

Suggestions for Improvements to the Village Land Use Laws and Procedures

November 14, 2017

Jeff Watiker, BZA Chairman

A. Changes to the Floor Area Ratio Law (Scarsdale Code Chap. 310)

Below I discuss four proposed changes to the Village's FAR law, roughly in their order of importance.

1. Modify the side yard setback FAR bonus as it applies to existing homes

- a. Explanation: Section 310-104 of the Village Code provides that in all Residence A Zones (except the AA-1 Zone which has 2 acre minimum lot size) for each additional foot that a house is set back beyond the minimum side yard setback, an additional 100 square feet of floor area above the maximum permitted FAR on that lot shall be permitted, *provided, in the case of additions to existing homes, the bonus floor area is added to the rear of the house* (the "Bonus").

Typically, the Bonus allows a house to be about 15% bigger, which is quite significant. Here are some examples:

- The maximum Bonus is 400 square feet for lots located in the A-4 and A-5 Residential Zones. On a 5,000 square foot lot, the increase is from 2,150 square feet to 2,550 square feet (15.7%). On a 8,000 square foot lot, from 3,056 square feet to 3,456 square feet (13.1%).
- The maximum bonus is 700 square feet for lots located in A-2, A-2a, and A-3 zones. On a 10,000 square foot lot, the increase is from 3,500 square feet to 4,200 square feet (20.0%). On a 20,000 square foot lot, from 5,200 square feet to 5,900 square feet (13.5%).
- The maximum bonus is 1200 square feet for lots located in A-1 residential zones. On a 45,000 square foot lot, the increase is from 7,027 square feet to 8,227 square feet (17.1%).

Accordingly, how this bonus rule works is very meaningful to homeowners in the Village.

The bonus rule was intended to: (a) encourage both additions and new homes to build away from the side yard setbacks and (b) encourage new additions to existing homes to be built in the rear where they would not be seen from the street. Although the rule has largely accomplished these objectives, I believe that it needs to be amended because it (a) disproportionately burdens existing homeowners and (b) encourages teardowns.

First, it is often impractical or impossible to place a proposed addition to an existing house at the rear of the house. In some cases, the house is already fully built-out in the back -- making a new rear addition impractical without encroaching on the rear yard setback. Other times, the purpose for the addition does not lend itself well to a rear yard location. For example, if a new bathroom is being added to bedroom that faces the side or front of the house.

Second, even if the addition can be built in the rear, older homes in the Village were often originally built on or close to the existing side yard setbacks (particularly on smaller lots), meaning that the homeowner cannot qualify for the full bonus because of pre-existing conditions.

New construction, on the other hand, can typically qualify for the full bonus. First, the requirement to build at the rear does not apply to new homes. Second, a new home can usually be sited far enough off one or both of the side yard setbacks to qualify for the full bonus. For this reason, nearly all newly-constructed homes in the Village qualify for the full bonus. Because the bonus is large and favors new construction, the bonus has created an unintended incentive to teardown existing homes and build new ones.

The BZA can, and often does, provide relief, by giving variances to owners of existing homes who do not qualify for the full bonus. However, a better solution would be to amend the law as discussed below.

- b. Suggested Change: I recommend the Village eliminate the requirement that *“in the case of additions to existing homes, the bonus floor area is added to the rear of the house.”* Such an accommodation for older homes is warranted because, as discussed above, it is often impossible or impractical to build additions in the rear. While this may make some additions more visible from the street, to not act is to encourage teardowns which I believe most people would see as a greater harm.

This change will not fix the concern that older homes were often built close to the existing side yard setbacks (particularly on smaller lots), meaning that they cannot qualify for the full bonus. However, the BZA process will still be available to consider homes in this situation.

2. Reduce the scale of the side yard setback FAR bonus

- a. Explanation: The current FAR law is well designed and has generally served our Village well. However, as the Village has built itself out under the FAR rules, I believe that the resultant homes are marginally larger than what is ideal, leading to neighborhoods that feel crowded and overbuilt. This results, in part, from the current economic incentives to build as large a house as possible under rules. Overtime, this overcrowded effect will be magnified as more homes on each street get built out to the maximum allowable FAR.
- b. Suggested Change: I recommend that the side yard set-back Bonus be decreased by 33.3%. Thus:

- The maximum Bonus would be 267 (rather than 400) square feet for lots located in the A-4 and A-5 Residential Zones.
- The maximum bonus would be 467 (rather than 700) square feet for lots located in A-2, A-2a, and A-3 zones.
- The maximum bonus would be 800 (rather than 1200) square feet for lots located in A-1 residential zones.

Here would be some sample effects of a 33.3% reduction, assuming that the homeowner/builder qualifies for the full side yard setback Bonus:

<u>Lot size</u>	<u>Allowable today w/full Bonus</u>	<u>Allowable w/Bonus reduced 33.3%</u>
5,000	2,550	2,417 (5.3% less)
8,000	3,456	3,323 (3.8% less)
10,000	4,200	3,967 (5.9% less)
20,000	5,900	5,500 (6.7% less)
45,000	8,227	7,827 (4.9% less)

This adjustment would make the allowable houses marginally smaller without further complicating the FAR rule or taking an action that would disproportionately impact any particular neighborhood, lot size or style of home. Whether an individual home would reduce the size by making the home slightly less tall, less wide and/or less deep would be up to the homeowner/builder. While the impact on each home might be slight, overtime I believe it would collectively make a material difference in the Village, particularly as more and more “maxed-out” homes appear side by side on each street.

