



Examining Commercial Restrictions in Other Communities.

The October 2007 edition of *Zoning Practice*, a publication of the American Planning Association, is dedicated to the topic of practicing downtown diversity (see copy in appendix). It discusses the efforts undertaken by various communities to protect their downtown districts.

The identity of a community comes from not only the history, architecture and the built environment generally, but from the businesses located within the district.

“Local governments are beginning to use zoning regulations as a powerful tool to create a balanced mix of land uses downtown and in business districts. In doing so, they are correctly recognizing a vital component of creating and

maintaining a vibrant and sustainable downtown.

“Using zoning to regulate uses is nothing new, but there are since creative strategies emerging to address the thornier issue of how to achieve the appropriate mix of uses. After all, attractive downtowns and business districts are a source of identity that distinguishes one community from another. This source of identity comes from not only the history, architecture and the built environment generally, but also the businesses located there. One of the most significant features of vibrant downtowns and central business districts is diversity, or a robust mix of land uses, whether local, national, small or large. In many cases, the businesses contributing to an ideal mix are the smaller, locally serving and locally owned businesses. Local governments around the country are recognizing this fact and taking creative steps to protect these businesses through zoning regulations.”

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The article reports that a number of communities have established restrictive zoning codes, that are tailored to the core commercial areas, and tailor use lists that exclude particular uses that are not serving the local population. Several examples cited include:

- h** Over fifteen years ago, Palm Beach, Florida created a “Town Serving Zone”. The intent was to “create, preserve and enhance areas of attractive, small-scale retail, personal and professional/business services providing for the needs of the Townspersons”. Their zoning established a maximum business size of 2,000 sq. ft.. Any business larger than 2,000 sq. ft. must provide to the Town a report from an auditing firm which demonstrates that over fifty percent of the receipts come from a local zip code.

- h** Laguna Beach, California which is an upscale community on the coast, enacted a Resident-Serving District. They sought to maintain a balanced mix of uses which would serve the needs of both the local and non-local

populations.

- h** Port Townsend, Washington, a small historic seaport located on the Olympic Peninsula adopted restrictions on formula retail and restaurants in response to the community's concern over the potential for a new chain video store opening within their community. They established as maximum size limit for retail and restaurants that limits commercial spaces to 3,000 sq. ft., and also established a maximum linear street frontage of 50 feet.
- h** Warner, New Hampshire, a small community that is located in the southern-central part of the state, was concerned about the proliferation of fast-food and drive-in restaurants. They adopted specific provisions that prohibit the establishment of such a use within 2,000 feet of another similar use.
- h** Corvallis, Oregon established in their Comprehensive Plan policies that the city's goal is to "support the establishment of locally-owned, managed, or controlled small businesses."
- h** Manchester, Vermont established in their town policies that they should create and maintain a business environment which is hospitable to locally owned and managed businesses, and create regulations that control the increased presence of retail that attract a non-resident customer base - whose presence in Manchester would tend to detract from the Town's uniqueness or distinctiveness as a place to visit.

The report discusses further the importance to achieving a healthy mix of locally-oriented commercial uses and the issue of creating commercial space that is affordable. It discusses two approaches - incentive-based zoning, and mandatory regulations.

Like affordable housing initiatives, where density bonuses are provided to a developer if they incorporate affordable housing into their project, commercial restrictions may also be developed that can encourage the creation of affordable commercial space. The incentives discussed in the report include: square footage/density bonuses, expedited development review and permitting, and exemptions from certain land use regulations or requirements. The result would be to create a portion of a project (whether units or square footage) which would

have restrictive covenants that would limit cap rents for the spaces designated as affordable.

The report found, however, that the use of voluntary incentive-based zoning has in some instances been proven ineffective in accomplishing goals like providing affordable housing. Therefore, if one goal is the creation of affordable commercial space, then the adoption of regulations (vs. incentives) is believed to be more effective.

The report goes on to discuss concepts regarding mandatory programs for the creation of affordable commercial space. In instances where a developer or property owner wish to either construct new commercial space, or eliminate existing commercial space from a downtown “core” area, they could be required to provide off-site affordable commercial space or make payment in lieu into a local affordable commercial space fund. Such a fund could be used by local government to purchase or build commercial space that could be leased to tenants at reduced rates.

It is noted that the success of such a program is directly linked to the degree in which a developer, project sponsor or owner is able to recoup some of the costs of compliance. In some instances compliance with such provisions are also tied to increases in density as an incentive.

Looking more locally, Southampton Town enacted changes to protect the character of the commercial corridors throughout the Town. In order to prevent the construction of new buildings the size of which could change the character of the Town’s commercial hamlets, in 2003 the Town of Southampton enacted legislation that restricted the size of office buildings and commercial building. They adopted the Hamlet Office (HO) and Hamlet Commercial (HC) zoning districts, defined specific areas where these designated zones would be applied, and established specific restrictions governing the development of new structures within these zones.

Specifically, they defined HO and HC development projects as Special Exceptions to be reviewed by the Planning Board. Within these districts, the maximum size of any building is 3,000 sq. ft., however they included a provision that the building could be increased to a maximum of 6,000 sq. ft., however a requirement was made for providing one moderate income dwelling unit for every 1,000 sq. ft. over the 3,000 sq. ft. maximum.

