

DISSENT TO BUTTERFIELD REDEVELOPMENT DECISION RENDERED 5/14/2015
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VILLAGE OF COLD SPRING HISTORIC DISTRICT REVIEW BOARD

I believe that the approval of the Butterfield Redevelopment Proposal on 5/14/2015 establishes injurious precedents for review of large-scale developments in the Village of Cold Spring, as well as for consideration of mass and scale for proposed structures within the Historic District. For this reason, I have requested that my dissent be appended to the record of the decision made by the Historic District Review Board (HDRB).

The series of workshops held October 2014 through March 2015 with Butterfield Realty, LLC resulted in a project improved in many ways over the original submission. Buildings 1 & 2 now have a material palette that is more compatible with the Village's commercial structures, and their forms draw on the visual heritage of the Butterfield Hospital as well as that of the structure to remain on the site, the Lahey Pavilion. The setbacks and orientation of Buildings 1 & 2 have been somewhat improved so that they are more compatible with those of surrounding properties in that portion of the Historic District. The single-family homes along Paulding Avenue are compatible with the surrounding District because of their massing, scale and material palettes, though their lot sizes and location in relationship to the development's multi-family structures is problematic.

Despite these successes, and, on balancing the criteria we are required to consider under Chapter 64-7A(2) of the Village code, I believe that the improvements the HDRB was able to achieve in its work with the applicant are outweighed by the disproportionate mass and scale of the multi-family homes—the element of the project that has greatest impact on the Historic District. Due primarily to the bulk and positioning of the multi-family homes, and site circulation around them, the Butterfield Redevelopment is a distinct departure from the unique, small scale, walkable Village that is Cold Spring. I believe these are the same reasons that the development does not meet related Village Comprehensive Plan goals (2012) that address the protection of Village character, emphasis on walkability, and successful integration of new design within the traditional Village setting.

I agree with my colleague Carolyn Bachan, who in her verbal dissent of the vote—and particularly her comments on the multi-family homes—likened the overall feeling of the Butterfield Redevelopment to something that belongs in Westchester County—it is homogenous and oversized like so many of the urban developments in Westchester's once quaint municipalities. Unlike other Hudson Valley villages and towns, Cold Spring has, until now, been fortunate to retain its unique and defining character. It has not been subsumed by large-scale developments consisting of formulaic structures, bland materials and maximized parking and density. It still largely has the appearance and feel of a 19th Century Hudson River village, with its Main Street commercial spine extending up from the waterfront and branching out into diminutively-scaled and walkable residential neighborhoods. The Village has a character that draws residents and tourists alike because of its human scale, architectural integrity and charm. Going forward, with the formulaic Butterfield Redevelopment at the community's entrance, Cold Spring will be more like the predictable "anyplaces" of Westchester and beyond, rather than being a recognizable, authentic, sought-after "someplace."

Relationship of Single-Family Homes and the Multi-Family Structures

The large-scale multi-family structures of the Butterfield redevelopment loom in close proximity to the small rear yards of the single-family homes on the site, creating an unbalanced relationship among housing types that is not typical in the Village. This communicates a decidedly urban character. Where large multi-family complexes do exist—at Chestnut Ridge, Forge Gate and Spring Brook, they are spaced from surrounding single-family homes either by roadways or greenspace, helping to mitigate their larger scale and greater density and thereby their visual and character impacts on the smaller structures. The only precedent for such close placement of a large-scale structure and single-family homes in the Village is near the Haldane Elementary/Middle School building (in a neighborhood that is outside of the Historic District). The scale of that institutional structure dwarfs the single-family homes along Mountain Avenue and creates an incursion on the privacy and aesthetics that owners attempt to mitigate with dense plantings and even ancillary structures. Luckily, the impact of the school's scale is mitigated by its use pattern—it is primarily occupied between 8am and 4pm for ten months a year; an apartment building such as those approved for the Butterfield site will be inhabited and in use at all hours throughout the year. I believe that this relationship among and lack of sufficient buffering between uses at Butterfield is not in keeping with Village residential character, particularly beyond the dense Main Street commercial corridor.

