

**TOWN OF HARRISON
VILLAGE OF HARRISON
ATTORNEY'S OFFICE**

MEMORANDUM

E-149

TO: Supervisor Richard Dionisio
Members of the Town Board

FROM: Jonathan D. Kraut, Village Attorney 

DATE: March 22, 2023

RE: **Proposed Local Law__ of 2023 Amending Chapter 235, Attachment 3, entitled "Business Districts Table of Use Regulations" and Section 17(R) of Chapter 235, entitled "SB-0 day-care center in SB-0 District"**

Attached herewith is a draft Public Notice, proposing amendments to the above-referenced Sections of the Zoning Code of the Town of Harrison.

In addition, I have attached Planning Board Resolution PB2011/12 in support of this proposed Local Law, pursuant to the ordinance amendment procedure established by Article VIII, Section 235-76, of the Zoning Code.

If acceptable, kindly adopt a Resolution which designates the Town Board as Lead Agency for SEQR and authorizes the Law Department to circulated the EAF and Notice of Intent to involved agencies.

In addition, kindly scheduled a Public Hearing on the matter to be held at the May 4, 2023 Town Board meeting.

JDK:ld

Attachment

cc: Rocco Germani, Building Inspector
Patrick Cleary, Planning Consultant

PUBLIC NOTICE

Proposed Local Law No. ____ of 2023
Amending Section 17(R) of Chapter 235, entitled
“SB-0 day-care center in the SB-0 District” to allow
Day-care Centers in any SB District as a Special Exception Use

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Harrison, at its meeting to be held at 7:00 P.M., on _____, will hold a Public Hearing pursuant to Article 2, Section 10 and Article 3, Section 20 of Municipal Home Rule Law, to amend Chapter 235 Attachment 3 of the Town Code entitled “Business Districts Table of Use Regulations” and Section 17(R) of Chapter 235, entitled “SB-0 day-care center in the SB-0 District” to allow day-care centers as a Special Exception Use in any SB District.

Chapter 235, Attachment 3, entitled “Business Districts Table of Use Regulations” is hereby amended as follows (new material is underlined and deletions are in brackets []):

Use Classification	PB	NB	CBD	SB-0	SB-1	SB-35	SB-100	MFR	GC	TOD
SB[-0] education school	X	X	X	SE	[X] <u>SE</u>	[X] <u>SE</u>	[X] <u>SE</u>	X	X	

Section 17(R) of Chapter 235, entitled “SB-0 day-care center in the SB-0 District” is hereby amended as follows (new material is underlined and deletions are in brackets []):

§ 235-17 Special conditions and safeguards for specific uses.

No authorization for a building permit shall be granted by the Planning Board for any use listed in this section, unless the Board shall specifically find that, in addition to meeting all general conditions set forth in § 235-16, the proposed special exception use also meets the special conditions and safeguards required in this section.

R. SB[-0] day-care center in [the] any SB[-0] District.
(Added 2-17-1993)

- (1) An SB[-0] day-care center shall only be permitted to be located in an SB[-0] office park] District. Notwithstanding the provisions of § **235-11**, an SB[-0] day-care center shall be deemed incidental to the principal uses permitted on the lot on which it is situated and shall be a permitted use on a lot utilized for [any planned] office park use or uses, subject to prior issuance of the special exception use permit for such SB[-0] day-care center.
- (2) An SB[-0] day-care center may be situated in a freestanding building or in a building which otherwise is used for any other planned office [park] use or uses, provided that the SB[-0] day-care center complies with the requirements of this § **235-17R**. However, no

more than one such SB[-0] day-care center shall be permitted in any SB[-0] office district [park] unless the Planning Board, in its sole discretion, determines that:

(a) Special circumstances exist because:

(1) No other SB[-0] day-care center within such SB[-0] office parcel [park] meets the unique day-care needs proposed to be served by the additional SB[-0] day-care center.

(2) The size or configuration of the SB[-0] office parcel [park] or the nature of the previously approved SB[-0] day-care center warrant the establishment of an additional SB[-0] day-care center.

(b) The provision of an additional SB[-0] day-care center within such SB[-0] office district [park] would not create an undue burden upon municipal services, nor negatively impact traffic or any other environmental factors.

(3) The application for site plan approval of such SB[-0] day-care center shall include a fully dimensional diagram floor plan showing planned occupancy or use of all areas, interior or exterior, to be utilized for day-care, including, without limitation, exits, fire-prevention measures, windows, doors, sanitary facilities, adequate off-street parking (as set forth in § 235-37), and a landscaping plan, identifying the location of the fenced outdoor play area, if required, and showing details of any proposed plantings, including those in the buffer area.

