

## DIAGNOSTIC ANALYSIS

### ZONING LAW OF THE TOWN OF NEW CASTLE, NEW YORK

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The purpose of this Diagnostic Analysis is to assess how to integrate the proposed Form-Based Code (FBC) for the Chappaqua Hamlet into the existing Zoning Law of the Town of New Castle (Chapter 60 of the Town Code). Adopting the FBC will affect many sections of the Zoning Law and the FBC itself will have to be inserted into an appropriate place in the Zoning. This analysis will begin with an assessment of how the FBC will affect and be affected by each Article of the Zoning. It will then make recommendations concerning where to insert the FBC and what changes will be necessary in other sections of the Zoning Law as well as other chapters of the Town Code.

**Article I. Purposes** – This is a series of statements of general purposes typically found in zoning codes and is not relevant to the FBC except to note that the FBC is consistent with the general purposes listed. If desired, another purpose could be added relating to making the Hamlet a more vibrant and walkable community center.

**Article II. Definitions** - The definitions will bear importantly on the way the FBC is drafted. It will most likely be necessary to have a separate definitions section for the FBC because it will have many terms that are not defined in the current zoning, terms that will be used only in the FBC. At the same time, however, many terms to be used in the FBC are also used in other sections of the zoning, sometimes with the same meaning and sometimes not. Therefore, it will be necessary to have a separate definitions section in the FBC, while also stating that terms in the FBC that are defined elsewhere in Chapter 60 will carry the meaning in the main definitions section unless the FBC states otherwise. The definitions section is typically finished last, after most of the FBC has been drafted, although the best practice is to develop definitions of terms as the FBC is drafted, since the definitions have important substantive ramifications and are best thought through during the FBC drafting process.

One important definition that will probably apply to the FBC is related to affordable housing. The New Castle zoning uses the defined term “Affordable Affirmatively Furthering Fair Housing (AFFH) Unit.” For reasons that are not clear, the regulations relating to the AFFH units are found in Section 60-220, which is part of Article 2, “Definitions,” rather than in Article IV, Regulations. The Town will have to decide whether to incorporate all of the provisions of these AFFH regulations into the FBC or whether some of them should be modified or omitted to maximize the effectiveness of the FBC.

**Article III. Establishment of Districts** – This Article establishes the zoning districts and the zoning map. It has long sections containing regulations for the Millwood Center Area Design Plan Overlay District (Sec. 60-350) and the Office Park Retail Overlay District (Sec. 60-360),

which are not relevant to the FBC for Chappaqua. There are a few provisions that will need to be tweaked, however, as follows:

1. In the list of districts in Section 60-300, item B(7), “B-RP Retail Business and Parking” should be deleted because that district will be replaced by the FBC.
2. Also in Section 60-300, there are three categories of districts, Residence, Business, and Industrial. The FBC district(s) will not fall into any of these categories, so I suggest that a fourth category of “mixed-use” or “form” districts be added, which would include the districts to be encompassed in the FBC.
3. Section 60-340 establishes the “order of restrictiveness of districts,” based upon the order in which they are listed in Section 60-300. It will be necessary to decide where the FBC districts fit in this ordering, which affects matters such as properties that are located in more than one district or that border on a different zoning district.

**Article IV. Regulations** – This Article contains most of the relevant sections that will affect or be affected by the FBC. This analysis will go through Article IV section by section.

§60-400. Application Regulations. Subsections A and B are boilerplate and C and D cover temporary uses associated with site development and the Westchester County Greenway Compact Plan, none of which relate directly to the FBC. The title of this section is misleading, as it has nothing to do with applications; perhaps the intent was “applicability of regulations.”

