1 (1 acre) zoning district, 700 sq. ft. in the A-2, A-2a and A-3 (20,000, 15,000 and 10,000 sq. ft.) zoning districts and 400 sq. ft. in the A-4 and A-5 (7,500 and 5,000 sq. ft.) zoning districts.

Reducing the side yard setback bonus by 30.0% would still encourage greater than required side yard setbacks but would provide only 70 sq. ft. of additional floor area for each foot the house is set back above the required minimum. The caps also would be reduced by 30%, making the maximum “bonus” 840 sq. ft. in the A-1 (1 acre) zoning district, 490 sq. ft. in the A-2, A-2a and A-3 (20,000, 15,000 and 10,000 sq. ft.) zoning districts, and 280 sq. ft. in the A-4 and A-5 (7,500 and 5,000 sq. ft.) zoning districts.

Calculating the impact of the reduced “bonus” yields a reduction in the total FAR of approximately 5%. In practice, however, the reduction may be somewhat less. When the 30% reduction was applied to the four sample properties, it resulted in a decrease in permitted floor area ranging from 2% (50 sq. ft.) on the A-5 lot to 4% (400 sq. ft.) on the A-1 lot. The explanation for the more modest reduction is that, although each of the four sample houses utilized the side yard setback bonus, none of them was set back enough to take advantage of the maximum permitted “bonus” amount.

The Committee also looked at the extent to which the reduction in the side yard setback bonus would render properties nonconforming. With respect to the four sample houses, the three smaller sample lots would become nonconforming, while the change would not affect the house on the larger A-1 lot. This finding reflects the practice of most new houses being built to the maximum permitted FAR, leaving little or no possibility of a material expansion of these homes. Therefore, while a number of newer homes will be rendered nonconforming by a reduction in the side yard setback bonus, there will likely be of little or no consequence for such homes (and their owners) because the homes already have been built to the maximum permitted FAR under the current code. The impact of the change in the “bonus” on older homes was not evaluated by the Committee.

Staff raised the question of whether the reduced “bonus” would be adequate to continue encouraging property owners to set houses back further than required by the code. The information available to the Committee was insufficient to provide a definitive answer.

An alternative to reducing the side yard setback bonus is to reduce the entire FAR calculated amounts (including the base FARs and the bonuses) by 5% across the board. Some Committee members felt, however, that this option was not as well targeted to homes on larger lots and new construction as the reduction of the FAR setback bonus. This led to some discussion of not applying this 5% reduction to the smallest lots (*e.g.*, 10,000 sq. ft. or less). Another alternative, the elimination of the garage credit, was not favored because it might encourage fewer or smaller garages leading to more on-street parking or separate storage buildings, and could encourage front-facing basement garages.

Thus, it is the Committee's view that a reduction in the side yard setback bonus will have a meaningful but incremental impact on the size of houses while continuing to encourage setbacks greater than the required minimums. The Committee's recommendation is that the Board amend the code (Chapter 310-104) to reduce the FAR side yard setback "bonus" by 30%.

**3. Eliminate the FAR requirement that to qualify for the side yard setback bonus, additions to existing homes be to the rear of the house.**

The current FAR regulations limit the extent to which existing homes can utilize the side yard setback bonus. This has the potential to be a constraint on the redevelopment of existing homes and an incentive to demolish and build anew.

To qualify for the side yard setback bonus, an existing home must be set back further than the minimum required setback *and* the proposed addition needs to be to the rear of the existing house. The intent in requiring that the addition be located at the rear was to limit the perception of bulk from the street. In practice, however, the unintended consequence of this rule may be to encourage the demolition of existing homes and the construction of new ones in their place. This is because new homes can be and are designed free of the constraint to build "to the rear of the house" which burdens existing homes.

It is difficult to evaluate and compare the bulk of an addition to an existing home, where the addition is visible from the street, with the bulk resulting from a demolition and reconstruction. It also is uncertain the extent to which the award of a bonus only to construction at the rear of existing homes actually results in teardowns. Yet, in proposing that the "rear of the house" requirement be eliminated, the Committee is cognizant of the goal of encouraging the preservation of the existing housing stock. Therefore, it is the Committee's recommendation that the Board amend the code (Chapter 310-104) to eliminate the requirement that additions be placed to the rear of existing homes in order to qualify for the side yard setback bonus.