For structures that are constructed in excess of the 3,000 sq. ft., the Town has developed a graduated scale of increased setback requirements proportional to the size of the increase.

The goal should be to assure that key areas such as downtown business districts provide a variety of uses that serve local residents and visitors, as well as various income levels.

It is expected that these types of programs in the historic Village of Sag Harbor - either incentive-based voluntary programs or mandatory restrictions on expansion - would likely engender opposition from the commercial property owners. In addition, the unique factors that surround the commercial district of Sag Harbor also would likely make the institution of such a program problematic:

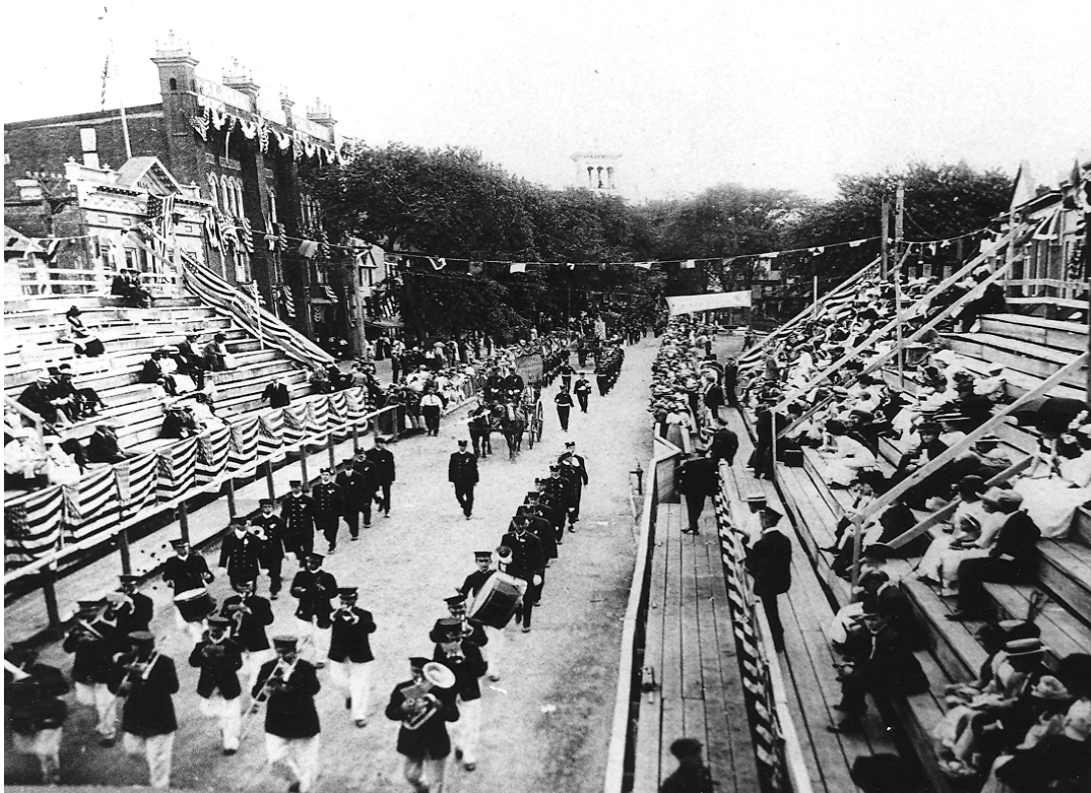
- h** The high desirability of the existing commercial space;
- h** The low vacancy rates that have been experienced in the Village and thus lack of available space;
- h** The extent of the already built environment, and the lack of any measurable expansion capability within what one typically considers the “core” commercial district (Main Street);



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- h** The Village’s objective to focus commercial/retail energies to the “core area” (Main Street), and converting the outlying Village- Business zoned areas to accommodate non-retail commercial uses; and
 - h** The high value of the real estate, leading to high rents for commercial space.

“Sag Harbor is a classic old whaling village, now a happy, charming and quirky tourist destination, with a fascinating history, a whole lot of culture, beer joints, classy restaurants, chic shops, ice cream parlors, school kids, artists and writers, churches, pizza parlors, coffee shops, babies, art galleries. dogs, retired people, rich people and poor people, bicyclists and teenagers. Its’ one of the most unique small towns in America.”
September 21, 2007, Dan’s Papers.

Although in its early history the Village went through significant transformation due to several catastrophic events, recent history has been kind to Sag Harbor. The Village has transformed naturally and gracefully. It is likely that for a while, Sag Harbor was off the beaten track . . . passed by while the other communities in the Hamptons flourished. It remains an important place of commerce that meets multiple purposes - providing goods and services and a place of social gathering for the local community, at the same time providing a second-home and visitor/tourist economy. Appropriate measures need to be undertaken in the Village to ensure that unexpected change does not transform the Village to something that the community does not want.



On November 14, 1845, fifty-seven stores, shops and warehouses, stables and barns were destroyed in a huge fire. Sag Harbor had been subject to many disastrous fires. Had it not been for its many brick buildings, the whole town would have burned to the ground more than once.

(written by Robert Keene, undated.)