§60-410. District Regulations. This is a highly substantive section, with many detailed use and bulk provisions contained in tables at the back of the document. Comments on each subsection follow:

- A. Residence Districts. This doesn’t affect the FBC because it is not located in a residence district.
- B. Business and Industrial Districts. There are detailed use and bulk regulations for these districts. Those that relate to the B-RP should be deleted because that district will be repealed. Those that relate to the other districts will remain in effect. However, they will be superseded by the FBC in the Chappaqua Hamlet for the B-D, B-R, and I-P districts. A note will need to be added to this material referencing the FBC Article (tentatively, Article VIII) for the FBC districts.
- C. Supplementary Regs for Business and Industrial Districts. This is probably irrelevant to the FBC, but the material in the table in Attachment 6 should be reviewed to see if any of it should apply to the Chappaqua Hamlet.
- D. Sign Regulations. 10 pages of sign regulations. Need to decide whether the FBC should have its own sign code or whether it can use some or all of the material in this subsection. My recommendation is to avoid using this section and instead come up with a section on signs specifically for the FBC.
- E. Reserved (no comment)
- F. Public Garages and Gasoline Filling Stations. This seems like an odd pairing of subject matter, but its only purpose is to establish buffer distances between these two uses and the boundaries of residential districts. Unless this subsection is superseded,

it could affect where these two uses can locate within the FBC districts. I don't know if this is a concern or not.

- G. Professional offices and customary home occupations. This subsection only applies to residence districts, so it is not relevant to the FBC.
- H. Multifamily districts. This subsection contains detailed regulations for three special multi-family zoning districts, for accessory apartments in one-family districts, and for apartments in the B-R and B-RP districts. Therefore, none of this subsection applies directly to the FBC which will supersede these provisions. However, since the B-RP district will be eliminated by the FBC, references in subsection H(6) to the B-RP district should be deleted. The provisions of this section will no longer apply to the Chappaqua Hamlet, but they will still apply to the portions of Millwood zoned B-R.
- I. Dish Antennas. Regulations for dish antennas in all districts. These are probably obsolete due to changes in technology, but it will be necessary to determine whether or not these regulations should apply in the FBC.
- J. Athletic training centers. FBC should supersede this.
- K. Pigeons. This can probably be left out of the FBC altogether.
- L. Solar collectors or installations. This is an issue that the FBC will probably have to cover. Need to decide whether to use the existing section or develop a new one.
- M. Vape shops. Need to decide whether to supersede, use, or ignore.
- N. Chickens. Probably can ignore since chickens are unlikely to be raised in the FBC areas.

#### §60-420. General Regulations.

- A. Lots. This section contains boilerplate lot requirements, lot coverage standards, requirements for building on "substandard" (i.e. nonconforming) lots. and maximum floor areas for single-family homes in residence districts. These standards are either irrelevant to Chappaqua hamlet or they will be covered differently in the FBC. Therefore Section A can be superseded.
- B. Buildings and Uses. This section covers building location as well as general standards to prevent nuisance land uses (subsection 3). Subsections 1 and 2 will be superseded by the FBC. We should find out if the Town wants the "Prohibited use characteristics" in subsection 3 to apply to the FBC. My guess is that they will.
- C. Yards and building projections. This subsection covers a wide range of subjects, including projections into yards and above roofs, corner lots, walls and fences, and various accessory uses. The FBC will cover this material, so it should be superseded.
- D. Miscellaneous regulations. This covers exterior lighting, buffer screening, property maintenance, solar access, and transitions between residential and non-residential districts. Most of these issues will be addressed in the FBC, so it should be superseded, except possibly for the subsection on property maintenance.
- E. Nonconforming uses and other nonconformities. Much of this is probably valid, but it will be necessary to have a new section on nonconformity in the FBC, which will supersede this material.
- F. Off-street parking and loading facilities. This will all be superseded by the FBC. It includes a provision to allow a waiver of off-street parking and loading requirements in the B-RP district if the applicant has voluntarily offered to dedicate to the New Castle

Parking District “an easement over the entire designated parking/loading/circulation/setback area” where parking, loading, and/circulation is proposed.