Mass and Scale of Multi-Family Structures

Building 3 and the single building referred to as multiple Buildings 4, 5, 6 are vastly out of scale with any other building in the Village. The only comparably sized structures are the soon to be demolished Butterfield Hospital and buildings on the Haldane campus (refer to table below). When considering mass and scale, however, one must weigh more than simply size. One also has to consider use and character.

The Village of Cold Spring consists of a central business district along Main Street, which serves as the backbone for the village. The commercial structures along that corridor are two- and three-story buildings constructed of materials ranging from brick to clapboard, with businesses below and apartments above. Their height and cheek-by-jowl positioning distinguish the buildings as the historic commercial core, and sets them apart from the diminutive 19th Century housing of the lower village, as well as from the varied 20th Century housing stock in the upper Village. And, while the mass and scale of Main Street's buildings serve the purpose for which they were built, their overall impact is mitigated by their varied rooflines, fenestration patterns and street level design variations. Were the linear feet of Butterfield's Building 3 to be laid along Main Street, it would extend from the southwest corner of Kemble Avenue to approximately 101 Main Street, a length that includes five mixed-use commercial structures and a small alley. Were Building 4,5,6 to be laid along Main Street, it would extend from the southwest corner of Kemble Avenue approximately to the garden of 91 Main Street, a length that includes seven single-width, mixed-used commercial structures, plus one double-width structure, as well as the alley.

Cold Spring has a 20th Century commercial district as well, located closer to the Butterfield Redevelopment and arguably a more appropriate comparison. Even there, though, Butterfield Building 4,5,6 is outsized. The land coverage of the entire building containing Foodtown and several other commercial enterprises is nearly 2,000 square feet smaller than the land coverage of Building 4,5,6. Importantly, the Foodtown complex is a single story. The 2.5 story volume of Building 4,5,6, as well as its placement on an elevated site, will constitute an even more disproportionate structure in relation to the surrounding buildings in the Historic District. Combine that volume with the volume of Building 3, which has a land coverage of 12,534 square feet, and the core of the redevelopment site projects a massive, institutional character.

Butterfield Redevelopment Proposal
Land Coverage Comparison to Existing Structures in the Village of Cold Spring

Structure	Dimensions (LxW)	Approx Sq Footage: Land Coverage	Approx Sq Footage: Reported by Applicant 5/7/15	Lengths from SW Corner of Kemble & Main	Linear Feet
Springbrook Bldg A (units 2-4)	133 x 33	4,389		To 113 Main Street (Mommunia)	100'
Chestnut Ridge Bldg 2	148.5 x 39	5,792		To 97 Main Street (Country Touch)	200'
Forge Gate Bldg H (units 1-8)	140x39	5,460		To 85 Main Street (Village Hall Main Door)	300'
Philipstown Town Hall	61 x 41	2,501			
Foodtown Plaza	208 x 80	16,640			
Drug World Plaza	147 x 45.5	6,689			
Haldane High School	237 x 80	18,960			
Haldane Elementary/Middle School (on-grade structures to east of original exterior wall only)	multiple sections	23,246			
Existing Butterfield Hospital (not including Lahey Pavilion or connector)	multiple sections	12,460			
Butterfield Bldg 1	66 x 107	7,062	6,000		
Butterfield Bldg 2	59 x 101	5,959	5,995		
Butterfield Bldg 3	81.6 x 153.6	12,534	12,533		
Buildings 4 & 5	70 w	n/a	not reported		
Community Space	not reported	n/a	not reported		
Butterfield Bldg 6	72W	n/a	not reported		
Combined Bldg 4/5/6 & Community Center	70x263	18,410	17,651		

NOTES:

- * For new construction, linear feet data provided by applicant 5/7/15.
- * For new construction, middle column shows calculation based on linear feet provided by applicant 5/7/15.
- * For new construction, approximate land coverage square footage in right column are numbers reported by the applicant 5/7/15

One could argue that for the better part of a century the Butterfield site, as home to a hospital and medical offices, has had an institutional character. The mass and scale of the hospital building, with land coverage of approximately 12,460 square feet, was required for that structure to serve its intended purpose. Its size, however, was offset by surrounding open acreage, and therefore had less impact on nearby buildings in the Historic District than it might have—particularly residential buildings. Similarly, the mass and scale of the institutional buildings on the Haldane campus reflect their use. The impact of those large structures, too, is mitigated by a high percentage of surrounding green space. However, there is no such comparable mitigation for the large scale buildings to be constructed at the Butterfield site; the existing green space will be reduced dramatically to a comparatively small, isolated triangle in one corner of the parcel.