**4. Clarify the language of the code to specify that the FAR garage credit applies only to the square footage on the floor level of the garage where cars are parked but not to space on upper floors.**

Scarsdale's FAR regulations exclude the lesser of 250 sq. ft. or the square footage of the garage from the FAR calculations on smaller lots (9,999 sq. ft. or less) and the lesser of 400 sq. ft. or the square footage of the garage on larger lots (10,000 sq. ft. or more). Some members of the public have asserted that the section of the code is not clear and that the bonus might be applied to area above the

garage level. The Committee agreed that it makes sense to add clarity to the chapter to ensure the bonus applies only to the square footage on the floor level of the garage where the cars are parked and not also to space on upper floors. Therefore, the Committee recommends that the code (Chapter 310-103) be amended to eliminate any ambiguity respecting the extent of the garage bonus.

**5. Require Planning Board Site Plan approval for single family residential projects involving more than 15,000 sq. ft. of gross floor area, rather than a Special Use Permit from the Board of Appeals.**

The FAR regulations currently require a Special Use Permit from the Board of Appeals for single family residential projects with more than 15,000 sq. ft. of gross floor area. The code does not provide guidance, standards or criteria for the Board of Appeals to consider when reviewing these applications. In the absence of guidance from the code, the Board of Appeals has looked at, among other things, siting, landscaping, setbacks, tree removal and stormwater management. The Board of Appeals also has considered the use of these single family projects; but, as to use, the zoning code specifies the permitted uses in the Residence A - single family residential districts.

The Committee reviewed the regulations and believes the Planning Board is better suited to the process of reviewing large residential projects. The relevant issues, including siting, landscaping, setbacks, tree removal, and stormwater management, regularly are considered by the Planning Board during site plan review. Moreover, the Planning Board already reviews single family house development on wetlands properties, flag lots, and lots created through a cluster subdivision. The review of single family residential projects with more than 15,000 sq. ft. of gross floor area should not be materially different and will not add substantially to the Planning Board's workload as the number of these cases is quite limited (typically not more than one per year).

Therefore, it is the Committee's recommendation that the code (Chapters 77, 251, 310-102 and other related chapters) be amended to require Planning Board Site Plan Review of single family residential projects with more than 15,000 sq. ft. of gross floor area, and that the requirement for a Special Use Permit from the Board of Appeals be eliminated.

**C. Additional Zoning Alternatives**

The Committee discussed a variety of additional ways by which the zoning code might be modified to reduce instances of bulk. These changes are likely to be more controversial and would warrant more careful consideration and study. The additional zoning changes considered included, for example, incentivizing second floor setbacks to discourage the construction of new homes that tower over neighboring homes, increasing side yard setback requirements and substantially reducing the maximum FAR.

**D. Non-Zoning Alternatives**

The Committee had discussions about potential non-zoning techniques to mitigate the problem of bulk. The Committee was interested in preserving the existing housing stock and urges the Village Board to consider pursuing financial incentives for preservation as opposed to demolition.

Many neighborhoods in Scarsdale are populated by charming older homes that are nearly one hundred years old or even older. The construction of new bulky homes in these neighborhoods can be particularly disruptive to the unique character of these neighborhoods. The Committee considered the possibility of implementing financial incentives to encourage the preservation of such older homes, thereby protecting neighborhoods from the undesirable impact of bulky new homes.

One incentive may be provided in the form of a tax abatement for a period of years on the increased property taxes that would become due on the completion of a renovation and/or expansion of an existing older home. The tax increase could be abated for five years and phased in over the next five years.

Staff noted that the New York State Real Property Tax Law generally does not authorize local communities to provide tax credits or incentives. To obtain authority to implement an incentive of this kind requires enabling legislation at the state level. The desirability and logistics of such legislation would have to be explored, as would the feasibility of securing such legislation. Support for such legislation might also be found in other communities with a shared concern for preserving older homes and the character of their communities.

The Committee also discussed the role of the BAR in controlling bulk, the importance of trees and landscaping in preserving neighborhood character and the potential of designation of historic homes.

#### **E. Other Considerations**

The Committee discussed, but generally did not see a compelling need at this time, to engage consultants to help identify possible solutions to the bulk housing issue. While studies of this kind have been undertaken in the past, the Committee did not see them as a necessary precondition to implementing the recommended incremental zoning changes outlined in this report. However, the Committee was cognizant that limited staff resources might warrant the use of one or more consultants to help evaluate some of the recommendations discussed above. For example, a consultant might be engaged to help staff evaluate the level of non-conformity that might be caused by lowering the maximum permitted building height, or by reducing the side yard set-back bonus. In contrast, the broader changes to policy and the code that are identified in this report would be candidates for more careful study and, as required, the engagement of outside professionals.