

3.4 LAND USE AND ZONING COMMENTS AND RESPONSES

Comment 3.4-1 (Letter #2 Kauker & Kauker, LLC - Haverstraw Planning Consultants, March 4, 2009): The applicant is proposing 254,000 square feet of commercial use and 967 parking spaces.

Response 3.4-1: The concept plan attached to this FSEIS illustrates 254,000 square feet of commercial space and 1,026 parking spaces associated with the space. As stated in the SEIS and as discussed in Section 2.0 of the FSEIS, a variance will be requested to allow 1,026 parking spaces. The Haverstraw zoning law requires that 1,693 parking spaces be provided. Based on analyses described in the response to Comment 2-2, the Applicant has opined that a parking requirement of 3.7-4.0 parking spaces per 1,000 square feet of gross leasable area is a reasonable requirement for shopping centers of this type and size.

Comment 3.4-2 (Letter #2 Kauker & Kauker, LLC - Planning Consultants, March 4, 2009): The proposed use is a permitted use on the site in Haverstraw and does not require a zoning change.

Response 3.4-2: Comment noted.

Comment 3.4-3 (Letter #2 Kauker & Kauker, LLC - Planning Consultants, March 4, 2009): The proposed use will meet all of the bulk and area requirements of the zoning ordinance, with the exception of associated parking requirements. (Parking will be addressed separately.)

Response 3.4-3: Comment noted.

Comment 3.4-4 (Letter #2 Kauker & Kauker, LLC - Planning Consultants, March 4, 2009): The proposed use is more compatible with the existing uses in the area as it is developed with similar commercial type uses, including the shopping center on the opposite side of Route 202.

Response 3.4-4: Comment noted.

Comment 3.4-5 (Letter #2 Kauker & Kauker, LLC - Planning Consultants, March 4, 2009): The applicant indicates that the nearest residential land use is over 1/3-mile from the subject property and it is their opinion that there would be no significant adverse impact on that residential neighborhood.

Response 3.4-5: Comment noted.

Comment 3.4-6 (Letter #4 Frederick P. Clark Associates, Inc., March 13, 2009): On page 1-26, the height of the proposed residential buildings is proposed at 45 feet. The architectural renderings show a four to five story building plus steep roofs. This office has no issue with the design of the buildings, but the height of the proposed structure should not exceed the 45 foot requirement. Section 376-66 B (3) sets the maximum number of stories at four.

Response 3.4-6: For the residential development in the Town of Ramapo, the Applicant proposes a maximum building height of four stories and no more than 45 feet.

Comment 3.4-7 (Letter #4 Frederick P. Clark Associates, Inc., March 13, 2009): Section 376-66 B (8) restricts the number of units that can be linked into a single building to 8. The site plan shows as many as 64 units in a single building.

Response 3.4-7: Comment noted. A variance from this requirement will be sought.

Comment 3.4-8 (Letter #4 Frederick P. Clark Associates, Inc., March 13, 2009): Section 376-66 B (5): The residential portion of the development shall comply with the standards contained in Section 376-163 (F), (G), (H), (I), (J), (K), and (L). In particular the requirement for a variance for the distance to the commercial roadways and properties. In addition, no parking area or driveway may be closer than 10 feet to any building which would also require variances.

Response 3.4-8: Based on a review of the applicable zoning provisions, there does not appear to be any reference to a specific minimum setback requirement to a commercial roadway or property. Subsection J requires that "All parking areas, driveways, recreation areas and refuse collections areas shall be no closer than ten feet to any building or lot line...." The language is unclear as to what building or lot line is being regulated. Assuming that this provision is referencing a "residential" building or lot line, it is noted that the residential buildings are no closer than ten feet to the commercial boulevard, the nearest element of the commercially developed property to the residential portion of the development. Once the lot line is drawn, it is anticipated that the 10-foot setback can be met.

If the zoning law subsection is regulating the minimum distance of an on-site parking facility or driveway to a residential building, it is correct that a variance will be needed as there are garages and driveways integral to the residential buildings - no setback is provided. This issue was discussed with the Commentator at a May 20, 2009, CDRC meeting and the interpretation contained in this response was sustained at that time.