(Amended 5-6-1998 by L.L. No. 3-1998)

(4) An appropriately fenced outdoor play area providing adequate room for the size of the SB[-0] day-care center shall be provided on site. If said outdoor play area is not directly adjacent to the indoor SB[-0] day-care center, a supervised crosswalk shall be provided between the two areas. A minimum distance of 10 feet shall be provided between all portions of said outdoor play area and all off-street parking areas and roadways. If the New York State Department of Social Services waives its requirement for an outdoor play area, the Planning Board may, waive, in whole or in part, the requirement of an outdoor play area.

(Amended 5-6-1998 by L.L. No. 3-1998)

(5) No portion of said SB[-0] day-care center shall be located in a cellar.

(6) The SB[-0] day-care center shall be provided with adequate windows, light and air.

(7) Temporary waiver of parking improvements. In connection with the approval of the SB[-0] day-care center, the Planning Board may temporarily waive the construction of no more than 1/3 of the parking and/or loading spaces serving adjacent buildings in the SB[-0] office district [park] (including in the aggregate thereof any previous reduction granted by variance or otherwise) (collectively the "replacement parking"), provided that such replacement parking shall be limited solely to parking and/or loading which will be removed to construct the SB[-0] day-care center and which parking and/or loading would otherwise be required to be immediately replaced for such adjacent buildings to continue to be used and occupied in accordance with their certificates of occupancy if it determines that:

(a) The applicant has demonstrated the technical feasibility of constructing the replacement parking within an appropriate area of such SB[-0] office parcel [park], in accordance with its site plan and accompanying drawings as may be required to be submitted to the Planning Board.

(b) On-site demand for construction of parking and/or loading spaces is less than the number of spaces required pursuant to §§ 235-37 and 235-38 and demand will not be transferred from the site to adjacent streets or to inadequately improved off-street locations as evidenced by, among other things, anticipated uses at the SB[-0] office parcel [park], availability of mass transportation or other communal transportation, the diminution in the intensity of on-site occupancy of floor area, the number of employees on-site, other changes in site conditions or other factors affecting the operation of the site.

(c) As a condition of any waiver and prior to the issuance of any building permit for the SB[-0] day-care center, a written agreement (in form and substance satisfactory to the Town Attorney) imposing covenants and restrictions running with the land shall:

(1) Be signed between the town and the owners (collectively the "owners") of all of the following premises:

(a) The premises on which the SB[-0] day-care center shall be situated.

(b) The premises on which all office buildings are situated having parking and/or loading which will be removed to construct the SB[-0] day-care center.

(c) The premises on which the replacement parking will be constructed.

(2) Be recorded in the Westchester County Clerk's Office, Division of Land Records, and indexed against all of the owners' property which is situated in the SB[-0] office district [park] in which the SB[-0] day-care center will be located (the "owners' premises").

(3) Contain the following provisions:

(a) Reserve an adequate area on the owners' premises which is proximate to such adjacent buildings and which shall be shown and designated on an approved site plan as the location for the construction of the replacement parking.

(b) Commit the owners to commence to file plans for construction of the replacement parking within 90 days and to complete construction thereof within 270 days of receipt of written notice (the "notice") by the town that due to the absence of such replacement parking, the parking and/or loading facilities at the site are inadequate.

(c) Provide that if such replacement parking is not constructed within 270 days of the receipt of such notice, the owners' premises shall be deemed in violation of the requirements of this chapter and shall be subject to the

revocation of the certificate of occupancy for the owners' building or buildings thereon.

(d) Permit the town to enter upon the owners' premises in order to construct the replacement parking as shown in the area designated on the approved site plan and, thereupon, to lien the owners' premises (in the amount of the actual construction costs, including but not limited to the town's labor, material, equipment and other soft cost, if any), which lien shall be enforceable by the town as a real estate tax lien.

(e) Require the owners on an annual basis to deliver to the Planning Board Secretary a report prepared by a licensed professional certifying the status of parking and/or loading supply and demand on the owners' premises together with the annual payment to the Town of a fee to review such report as set forth in the most current resolution of the Town Board fixing the fee pursuant to § 137-1 of the Town Code.
(Amended 2-21-2007 by L.L. No. 1-2007)

- (8) No SB[-0] day-care center may exceed two stories or 25 feet in height, nor shall its floor area exceed 12,000 square feet. In addition, if, located in other than a freestanding building, the area of the SB[-0] day-care center shall be limited to the first floor of such building and its floor area shall not exceed the lesser of 12,000 square feet, or 60% of the first floor of such building. Further, a minimum floor area of 35 square feet per child shall be required for each and every SB[-0] day-care center and, accordingly, maximum number of children who may be enrolled therein shall be determined by the floor area of such facility. The minimum floor area shall not include hallways, kitchens, bathrooms and office space.