The closest comparable for the single building referred to as Buildings 4,5,6 (estimated land coverage 18,410 square feet) is the Haldane High School building (estimated land coverage 18,960 square feet). It is separated from Building 3 by a parking lot with minimal edge plantings. Building 3 and Building 4,5,6 are not institutional buildings like the hospital and the school—they are residential buildings designed at urban, institutional scales. Their footprints and volumes also do not reflect other multi-family residential structures in the Village—they are orders of magnitude larger than even those.

Multi-Family Housing in the Village of Cold Spring

Cold Spring's built environment rightly includes multi-family housing; certainly the goal to expand such housing for seniors on the Butterfield site is laudable. Many in the Village would likely argue that the existing apartments at Chestnut Ridge, Spring Brook and Forge Gate are not all that compatible with the Village—admittedly, they are not architecturally notable. However, despite their design failings, their mass, scale, site arrangement, and relationship to the landscape help to mitigate their impact at the edges of the Historic District. The units in all these complexes read as garden apartments because each has an individual entrance and access to personal and common green space. The ability for residents to engage in neighborly exchanges and community events reflects Cold Springs' cherished heritage of sidewalk chats and front porch socials—essential parts of the Village's community character. Additionally, the buildings are arranged in such a way to feel like distinct neighborhoods—they relate to each other and create both common and more intimate spaces, not unlike the Village's single-family neighborhoods. Further, parking is mostly peripheral to the structures, allowing green space closer to the buildings. Finally, although the existing apartment buildings are large, they much smaller than the apartment buildings to be constructed at Butterfield. The average building at Spring Brook would fit inside the single structure referred to as Buildings 4,5,6 four times; the average building at Forge Gate and Chestnut Ridge three times.

By contrast, the multi-family homes at Butterfield will have an intensely urban feel that is contrary to Cold Spring's development tradition and is not in keeping with the Village's character. Building 3 and Building 4,5,6 have single primary entrances and double-loaded, central hall floor plans that read more like a city apartment complex, or even like a hotel. Their separate balconies and patio areas open not onto common green spaces, but onto parking lots and driveways, discouraging the community engagement that is possible in the other Village apartment developments. Rather than consisting of smaller buildings that relate to each other in open, neighborhood-like configurations, the two Butterfield multi-family buildings sprawl across the site much like urban complexes that maximize lot coverage and therefore density. Their urban character will be further emphasized by the volumes that rise off the footprints, making the structures even more massive in relation to surrounding buildings and the Village overall.

Mass and Scale are Not New Concerns for the HDRB

The HDRB has expressed concerns over the mass and scale of the Butterfield project, and particularly that of its multi-family housing, at several critical junctures in the land use review process. Two unanimously approved written evaluations—one of the B4A Zone Amendment Proposal and the other of the Environmental Assessment Form prepared for the project’s SEQR review—were provided to the Village Board of Trustees and the Lead Agency (the Planning Board). The content of these evaluations was not addressed by the Trustees or the Lead Agency in any meaningful, substantive way.

In response to the Trustees’ request for comments on the B4A Zone Amendment, 6/4/ 2013:

The HDRB finds that the size, scale and potentially the massing of the proposed senior condominiums greatly exceeds community standards. In addition, the overall density of the senior residential buildings grossly exceeds either the density that would have been permitted under the existing zoning regulation or under the Village’s comparable multi-family zoning regulation (R-3). Both the volumetric proposal and the density proposal thus violate community character.

In response to the project’s Expanded Environmental Assessment Form (EAF), 8/11/2013:

Village scale and character are neither preserved nor reflected in the size, scale, massing, layout and design of buildings as represented in the EAF.