Comment 3.4-9 (Letter #4 Frederick P. Clark Associates, Inc., March 13, 2009): It appears that no deductions were identified under the proposed plans. The majority of the wetlands exist on the Town of Ramapo's portion of the project. Fifty percent of the wetlands area can not be counted for development purposes. The applicant should provide a detailed calculation of the land areas used to support the development proposed. The USGS map contained on Figure 2-1 indicates that approximately two thirds of the Town of Ramapo zoned parcel is wetland. With a deduction of 50%, it would appear that using a cursory calculation that the 27 acres of this site has approximately 18 acres of wetlands. Reducing the developable portion of this lot by 50% of the wetland or 9 acres presents 18 acres as the developable portion, notwithstanding other deductions. Thus, if all of the land were going to be used for residential purposes, 18 acres at 12 dwelling units per acre would limit the number of residence to 216. Since 219 residential units have been proposed, there would be no developable land remaining for commercial development. These are rough calculations, but the Supplementary DEIS needs to show a recalculation of developable land and a revised number of housing units and commercial pads. It is a far different picture than illustrated on Figures 3.3.1-3.3.4 which tend to minimize the wetland area.

*Response 3.4-9: The comment is referencing Section 376-42.A of the Ramapo zoning law. That section states: "As part of any **minimum lot area** requirement of this chapter for all uses, not more than fifty percent of any land underwater, subject to or within the 100-year-frequency floodplain, wetlands, within easements or rights-of-way for overhead utilities, with slopes unexcavated of over 25 percent or within a designated street line of*

any road shall be counted. ...” Sheet 1 of 4 of the concept plan illustrates the various environmental features of the project site. The floodplain and lands under water are contained within the delineated wetland area. There are no slopes in excess of 25 percent on the Ramapo portion of the site. Sheet 2 of 4 includes a detailed calculation of land area. The total site area in the Town of Ramapo is 27.0017 acres. Wetlands account for 10.14 acres of the Ramapo parcel. Deducting 50 percent of the wetland results in a net minimum lot area of 21.9317 acres. The MU-2 district requires a minimum lot area of 10 acres. This requirement is met.

It is important to note that the Ramapo zoning law does not state that the residential density is to be calculated on the “net lot area”. Thus, 16.67 gross acres are required to achieve a net yield of 200 dwelling units based on a residential density of 12 dwelling unit per acre. The residential portion of the site is 9.6132 acres. This area, plus the wetland area of 10.14 acres results in a total area of 19.7532 acres. There is sufficient area to meet the 12 dwelling units per acre density requirement regulating the MU-2 zoning district. See also response to Comment 3.4-10 below. This issue was discussed with the Commentator at a May 20, 2009, CDRC meeting, and the interpretation described in this response was sustained at that time.

Comment 3.4-10 (Letter #4 Frederick P. Clark Associates, Inc., March 13, 2009): Table 3.4-1 illustrates the MU-2 Bulk requirements. What is not shown is the requirement for preparing a list of deductions as contained in section 376-42A. Special Bulk Requirements: The section provides:

- A. As part of any minimum lot area requirement of this chapter for all uses, not more than fifty percent of any land underwater, subject to or within the one-hundred-year-frequency floodplain, wetlands, within easements or rights-of-way for overhead utilities, with slopes (unexcavated) or over twenty-five percent or within a designated street line of any road shall be counted towards meeting the minimum lot area. In addition, at least fifty percent of the minimum lot area requirement shall consist of land without the above-listed impediments. The application of this section to any particular lot shall be the responsibility of the Town of Planning Board at the time of subdivision or site development plan approval.

As such, deductions must be shown and calculated to arrive at the developable lot area. Please provide these calculations.

