

## South Orange Rehabilitation Designation Information

On March 9, 2015, the Board of Trustees adopted Resolution #2015-45, designating the Village as an Area in Need of Rehabilitation as authorized by New Jersey Statute 40A:12A-1 et seq, the "[Local Housing and Redevelopment Law](#)". ("LHRL")

Recently, the Village has received a number of inquiries about this process, including many from citizens concerned about the impact and effect of this designation and Resolution. These residents advised us that their concerns arose as a result of certain assertions that have been circulating via emails and other outlets, which appear to have emanated from a single email, a copy of which was provided to the Village. Due to the numerous inaccuracies contained in that email, the Village believes that is important to address the residents' concerns, by providing a complete and accurate history of the process which resulted in the Resolution and the legal authority for and effect of the Resolution, as well as by correcting the misstatements that have been circulating.

A more detailed discussion follows, but in summary, residents should know:

- The Rehabilitation designation was authorized by New Jersey Statutes, recommended by the Village Planner, and unanimously recommended by the Planning Board.
- The Rehabilitation designation was the result of over nine months of deliberation, study and public discussion.
- The Rehabilitation designation does simply that, designate the Village as an Area in Need of Rehabilitation and is only the first step in a process to make certain tools available.
- The Rehabilitation Designation DOES NOT
  - Change any Existing Zoning
  - Authorize any Projects or Uses
  - Grant any Tax Abatements
  - Circumvent the Zoning Process, or
  - Bypass the Role and Jurisdiction of the Planning Board
- Under Rehabilitation, any action to revise zoning or authorize improvements would require the introduction of an Ordinance, advertised public notice, a review by the Planning Board for Consistency with the Master Plan and a public hearing and adoption by the Board of Trustees; exactly the same procedure required to be followed with all zoning ordinances.
- Under the Rehabilitation process, any proposed improvement is still required to go through the Planning Board site plan application, notice, public hearing and approval process before any construction could occur; exactly the same process required under regular zoning.
- The Rehabilitation process provides the Village with additional, greater controls, including strict control over layout, design, architectural style and aesthetics, not available under regular zoning. These stronger controls better enable the Board of Trustees and Planning Board to ensure compatibility with surrounding properties and neighborhoods and to preserve the essential character of our community.
- The Rehabilitation process allows for a more open and public participatory process by reaching consensus on appropriate uses and plans, with the opportunity for public input, before an application is filed with the Planning Board.

## **The Rehabilitation Process**

Rehabilitation does not involve blight, possible condemnation or long term tax abatement, and is primarily focused on repairs, renovations and upgrades to existing buildings.

The LHRL, specifically N.J.S.A. 40A:12A-14, establishes a number of criteria by which areas or entire municipalities can be so designated, including where more than half of the housing stock is at least 50 years old or where a majority of the water and sewer infrastructure is at least 50 years old and in need of repair or substantial maintenance; which were two criteria that made South Orange eligible.

In 2014, numerous discussions took place with the Irvington Avenue Corridor Advisory Committee (now the “Seton Village Committee”), the South Orange Village Center Alliance (SOVCA), and the South Orange Village Development Committee about the need to make upgrades and improvements to corridors outside of the Central Business District (CBD) and what tools the municipality could leverage to incentivize these improvements from property owners. These concerns have been articulated in various reports and surveys of residents including our Village’s Smart Growth Plan, Vision Plan, and the latest market research study conducted by the Seton Hall Stillman School of Business for the Irvington Avenue corridor.

Last year, the Planning Board authorized their Planner, Heyer Gruel Associates to conduct the studies under the LHRL. After reviewing the applicable criteria, the Planner submitted a report in August of 2014 and advised that the Village was eligible for designation as an Area in Need of Rehabilitation as a result of the age of the housing stock. In addition, the Village Engineer reported to the Planning Board that a majority of the water and sewer infrastructure in the Village was over 50 years old and in need of repair and substantial maintenance, satisfying a second eligibility criteria.

The entire Village being eligible for rehabilitation designation avoided the need to conduct, and ultimately pay tens of thousands of dollars for, many different studies on different areas throughout the Village. Instead, a Village-wide designation completed the first, preliminary step in the process in a single study at considerably lower expense to the Village.

At its meeting on March 2, 2015, the Planning Board determined that the entire Village was eligible for designation as an Area in Need of Rehabilitation and unanimously recommended that the Board of Trustees make such a designation.

At its meeting on March 9, 2015, the Board of Trustees, accepting the unanimous recommendation of the Planning Board, unanimously adopted Resolution #2015-45 designating the Village as an Area in Need of Rehabilitation under the LHRL. Below is an explanation of the effect of that Resolution and the additional steps in this process.

