

Board of Trustees  
Regular Meeting  
April 19, 2005

#### **45:05 LOCAL LAW NO. 5 OF 2005 MIXED USE BUILDINGS DEFINITION**

**Mayor Kinnally:** This proposed local law is the result of a number of meetings held by the Planning Board, by the Village Board jointly with the Planning Board, public hearings, public comments. Much discussion has ensued to get us to the point where we have a workable definition that will not only provide the flexibility for the Planning Board, but also the protection for the community and not dismantling the amendments to zoning code and to the downtown zoning that we recently enacted. We have had exhaustive comment on this and the record is fairly complete.

**Jim Metzger, 427 Warburton Avenue:** I would like to distribute this letter to the Board. It was sent to Trustee Swiderski, based on an e-mail that he had sent out discussing this things.

**Mayor Kinnally:** It will be part of the record.

**Lin Osborn, 17 Villard Avenue:** I have a letter here from Leslie Chervokas that she asked me to read.

“Ladies and gentlemen, before acting to approve the proposed changes to the zoning code, please consider the following. The state statutes make it clear that zoning regulations are to be adopted in accordance with a comprehensive plan, in quotes. The purposes of these regulations are to accomplish a number of specific objectives, including conserving the value of buildings, encouraging the appropriate use of land, maintaining the character of zoning districts, facilitating the provision of transportation, water systems, sewage treatment, schools, and parks, lessening travel congestion, preventing overcrowding, providing adequate light and air, and containing damage from fires, floods, and other dangers.

She gives the citation.

The most serious problem with the proposed changes to the zoning code is the process that is being used to effect the changes. To amend the code to accommodate the niceties of a particular site or project is to erode the very purpose for which a zoning code exists, and likely will impede the Village's ability to enforce the code in the future. If you proceed in this manner you will be subjecting us to the possibility that we will not be able to insist on compliance with a cohesive law with respect to future projects, such that development in Hastings will become a free-for-all, for all developers, that is.

I urge you not to implement any of the proposed changes via amendment to the code. If such changes must be implemented, and I am not convinced that they must except to cater to special interests, they should be subjected to the procedure for obtaining a zoning variance. The variance process already affords us with an adequate legal mechanism to evaluate such changes in accordance with the code and does not threaten the code's integrity to the detriment of present and future Village residents.”

**Danielle Goodman, 28 Ashley Road:** I ask you to reconsider that which you are about to do, and that is to change the character of our Village. We are a village. I have heard a lot of discussion with misapplication of urban planning principles to a village. The downtown has parts that are open space right now. The downtown Village is not a city. It is not Yonkers, it is not Scarsdale, it is not Bronxville. It is a village. The amendments, as proposed, will encourage overbuilding of the downtown. We will be wall-to-wall concrete, we will be windows, we will be stainless steel. I implore you not to do this.

**Trustee Swiderski:** To me, this is ultimately use discussion and, secondly, a mechanism for implementation of that use. All it comes down to is, are there occasions where residential use makes sense on the ground floor of a development? I do not believe that residential use belongs as-of-right of the first floor. But I do believe there are circumstances where it might make sense. The question of mechanism then remains how do you implement something where there is a review to determine whether residents on a ground floor make sense. At least to my understanding of how the Zoning Board is limited in their review process, and how the Planning Board is less limited, I believe the Planning Board is the place where such a review should sit. I do not think it is any more complicated than that. If you do not believe residences belong on the first floor you will disagree. And if you do, then this seems to be the best mechanism for implementing that.

**Trustee Apel:** I disagree. I am strongly against the shift of power from the ZBA to the Planning Board. I do not think there is anything wrong with the current system that we have. Given the past, if we had given this power to the Planning Board, then the Andrus property would probably be all built up today because they were in favor of the design. And only the ZBA were the ones that intervened and put a rein on the project.

Having residential on the ground floor was not what we envisioned. With newer properties that are coming on the market in the downtown, if this law passes, we will have altered this plan with unforeseen consequences, and for what? So that one developer can maximize the return of his money at the expense of the Village. Have you actually looked at the proposed building? It would stand out like a sore thumb. Picture yourself looking up from the train or the waterfront or from the Warburton Bridge. This project will be massive, and will not be similar to those projects around it.

Keeping the law the way it is written will force the developer to come back with a more reasonable design more in keeping with the Village and more in keeping with what the downtown committee was thinking of when they brought us the revision to the zone in the

past. People far wiser than I instituted the concept of a ZBA. Why? To protect against just this: developers coming in and asking for, and getting, changes in the law that benefit them and not those who have the most at stake in the community, the citizens.

Why not keep the checks and balances that have been in place to protect us? Why not make the developer come before the ZBA to plead his case? Time would be better spent on the Planning Board planning, instead of reacting to a developer's request. We are still looking for those plans from the Planning Board, and where are they? They are nowhere, because they have been spending an inordinate amount of time looking at this request to advise the Village Board. If you want to have a mixed use, then go for the variance and bring in all the alternatives and let us see what those alternatives are. Because without coming to the ZBA we will never be able to see what possible alternatives there could be. Therefore, I cannot vote for this.