Response 3.4-10: *We respectfully disagree with the interpretation of this section. Section 376-42.A regulates minimum lot area. Based on the deductions shown on Sheet 2 of 4 and as explained in the response to Comment 3.4-9, the minimum lot area for the MU-2 zoning district is 10 acres. Netting out the environmental constraints set forth in 376-42.A results in a minimum lot size of 21.9317 acres. The site meets the minimum lot area requirement. Section 376-66.B states that the maximum density for residential uses shall be twelve residential units per acre less the area designated for commercial and/or office use. No provision in the zoning law states that for purposes of calculating density in the MU-2 zoning district, the calculation will be based on the minimum lot area after netting out environmental constraints.*

In fact, other provisions of the Ramapo Zoning Law specifically state that residential density is calculated using gross density - See Section 376-164.D., 376-165.D and 376-166D. There is no zoning language to support the argument that residential density

is calculated on a net lot area - that interpretation would treat an MU-2 multifamily residential development differently from other types of multifamily residential developments regulated by the Ramapo Zoning Law.

*The Town of Ramapo's requirement can be compared to that of the Town of Haverstraw. Environmental constraints must be subtracted when determining the minimum lot area in the Town of Haverstraw. However, Haverstraw's zoning law specifically states: "C. Said reductions shall apply in determining compliance with minimum lot area and **density requirements** [emphasis added]." In the absence of similar language in the Ramapo zoning law, there is no authority to regulate density by excluding environmental constraints.*

It is the Applicant's contention that the plan conforms to the MU-2 district requirements and will seek an interpretation and/or variance from the Ramapo Zoning Board of Appeals if required. This issue was discussed with the Commentator at a May 20, 2009, CDRC meeting, and the interpretation described in this response was sustained at that time.

Comment 3.4-11 (Letter #4 Frederick P. Clark Associates, Inc., March 13, 2009): Table 3.4.6 summarizes the gross floor area and floor area ratios of the MU-2 zone. There is a problem with the calculations in that there is a disproportionate share of the deductions resulting in too high a density for the residential component. The areas attributable to the residential and commercial components are roughly equal. If the commercial portion is as stated, 3.9 acres, then the residential area should be similar. The deduction applies to the total land area and if both commercial and residential uses are proposed, the deductions should be shared by both. This is why the calculation of usable lot area much be shown for review. There is simply no way to provide only 3.9 acres of commercial and 17.2 acres for residential use when the actual amount of land to be used is similar to the commercial amount of land.

Response 3.4-11: *See response to Comment 3.4-9 and 3.4-10. No provision in the Ramapo zoning law states that the gross floor area or the residential density in the MU-2 district must be calculated on the minimum lot area. Likewise, the provisions of 376-42.A address regulations associated with minimum lot area and do not apply to the calculation of floor area ratio. No provision of the Ramapo zoning law states that environmental constraints shall be netted before calculating the gross floor area of development. Thus, it is the Applicant's opinion that the project conforms to the requirements of the MU-2 zoning district and will seek an interpretation and/or variance from the Ramapo Zoning Board of Appeals as required. This issue was discussed with the Commentator at a May 20, 2009, CDRC meeting, and the interpretation contained in this response was sustained at that time.*

Comment 3.4-12 (Letter #4 Frederick P. Clark Associates, Inc., March 13, 2009): By hand calculation from the site plan, the effective density of the residential component is almost 22 dwelling units per acre because the buildable portion of the residential lot consists of only 10 acres. That translates to an effective density of 21.9 dwelling units per acre or nearly twice the density permitted under the MU-2 regulations which set a maximum density of 12 units per acre. That density on such a small portion of the lot appears excessive.