- G. Parkland or parkland fees with multifamily site plan approval. This subsection establishes a mechanism to require recreation areas and/or charge a recreation fee for multifamily development in specified multifamily residence districts. On its face, it would not apply to the FBC districts, unless the Town wants to extend it to those areas. I think that it can be ignored if the Town does not want to apply it to multifamily development in the FBC districts. This will serve as incentive to build multifamily housing in the FBC districts if there is no rec fee. However, some may object that apartments in the FBC districts should have the same rec fees as the rest of the Town.
- H. Conservation development. This is irrelevant to the FBC since it only applies to large tracts of undeveloped land.

§60-430. Permitted Special Uses. This section includes application requirements and the approval process and implementation of special permit regulations. It includes many sections that apply only to specific uses and/or specific districts. Many of the uses covered by these subsections don't require special permits, which is confusing since they are included within this overall section on special permits. Most of this section should be superseded by the FBC, which will probably make little or no use of special permits. However, there is a subsection on wireless telecommunication services facilities that needs to be incorporated in some way to enable these facilities to be installed in the FBC districts, unless the FBC itself will contain provisions for this. There is a long section on massage establishments, which may or may not be needed. This section also contains subsections on solar facilities and chickens, which are covered elsewhere in the zoning as well and probably aren't relevant to the FBC. There is a detailed section on workforce housing (subsection 15) which has subsections on motor vehicle and bicycle parking. This section should probably be superseded or deleted since it only applies in the Chappaqua hamlet and it will be superseded by the FBC (unless the Town wants some or all of this material included).

§60-440. Procedure and standards for site development plan approval. This section includes provisions for Planning Board (PB) approval of most projects as follows:

1. An application must be submitted at least two weeks before it will be considered by the Planning Board.
3. A public hearing must be held within 62 days of submission of a complete application.
4. The Planning Board must make its decision within 62 days of the close of the public hearing.
5. Within 60 days of PB approval, the applicant must submit a final site plan incorporating changes required by the PB. (There is no reason that the applicant cannot submit the final site plan much sooner.) The final site plan is supposed to be endorsed by the PB chair as soon as the PB and Town Engineer verify that the final site plan complies with all required conditions. There is no time limit for this, but it seems purely ministerial.

Based on the above, the PB must make a decision within 124 days of receiving an application and an applicant may submit a final site plan anytime up to 60 days later. However, there are many ways that this schedule can slip, especially these:

- The PB may engage in extensive pre-application discussions and negotiations.
- The PB may not accept an application as complete for a long time.
- A public hearing may be held open for a very long time.
- An application may be sent back to an applicant for revision after a hearing and this back-and-forth can go on for a long time.
- The final site plan may get hung up on small details, which could delay final approval.

A new section in the FBC on the administrative site plan approval process, which will not involve the Planning Board, will supersede this section. Site plan approval will be administered by the Building Inspector, the Planning Director, and/or a “Town Architect” (if the Town wants to have one), or some combination of the above.

6. There are exemptions from PB site plan approval for minor site plan modifications and changes of use that do not involve extensive site changes. These can be done by administrative approval of the Building Inspector and therefore don't trigger SEQR.

7. As long as Planning Board approval is required, SEQR will be triggered. Approval delays associated with SEQR are usually much longer than those related to the mandatory time frames above, and they are extremely unpredictable.

One of the most significant advantages of using a FBC in New York State is that it can make most approvals administrative, rather than discretionary, thus taking them out of the SEQR process and saving time and money for the applicant and the Town. The theoretical time frame for approval of site plans in the current zoning isn't very long, but predictable factors that slow it down, especially the SEQR process, can make it continue for years.

## **Article V. Administration and Enforcement**

§§60-500, Enforcement, 60-510, Building Permits, 60-520, Certificates of occupancy or use, 60-530, Penalties for offenses; abatement of violations, and 60-540 Board of Appeals, are primarily boilerplate administrative provisions that can remain unchanged and fully in effect for use in the FBC. Some of the content of these sections is dictated by state law and there is no reason why the Form-Based districts should not have the same rules.