(Amended 5-6-1998 by L.L. No. 3-1998)

- (9) The area to be occupied exclusively for use by the SB[-0] day-care center (excluding parking and dropoff areas) shall not exceed the lesser of 15% of the lot area of the owners' premises or 27,500 square feet, unless such area is otherwise required to be increased in order for the SB[-0] day-care center to be licensed or authorized and regulated for such use by the State of New York Department of Social Services or other agency having jurisdiction of such use.

- (10) Minimum setbacks from property lines along the outside perimeter of the SB[-0] office parcel [park] to the SB[-0] day-care center shall be as follows:

(a) Adjoining such property lines in residential districts:

(1) Front yard: 100 feet.

(2) Rear yard: 100 feet.

(3) Side yard: 100 feet.

(b) Adjoining such property lines in business districts:

(1) Front yard: 50 feet.

- (2) Rear yard: 50 feet.
- (3) Side yard: 50 feet.
- (11) Minimum buffer strips shall be as otherwise set forth for properties in the SB[-0] District, as detailed in the Table of Dimensional Regulations,² except that:
- (a) Such strip(s) shall be no less than 100 feet wide where they adjoin a residential district.
- (b) Adjacent to business districts, an outdoor play area may extend into the buffer, provided that the Planning Board determines that it is suitably screened from adjacent properties.
- 2 Editor's Note: The Table of Dimensional Regulations is located at the end of this chapter.*
- (12) An SB[-0] day-care center shall be located, designed and operated so that no driveway exit or entrance serving either it or the SB[-0] office parcel [park] in which it is situated shall be located opposite any residential district.
- (13) No SB[-0] day-care center shall be approved unless the Planning Board finds that there are no negative municipal fiscal impacts associated with the SB[-0] day-care center, by reason of its ownership, operation or use by a not-for-profit or other tax exempt entity.
- (14) The Planning Board shall not approve a special exception use for an SB[-0] day-care center unless, in addition to complying with the above-described conditions, it has adopted findings pursuant to the provisions of § 235-14E and has considered, among other matters or factors which the Board may deem material, those issues set forth at § 235-16.

This Law shall take effect immediately upon filing with the Secretary of the State of New York.

ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO
ATTEND AND BE HEARD.

BY ORDER OF THE TOWN BOARD OF THE TOWN OF HARRISON.

Jacqueline Greer
Town Clerk

Dated: Harrison, New York
March 22, 2023

**PLANNING BOARD RESOLUTION PB2011/12
JANUARY 25, 2011**

**RESOLUTION RECOMMENDING A MODIFICATION TO THE TEXT IN THE
ZONING CODE**

WHEREAS, on January 25, 2011, The RPW Group requested to the Planning Board to consider an amendment to the zoning code to permit day care centers in the SB-1 Zoning District; and

WHEREAS, the Planning Board has undertaken a review of this issue, and has reviewed other zoning districts to also include SB-35 and SB-100; and

WHEREAS, the Planning Board discussed this matter at the Planning Board meeting of January 25, 2011.

NOW THEREFORE BE IT RESOLVED, that the Planning Board finds that the existing day care center zoning provisions set forth in section 235-17R should be made available in all of the Special Business Zoning Districts in order to maintain and enhance the economic competitiveness of these office parks.

BE IT FURTHER RESOLVED, that the Planning Board hereby recommends that the zoning ordinance be amended to permit day care centers by Special Exception in the SB-1, SB-35 and SB-100 zoning districts pursuant to the regulations enumerated in Section 235-17R(1 through 14);

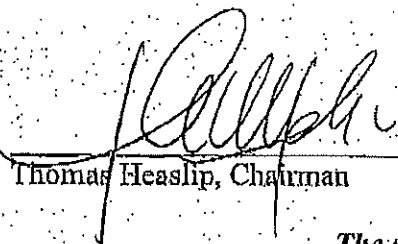
On Motion of Kate Barnwell, seconded by Mark Rinaldi it was adopted by the following vote:

AYES: Thomas Heaslip, Anthony Spano, Mark Rinaldi, Raymond A. Kraus,
Nonie Reich, Marshall Donat, and Kate Barnwell

NAYS: None

ABSTAINED: None

ABSENT: None


Thomas Heaslip, Chairman

The resolution was thereupon duly adopted.

RPW Zoning Amendment
Referral to the Town Board
1/25/11

RECEIVED
JAN 26 2011
10:03 AM
TOWN OF
MARLBOROUGH