This adjustment is sufficiently restrained that it should not materially disadvantage existing homeowners or cause the new homes being built to lose their appeal to new homebuyers. I also believe that it could be reasonably implemented without the need for months of study and consultant reports.

Moreover, the size of the Bonus would still remain materially large, so there would still be a strong incentive for both existing homeowners and new construction to build away from the side yard setbacks in order to qualify for the full Bonus.

NOTE: The effect of this proposed change to the Bonus is to reduce the total FAR of homes that qualify for the Bonus by approximately 5%. If the Trustees desired to keep the full setback bonus intact, then I would advocate a 5% across-the-board reduction in all of the FARs in order to reduce the overall maximum size of homes in the Village.

3. Modify the provisions regarding spaces over garages.

- a. Explanation: The current FAR law allows the total floor area of a garage to be excluded from square footage, subject to a cap of 250 square feet for lots of 9,999 square feet or less and 400 square feet on lots of 10,000 square feet or more (the (“Garage Exclusion”).

Because additional living space commands a high premium in Scarsdale, there was a fear that the adoption of the FAR would incentivize homeowners and builders to convert existing garages to living space or to build new homes without garages, in favor of carports, driveway and on-street parking. The Garage Exclusion was intended to remove this incentive by allowing homes on small lots to have a one car garage exclusion (250 square feet) and homes on bigger lots a two-car garage exclusion (400 square feet). Basement garages are not eligible for the Bonus as they were disfavored by the FAR drafters.

The rule has generally worked as intended (nearly all homes in the Village still have a one or two car garage) and almost no new construction built since the adoption of the FAR law has a below-grade garage.

The Garage Exclusion created an ambiguity about what happens if a homeowner has an undersized garage (for example, a single car garage (250 square feet) on a large lot that is eligible for a 400 square foot exclusion. Is the *excess* (the 150 square foot difference) lost or can it be applied elsewhere? Currently, the Village Code allows the *excess* to be applied to space above the garage, subject to complicated rules. Currently, the rule reads, in pertinent part:

“In those instances where an additional story is provided above a garage, whether detached or attached, such floor area or garage floor area, up to the [250 or 400 square foot] limits set forth herein as defined by lot size, shall be excluded from the calculation of FAR. For purposes of [the garage exclusion], attic space or area under a sloped roof shall not be construed to be an additional story unless it meets the criteria of § 310-103C(1) above.”

Section 103C(1), in turn, is the section of the FAR that determines when attic space or space under a sloped roof counts in square footage of a house for FAR purposes.

In my view, this is unnecessary complex and should be simplified in favor of having the *excess* lost. The garage exclusion was intended to encourage the house to have a garage to park cars, protecting space over a garage is not important.

- b. Suggested Change: I recommend deleting the language quoted above and replacing it with:

“For purposes of this garage exclusion, only the square footage of the garage’s main floor can be excluded from the calculation of the FAR.”

This significantly simplifies the Code and focuses the Garage Exclusion narrowly on to its intended purpose. Space above and below the garage would, by default, be treated the same as any other space is treated under the FAR rule.

I also believe the impact of the change would be minimal because few houses in the Village would be impacted. Basement garages are already excluded and nearly all above-grade one-car garages are at least 250 square feet in size and nearly all above-grade two-car garages are at least 400 square feet. Thus, this change, would generally only apply in the uncommon circumstance where a home has a one-car above-grade garage on a 10,000 square foot plus lot. Since the home is only keeping one-car off the street, I do not know of a good reason to give the full 250 square foot Garage Exclusion to that home.

4. Create criteria for the Special Use Permit for homes over 15,000 square feet

The FAR rule requires a special use permit from the BZA for homes over 15,000 square feet. Currently, there are no criteria in the code to guide the BZA on when such permits should be granted. The Code should probably be augmented to add such standards. The BZA could work with staff to draft these.

B. Review of Statement on Pools

Approximately 50% of the BZA’s agenda items are special use permits for swimming pools. Most of the content that we interpret and enforce is a “Policy Statement Re Swimming Pools” which is posted on the Village Website. The Policy Statement was last amended in 1999. These are BZA rules and it is worth us systemically reviewing them to identify areas of potential improvement.

Areas that we may want to look at are:

1. The rules currently state that: “The fencing enclosing the pool ... consist of vinyl clad chain link in black, brown or dark green color, with fence supports of a matching color. ... Similar fencing must enclose the pool equipment pad. Alternative fencing materials may be permitted if approved by the Board of Appeals and the Board of Architectural Review.” This can perhaps be expanded to discuss other type of permissible fencing.
2. The pool rules allow for a solid pool enclosure fence that is five foot high. We might want to clarify that the pool enclosure fence rules were not intended to generally permit a solid 5’ fence in a front yard. The rules already provide: “A pool not be located within the limits of a front yard (as defined in the Zoning Code).”
3. We may wish to reconsider our requirement that evergreen planting of a minimum of five feet must “enclose the pool equipment pad,” in favor of a rule that such planting

need only completely screen the pool equipment from the view of persons occupying adjoining properties and the street.”