**Mayor Kinnally:** This has been a difficult issue for me, and I have gone back and forth on this. There is a lot of unknown in this. But I have a basis for saying that all is not lost if the matter is going to go before the Planning Board. The Planning Board may not have the same formula to follow as the Zoning Board of Appeals. But the Planning Board, certainly in the way that they articulated the issues at our joint meeting, intend fully to vet any project to ensure that alternatives are considered and that any developer justify any deviation. As was indicated earlier, this is not an as-of-right, and any proposal will be scrutinized.

The size of a structure is a function of the envelope allowed under the zoning code, and this does not increase that envelope. None of the discussions we have had have talked about making a structure bigger. It is a question of utilization of the existing space. There is no proposal before the Board of Trustees dealing with this particular building. I have my own thoughts on size of the building, and I will, at appropriate times and to the appropriate people, make my thoughts known as a citizen. But as a mayor and part of the Board of Trustees, we are not at the present time dealing with a proposal.

But I do not minimize the concerns that have been expressed. Jerry Quinlan articulated quite well the rationale for having the matter stay within the Zoning Board of Appeals. Equally well articulated were comments made by the Planning Board as to why they thought they could look at a proposal with the same type of scrutiny and in the entirety, and come up with a better development not for the developer, but for the community. We are not jumping through hoops for any particular developer but, ultimately, whatever is erected in the CC district we are going to have to look at and live with. It has to be within scale, it has to be within character. I believe that we will be able to work with this and that we will get as good, if not a better, project, any project, out of this allowing the matter to be reviewed in its entirety in the context of the entire proposal and the entire CC district by the Planning Board. Believing that the Planning Board can and will do its job, I am inclined to vote for this.

**Trustee Holdstein:** We are simply revising an issue as it relates to first-floor residential. As you pointed out, it has no bearing on whether this project is too big, too small, and we all have different opinions. This is t a revision to the code to adjust for the potential for some

first-floor residential in a mixed use building, nothing more and nothing less. It does not dictate the size or the impacts that are governed by a lot of other stipulations in the code. When we talk about the health and vibrancy of the downtown it is important that we look at it in its entirety, which I think this Board has done, and recognize that in this particular site the requirement of retail would be difficult and could potentially lead to a lot of empty storefronts that front a parking lot. We are looking at the comprehensiveness of the downtown, and making sure that every project has the right viability for our downtown. It is a small change, a minor revision. It still carries a reasonable amount of checks and balances to ensure that dramatic negatives to our downtown do not, happen.

**Trustee Apel:** It is not a small change. When you take the power from one board and give it to another board, that is a big change. And when you encourage residential in that particular area do not forget at this time the market is such that the developer will make more money if he puts residential in. It was not that the concept of the CC district was to have people live down there. It is just that we do not want it overpopulated. In some instances, if a developer is not allowed to have residential they have to reconfigure what they are doing, and their project will become smaller because they are obligated to put in parking. If they cannot put in as much parking as required for the larger building, the building will be made smaller. This is going to happen to other properties. Once this comes in...

On MOTION of Trustee Holdstein, SECONDED by Trustee Swiderski the following Resolution was duly adopted upon roll call vote:

**RESOLVED:** that the Mayor and Board of Trustees hereby adopt Local Law No. 5 of 2005 to amend the definition of “Mixed Use Buildings”?

BE IT ENACTED by the Board of Trustees of the Village of Hastings-on-Hudson as follows:

Section 1. Section 295-5, Definitions, of the Local Zoning and Planning Law of the Village of Hastings-on-Hudson, New York is hereby amended by replacing the definition of “Mixed Use Building” with the following:

A building containing both residential and nonresidential uses. Each nonresidential use within a mixed use building must be a permitted use within the district in which it is located and each use is subject to the requirements for said use as if contained individually, notwithstanding an amendment statement to the contrary. No mixed use building shall contain a motor vehicle service station, a gasoline filling station, a commercial parking lot, a commercial storage garage, a hospital, a hotel, or a public utility structure.

Section 2. Section 295-76, Central Commercial (CC) Districts, Subsection A (Principal uses), paragraph 16 is amended to read as follows:

(16) Mixed use buildings, provided that:

- (a) Any residential dwelling unit contained therein has a minimum gross floor area of 500 square feet.
- (b) Only nonresidential uses are permitted on the ground floor. The Planning Board, however, after a public hearing held upon the same notice as that required for a zoning variance, may, in its discretion, permit residential use on the ground floor in the CC District but only if such residential use: (I) is not located on that portion of the ground floor story that abuts a street, (ii) is compatible with neighboring properties, and (iii) is consistent with the commercial nature of the CC District.
- © Artist studios shall be permitted above the ground floor story.

Section 3. Section 295-77, Limited Industry (LI) Districts, Subsection A (Principal uses), is amended to read as follows:

- A. Principal uses. The following uses are permitted uses in an LI District: any principal uses permitted in a CC District as set forth in § 295-76A above, except: (1) mixed use buildings are permitted only if the mixed use building consists of one or more principal nonresidential use(s) located on the ground floor story, and one or more residential dwellings or nonresidential uses located above the ground floor story, and (2) mixed use buildings may contain artists studios on any floor.

Section 4. This local law shall take effect immediately.

<b>ROLL CALL VOTE</b>	<b>AYE</b>	<b>NAY</b>
Trustee Michael Holdstein	X	
Trustee Bruce Jennings	Absent	
Trustee Marjorie Apel		X
Trustee Peter Swiderski	X	
Mayor Wm. Lee Kinnally, Jr.	X	