### **Effect of Designation as an Area in Need of Rehabilitation**

The rehabilitation designation alone is just that, a determination that the statutory criteria (in our case the age of housing stock and the condition of the water and sewer infrastructure) have been met. The designation does not authorize tax abatements, does not revise, alter or “circumvent” any existing zoning, does not approve any improvements, projects, or development, does not “award” any “redevelopment contracts”, and does not in any way reduce the jurisdiction of, or eliminate the “protections” of the Planning Board or the Board of Adjustment. To the contrary, as discussed below, any and all actions permitted under the LHRL pursuant to the Rehabilitation designation that would in any way permit improvements or authorize tax incentives can only occur through the adoption of ordinances by the Board of Trustees following introduction at one meeting and public notification and a public hearing. Moreover, any ordinances affecting zoning or permitting land uses would be subject to the exact same procedures as an ordinance to rezone any property under conventional zoning.

The Rehabilitation designation is simply the first step in the process which could lead, where appropriate, to the use of the tools available under the LHRL to incentivize and at the same time exercise greater control over repairs, renovations and improvements. The Board of Trustees' stated intention has been to focus these efforts on the commercial corridors on Irvington Avenue, Valley Street, and east on South Orange Avenue while retaining the ability to also use these tools, and the additional controls they provide, for large sensitive sites such as Marylawn and Orangelawn. Any areas, or sites would require an ordinance adopted with all of the procedures noted above. Additionally, under the LHRL all provisions of a rehabilitation plan ordinance are required to "be either substantially consistent with the municipal master plan or designed to effectuate the master plan".

### **Greater Control under Rehabilitation**

The rehabilitation designation allows the Village to exercise greater control over potential projects, while preserving all of the procedural protections and Planning Board jurisdiction that exists under conventional zoning laws. Specifically, as noted, any development under this framework would require the introduction of an ordinance by the Board of Trustees, a mandatory referral to the Planning Board to review for consistency with the Master Plan, public notification, a public hearing and adoption of the Ordinance by the Board of Trustees; the exact same process as the adoption of a zoning ordinance which could change the zoning on any property. Additionally, any proposed improvements would still be required to go through full site plan review and approval by the Planning Board. However, utilizing the rehabilitation process also provides additional powers and controls to the Village which are not available under conventional zoning.

One such power is the ability to exercise architectural control over the specific layout, design and appearance of any improvements. Zoning ordinances cannot contemplate every potential development and instead can only dictate approved uses, setbacks, height, density, lot coverages and other limitations, with no architectural controls; leaving the layout and design up to a developer, with the Planning Board unable to mandate a different layout or appearance. In contrast, using the rehabilitation tools, the Village can require any improvements to be constructed exactly as included in an approved plan, which can be as detailed as the style, colors, materials, appearance and exact layout and location of a building or buildings.

Another additional power is the ability to require that any approved project or improvement be constructed within a specific period of time or else the approval is void. In contrast, while zoning approvals have certain time periods of protection against zoning changes, in the absence of any change prohibiting the project, projects can be approved and then sit idle and unbuilt for many years.

Finally, and perhaps most importantly, conventional zoning results in a largely reactive land use approval process where the Developer submits their plans for what they want to build and if the plan complies with the zoning, the Village and the Planning Board are essentially required to approve the project, with little or no power to require changes. In contrast, under rehabilitation, the Village is in a position to control the dialogue on any proposed project, including the opportunity to vigorously engage public input and opinion in the process, working towards plans and projects that are compatible with the surrounding properties or neighborhoods and which preserve the very special and essential character of our community.

### **The Process Going Forward**

#### **Short Term Tax Abatements**

Rehabilitation does not permit long term tax abatements, but does authorize limited, short term tax exemptions or abatements on the value of repairs and new improvements, limited to no more than five years. Under short term tax abatements, in lieu of full taxes, the property owner pays on a phased in five year schedule of at least 20% in year 2, 40% in year 3, 60% in year 4, 80% in year 5 and full taxes thereafter. Again, the tax abatement is only on the value of the new improvements, which might not otherwise have occurred without the incentive, so it is all new revenue to the Village, simply phased in over five years. In order to authorize five year tax abatements for any properties or areas, the Board of Trustees

will have to introduce, provide public notice, hold a public hearing, and adopt an ordinance. To date, the Board has not introduced any such ordinance and is currently evaluating what areas or properties would be appropriate to include in such an ordinance. The short term tax abatements would be available immediately for improvements on properties and uses that are consistent with current zoning; without a rehabilitation plan.

### **Rehabilitation Plans**

In addition, after establishing the short term tax abatement program, the Village can adopt one or more specific rehabilitation plans for distinct areas or properties. As noted, those plans could only be implemented through the adoption of an Ordinance with all of the same processes, reviews, and public hearings as any other ordinance.

At this time the Village is very early in the process and the evaluation of potential areas or properties eligible for rehabilitation plans via ordinance is ongoing, and any such ordinances will be the product of an open process with full public and stakeholder input and dialogue.

Any resident who has additional questions relating to the Rehabilitation Designations is encourage to contact Barry Lewis, Village Administrator, [blewis@southorange.org](mailto:blewis@southorange.org), 973-378-7715 ext. 2.