The final 3-2 HDRB vote on the Butterfield Redevelopment proposal on 5/14/15 represents a strikingly different position from these written evaluations, despite the fact that little has changed in the project plan since they were written. Yet one member who helped to draft the above evaluations and who voted for their submission to the Trustees and the Lead Agency, indicating his support for the criticism, stated in his comments leading up to his final vote that he did not think the buildings on the site are “too big.” This is a notable contrast. It is also notable that two other members, who were not on the board at the time of these prior written evaluations, have been highly critical of other recent new construction based on mass and scale. In reviewing an addition to a house in the Historic District at a 4/23/15 public hearing, one supported his criticism of the project by reading from and comparing it to the HDRB Design Standards, which state:

The size and scale of new buildings and existing buildings being altered shall not be so dissimilar to neighboring buildings as to negatively affect their value or use. Proposals will be viewed with their impact on adjoining buildings in mind. They will be judged on the way in which they take their place in a larger collection of structures that make up the district

(HDRB Design Standards, page 37, section titled “Size, Scale and Massing”)

When commenting on the same residential proposal, the second member stated simply that it was “just too big.” The addition referred to above is 16 feet, three inches wide and will be set back from the existing house by approximately 27 feet, or about 50% of the main mass; it is a striking contrast to the massive new construction on the Butterfield site. Neither of these two members expressed any reservations about the mass and scale of the Butterfield buildings. I am concerned that these disparate considerations of mass and scale by HDRB members were, in the case of the Butterfield application, shaped by problematic guidance given by the Interim Village Attorney.

Counsel Provided to the HDRB

Interim Village Attorney Florence asserted that the B4A Zoning Amendment, which requires substantial conformity to a concept plan for the Butterfield redevelopment, preempts Chapter 64, and particularly preempts the HDRB's ability to assess mass and scale (memo dated 5/11/15). For a number of reasons, I believe this guidance contained contradictions which were not fully and satisfactorily addressed and which may have created confusion among board members relating to the extent of their purview, the criteria they should use to weigh the merits of the application—and particularly the matter of mass and scale—as well as the consequences of their vote. Further, we had extremely limited access to the Interim Village Attorney (he did not attend a scheduled 5/7/15 deliberation session and arrived nearly an hour late for the 5/14/15 session in which we rendered our decision). I am concerned that all of these factors may have negatively impacted the Board's deliberation.

Among the unclear guidance the HDRB received from the Interim Village Attorney is the following:

- a. *The Legislative body that passed the B4A Zone Amendment, the Village Board of Trustees, intended to preempt Chapter 64 and "very substantially" limit the authority of the HDRB in the B4A Zone.*

The Village Attorney stated in his 5/11/15 memo that the B4A legislation preempts the authority of the HDRB and particularly preempts the Board's ability to assess mass and scale for the Butterfield redevelopment. However, when asked to identify the statement of legislative intent required for such a preemption, he pointed only to Footnote 3 under Section 134-4, which defines substantial conformity to the concept plan. That footnote makes no reference to a legislative intent by the Board of Trustees to preempt Chapter 64 to the extent that it no longer applies to the Butterfield redevelopment, or to abrogate Chapter 64. Village Resolution 18-2014, which approved the B4A zone, also seems to contain no such statement of legislative intent.

- b. *The B4A Legislation's relationship to the concept plan, and substantial conformity to it, eliminate the possibility for the reduction of the mass and scale of buildings on the Butterfield site.*

The same Footnote 3 that the Interim Village Attorney cited as evidence of legislative intent in fact defines substantial conformity to the concept plan, and addresses the capacity to decrease mass and scale for the redevelopment:

(b) the size of the buildings may be decreased, but not increased, except for the proposed single family homes, which may be of any size confirming to applicable zoning (*Chapter 134-4, Footnote 3*).