Response 3.4-12: *See responses to Comments 3.4-9, 3.4-10, and 3.4-11. This issue was discussed with the Commentator at a May 20, 2009, CDRC meeting, and the interpretation contained in the responses noted above was sustained at that time.*

Comment 3.4-13 (Letter #4 Frederick P. Clark Associates, Inc., March 13, 2009): The SDEIS reviews compliance with Site Plan Development Standards for each town, but fails to gauge the impact of the Haverstraw development on the residential portion of the Ramapo section. Large box stores will generate considerable traffic moving by the residences which will generate a number of impacts including:

- Noise - Traffic
- Lighting - Impacts
- Extended hour operational impacts

The environmental impacts associated with the above should be assessed on the tranquility expected in the residential neighborhoods. There is no mention of mitigating factors to reduce the impacts such as landscaped berms, low level lighting requirements for the large parking areas of the Haverstraw development, or supplemental plantings to provide effective barriers blocking light and noise. The lighting for the parking lot should be kept to the absolute minimum required with the shortest lighting poles possible with down facing fixtures to limit the release of stray light. A berm could be built with a design feature to separate the residential area from the large box commercial.

Response 3.4-13: *The Commentator has specifically expressed concerns with the potential impact of the Haverstraw portion of the commercial development on the residential uses on the Ramapo portion of the site. It is noted that the MU-2 zoning district is intended, by design, to accommodate a mix of commercial and residential development. Thus, commercial development in the Town of Haverstraw is not inconsistent with the intended uses of the MU-2 zoning district. The district was created in 2004 - the land in the Town of Haverstraw was zoned for commercial use at the time of the Ramapo rezoning. As the Town of Ramapo is aware, the Applicant pursued a residential development on the Haverstraw portion of the site, but the Town of Haverstraw did not favor the residential development. Instead, the Applicant is pursuing a development that complies with uses permitted in the respective zoning district.*

During site plan review, lighting will be selected that minimizes the spillover effect onto the adjoining residential development. Full cut-offs and shorter light poles will be utilized. As part of the site plan that is submitted to both boards, a photometric plan showing lighting levels will be submitted to the Planning Boards for review and approval to ensure this requirement is met. Lighting for the commercial areas will be placed on timers to limit lighting levels from dusk to dawn. A detailed landscaping plan will be submitted with the site plan. Where space permits, between the access drive and the residential buildings, a combination berm and landscaping will be used to create effective separation between the commercial access drives and the residential development. It is noted that the site plan will be subject to Haverstraw ARB review and approval. Thus, the site plan elements such as lighting and landscaping will be reviewed to ensure an aesthetically attractive development within the Town of Haverstraw. The hours of operation and potential effects on the neighboring residential development will be reviewed during site plan review. To ensure that the Town of Ramapo has the ability to comment on the design aspects of the Haverstraw portion of the development and its potential effects on the residential development in Ramapo, the Findings Statement will include provisions that the Applicant will forward any plans for development on the portion of the project site within the Town of Haverstraw to the Ramapo CDRC for review and comment.

Comment 3.4-14 (Letter #4 Frederick P. Clark Associates, Inc., March 13, 2009): Page 3.4-9 notes that three story buildings are proposed. It is noted that four stories are permitted and utilization of four stories should free additional open space. It is again noted that the architectural concepts provided show 5 stories in portions of the building.

Response 3.4-14: See response 3.4-6 above. Although the architectural concepts illustrated 5 stories in portions of the building, the Applicant proposes a maximum building height of 4 stories and no more than 45 feet. No significant change to the building footprints are proposed as part of the modified site plan attached to this FSEIS. As such, any revisions have not created any significant open space in and around the buildings. Most of the on-site open space will be associated with the wetland complex and undeveloped portions of the site to the west of the residential development.

Comment 3.4-15 (Letter #5 Town of Ramapo Department of Public Works, March 2, 2009): The deductions must be over the whole site and not just the commercial portion.

Response 3.4-15: Deductions were subtracted for the entire site. See response to Comments 3.4-9, 3.4-10, and 3.4-11. This issue was discussed with the Commentator at a May 20, 2009, CDRC meeting, and the interpretation contained in the responses noted was sustained at that time.

Comment 3.4-16 (Letter #5 Town of Ramapo Department of Public Works, March 2, 2009): Drive-through restaurants are a Special Permit Use in the Town's Zoning Code. The applicant should make sure he complies with the conditions as well as the conditions necessary to get a use variance since it is not permitted in MU-2.

Response 3.4-16: The concept plan no longer proposes a drive-through restaurant.