§60-550. Architectural Review Board. This provision provides for advisory review by a 5-member ARB of applications referred by the Planning Board, Town Board, and ZBA, as well as binding review of building permit applications above a stated dollar amount, or below those amounts if requested by the Building Inspector. This section lacks clear criteria for the ARB to apply and therefore the ARB's decision could be subjective and legally vulnerable. The Town will have to decide whether and how to involve the ARB in review of development in the FBC districts. Since the FBC will likely have more detailed and prescriptive architectural provisions that can be applied administratively by a single official, it may be more appropriate to have

architectural review performed administratively by a “town architect” who is either an employee or consultant for the Town. Alternatively, this function could be performed by the ARB, using the standards and criteria contained in the FBC. Those standards will reduce the amount of discretion and subjectivity in the decisions so that those decisions can be delegated legally to an administrative official.

§60-560. Fee Schedule. This section establishes a framework for charging application and review fees for development proposals. It does not contain the actual fees, which are established by Town Board resolutions. This section creates the authority for the Town to charge these fees, and fees charged in the FBC districts can be added to the Town’s fee schedule without changing this section of the zoning.

**Article VI. Amendments.** This article contains mostly boilerplate provisions for zoning amendments, following the requirements of state law. It does not need to be changed or superseded.

**Article VII. Miscellaneous Provisions.** These are essentially boilerplate provisions that do not affect the FBC.

**Article VIII (new). Form-Based Mixed-Use District Regulations for Chappaqua Hamlet**

This new article will contain the FBC and will spell out what parts of the zoning law are being repeated, incorporated, repealed, or superseded. For sections of the zoning that will not be superseded or repealed, the drafters will have to decide how much to repeat material found in other sections of the zoning and how much to incorporate by reference.

**Other Chapters of the Town Code Relevant to the FBC**

**Chapter 76, Historic Preservation.** This chapter establishes a Landmarks Advisory Committee as well as procedures for designating historic structures as landmarks and reviewing development proposals that affect designated landmarks. Since there are several designated landmarks in the hamlet FBC area, the historic landmark review process will need to be integrated into the FBC in a manner that minimizes procedural burdens on applicants. This may require amendments to Chapter 76 or, alternatively, provisions in the FBC that explicitly supersede Chapter 76.

**Chapter 113, Subdivision of Land.** The Subdivision Law contains approval procedures dictated by state law for the approval of subdivisions of land. This Chapter was written primarily to regulate the subdivision of raw land in undeveloped parts of the Town. However, it will be important in implementing the FBC because the lot layout of much of the land in the hamlet will likely be reconfigured by the FBC, and therefore much of the land and some streets may need to be replatted. The FBC should provide an efficient and streamlined mechanism for doing this, which will most likely require amendments to Chapter 113 to put such a process in place. For example, Chapter 113 contemplates applications by private property owners to

subdivide land. Some of the subdivision (or resubdivision or replatting) will likely be initiated by the Town in order to rationalize land use patterns, modify or build streets, and enable the Town to subdivide land it owns that is slated for redevelopment. Many regulatory details that are typically contained in subdivision regulations and street and sidewalk standards will be included in the FBC, superseding conflicting provisions in other chapters of the Town Code.

In order to streamline approval processes under the FBC, it may be desirable to create a unified approval procedure that combines plan approval under zoning with plan approval under subdivision law. This, in turn, may require supersession of portions of state statutes on site plan and subdivision approval under the authority of New York's Municipal Home Rule Law. State statutes are very prescriptive with respect to procedures for zoning and subdivision approval. As an example, state law requires Planning Board review of both subdivisions and site development plans (site plan approval can also be conducted by an "authorized board" under Section 274 of New York's Town Law). The FBC will probably delegate these reviews to an administrative official, which will require the use of Municipal Home Rule supersession authority.