Two additional provisions in Footnote 3 address the number of feet and degrees that buildings can be shifted and still achieve substantial conformity. Decreasing the overall size of the multi-family structures may have had implications on the number of units that could be achieved within them, but that type of reduction also is accommodated under Chapter 134, as defined in 134-15A(B)4: "Senior Citizen Housing of up to fifty-five units." "Up to" is not the same as "must be," and therefore the possibility for reduction in units is addressed under the legislation as well. The legislation, then, defines the size limitations that the development *could have* reached, but *does not require that they be reached*—it allows for the size of the development to be reduced and still achieve substantial conformity with the concept plan.

The Interim Village Attorney's advice appears to align with the direction given to the Planning Board by Special Attorney Anna Georgiou regarding that board's limited ability to assess mass and scale for the proposal (according to his 5/4/15 invoice, on 4/21/15, Mr. Florence reviewed the "history of Butterfield with Plan. [sic] Consultant Georgiou"). However, it should be noted that Mr. Florence's guidance contradicts the previous Village Attorney's direction to the HDRB on the assessment of Butterfield's mass and scale under Chapter 64:

. . . I believe that the footnotes of B4A and the provisions of Chapter 64-7 are consistent. At the outset, in order for B4A to apply, the applicant cannot deviate from the footnotes. It must submit a plan that achieves "substantial conformity" and in order to do that, the buildings cannot be "moved more than 15' in any direction" and the "orientation of the individual buildings cannot vary more than 10 degrees...". These are two of the six limitations on the applicant to make sure that Applicant stays within the scope of the environmental review of the concept plan. These, however, are outside limitations. There is the ability for the applicant to decrease the size of the buildings-footnote b- and still not move a building more than 15 in either direction or change the orientation more than 10 degrees (email from former Village Attorney Michael Liguori to HDRB Chair and Vice Chair dated 11/12/14).

- c. *The only time that the HDRB had to review mass and scale was in a joint session with the Planning Board during that body's deliberation of the Butterfield site plan, and even in that session the HDRB's "authority was limited to realignment and setback in collaboration with the Planning Board" (Florence memo dated 5/11/15).*

The joint session that the interim Village Attorney refers to was held 12/3/14. In the HDRB memo requesting that joint session, the HDRB specifically stated its intent:

The HDRB has had two very productive meetings with the architect for the Butterfield re-development; we are making positive progress regarding the draft elevations we have seen. However, members all had concerns about the setbacks of Buildings #1 and #2, as well as the orientation of Building #2. . . Given our mandate, in our recent workshop sessions with Butterfield Realty, we have had extensive conversations concerning character, as defined by setbacks and orientation. We will address mass and scale when we have a full representation of the site and the relationships among all its structures and with surrounding properties.

(Memo from HDRB Chair Zgolinski to Planning Board Chair Molloy, dated 11/19/15)

The fact that HDRB could not yet assess mass and scale was reiterated in the 12/3/14 joint public session. However, there was no indication given by the Planning Board Chair, the Planning Board's consulting attorney, or its consulting planner that the HDRB could not return to issues of mass and scale [the HDRB had no assigned legal representation of its own until the April public hearing]. One might surmise from an email sent after the joint meeting that this purported limitation was purposefully left unsaid:

Think it went okay last night, as you two probably observed the dynamics between HDRB members themselves are quite voluble and can be contentious. Please keep that in mind, and let's try not to break new ground or give the impression that any initiative or suggestions on their part exist as "a condition, in addition, or parallel to" the Planning Board's site plan approval or the constraints of the B4A ordinance. It's probably time

well spent to remind the Butterfield team of the same. *(Email from former Planning Board Chair Barney Molloy to Special Attorney Anna Georgiou and Consulting Planner Charles Voss, dated 12/4/14 and copied to the HDRB Chair; it is not clear whether the message was copied to the HDRB Chair intentionally).*

From the beginning of the HDRB's review of the Butterfield redevelopment in October 2014, our discussions with the applicant were focused primarily on design elements of the site's structures, particularly the single family and commercial structures, as well as the orientation and setbacks of the latter. After the 12/3/14 joint session with the Planning Board, the applicant's submissions and presentations to the HDRB continued to focus on design elements for individual structures; accordingly so did the board's response to the submittals. However, HDRB minutes reflect requests for drawings and/or models that would have demonstrated the project's mass and scale beginning on 1/14/15:

Chair Zgolinski and Vice Chair Foley noted that the board had not yet been presented images that showed how the buildings on the site relate to each other, but had only seen individual structures in isolation. A. Zgolinski requested that in the next workshop the board be presented with views that demonstrate the buildings in relation to each other and in relation to accurate grades. K. Foley requested a mass model for the site, recognizing that the public had not yet been presented with an updated model that represents building shifts on the site made since Planning Board and HDRB deliberations. She noted that although a model was prepared during the VBOT B4-A hearings, the public was not given the opportunity to comment on it.

That drawings and a model were not provided to adequately assess mass and scale is reflected in repeated requests recorded in minutes dated 1/28/15; 2/25/15; 3/4/15; and 3/25/15. Limited drawings showing the relationship of the commercial buildings to Building 3 were presented in late February, I believe, but drawings that allowed comparison with the largest single structure, referred to as Buildings 4, 5 & 6, were not delivered until the April 22nd public hearing. A scaled model was only delivered on 4/17/15, five days prior to that public hearing. When questioned by the HDRB in the hearing about apparent discrepancies in the model's scale, the project architect admitted that he had not seen the model prior to the hearing, and said in his presentation that there appeared to be inaccuracies in its scale.

Additional renderings were submitted for the first time with the model at the 4/22/15 public hearing. The HDRB did not deliberate in that session on the additional materials submitted, but only heard public comment. The first opportunity to raise further discussion on mass and scale was in our public session on 5/7/15, for which the Interim Village Attorney canceled his attendance. My attempts and that of my colleague Ms. Bachan to raise questions related to mass and scale were met with assertions by other board members that the issue should have been raised long before. The record clearly reflects attempts to do so. However, full site assessment in relation to mass and scale was hindered by the applicant's piecemeal and limited submissions for review, as well as a lack of concerted focus by the board on that critical element of the proposal.

- d. *Lack of clarity on whether or not the Planning Board's site plan approval for the Butterfield redevelopment was conditional on the issuance of Certificate of Appropriateness by the HDRB.*

The HDRB had been advised by the previous Village Attorney that the site plan approval for Butterfield was contingent upon the issuance of a Certificate of Appropriateness by the HDRB. Questions arose in our deliberations after the 4/22/15 public hearing concerning (a) whether or not this was the case, and (b) whether an HDRB resolution that did not grant a Certificate of Appropriateness would return the plan to the Planning Board for further review. The previous Village Attorney advised that a failed application would return the plan to the Planning Board. The Interim Village Attorney gave conflicting advice. In his 5/11/15 memo he wrote "Because this is so unusual, I can't say what will occur without the Certificate of Appropriateness." However, in our voting session on 5/14/15, he seemed to suggest that the site plan approval was in fact conditioned upon a successful Certificate of Appropriateness, without which the application would return to the Planning Board for further review. I am concerned that this ambiguity created confusion among board members about the consequences of their decision, including their ability to actually influence mass and scale.

Conclusion

While it is true that the B4A Zone Amendment left very little flexibility for the Planning Board and the HDRB to ensure that the final design for the Butterfield site is appropriate to the scale and character of the Village, I do not believe that it completely eliminated the possibility for mitigating its impact based on the size of the buildings. Contrary to the advice of the Interim Village Attorney in his 5/11/15 memo to the HDRB, it does not seem that the mass and scale test defined in 64-7A(2) should be given any lesser weight than the other tests of compatibility. Therefore, balancing the tests, I conclude that the negative impact of the development's mass and scale would have required mitigation before the proposal could be compatible with the Historic District and Village character.

Not having attempted to reduce the size of the multi-family structures on the site—the element that creates the greatest negative impact on the Historic District—constitutes the HDRB's failure to uphold its mandate to ensure that new construction is compatible with the Historic District. It demonstrates the board's disregard of the criteria laid out in Chapter 64-7A, which are meant to guide our review of new construction. With developable parcels remaining in the Historic District, these are dangerous precedents that could encourage approvals of other massive, urban structures. The change in Village character that will be brought by the Butterfield development is irrevocable, and it is not for the better. Its impact will extend far beyond the site.