

Village of Tarrytown, NY

One Depot Plaza, Tarrytown, NY 10591-3199
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Planning Board Minutes 10/27/2014

Planning Board
Village of Tarrytown
Regular Meeting
October 27, 2014; 7:00 p.m.

PRESENT: Chairman Friedlander; Members Tedesco, Aukland, Raiselis, Birgy; Counsel Shumejda; Village Engineer McGarvey; Secretary Bellantoni

ABSENT: Village Administrator Blau

APPROVAL OF THE MINTUES – August 14, 2014 (Special Meeting)

Mr. Tedesco moved, seconded by Mr. Aukland, and unanimously carried, that the minutes of August 14, 2014, be approved as submitted. Motion carried.

APPROVAL OF THE MINTUES – September 22, 2014

Mr. Tedesco moved, seconded by Ms. Raiselis, and unanimously carried, that the minutes of September 22, 2014, be approved as submitted. Motion carried.

APPROVAL OF THE MINTUES – October 16, 2014 (Special Meeting)

Mr. Tedesco moved, seconded by Mr. Aukland, and unanimously carried, that the minutes of October 16, 2014, be approved as submitted. Motion carried.

Chairman Friedlander read the adjournments for this meeting:

- 67 Miller Avenue – Bartolacci
- 25 Main Street – HKP Realty Inc.
- 555 South Broadway – Montefiore Medical Center
- 17 North Washington Street – Cannavo
- 5 Hudson View Way – Tarrytown Waterfront LLC
- 1 Hudson View Way – Tarrytown Waterfront LLC
- 2 Division Street – Ferry Landings LLC

Chairman Friedlander stated that the order of the meeting has changed. The applications will be heard in the following order:

- New Public Hearing - Jardim East Subdivision
- Preliminary Presentation - 39-51 North Broadway
- Continuation of a Public Hearing - Toll Brothers Lot 10

- Continuation of a Public Hearing – Toll Brothers Lot 2

NEW PUBLIC HEARING – HAS-UWC – Jardim East Subdivision

David Aukland recused himself from this application.

Chairman Friedlander read the following public hearing notice:

PLEASE TAKE NOTICE that the Planning Board of the Village of Tarrytown will hold a public hearing on Monday, October 27, 2014, at 7:00 p.m. at the Municipal Building, One Depot Plaza, Tarrytown, New York, to hear and consider an application by:

*The Holy Spirit Association for the Unification of World Christianity
4 West 43rd Street
New York, NY 10036*

To consider an application for final subdivision approval of a 46.6 acre site into seven new single-family lots (plus two lots for existing structures), and creation of a 28.7 acre lot for preserved open space adjacent to Taxter Ridge Park.

The property, known as Jardim East Subdivision, is located in the Gracemere neighborhood, south of Sheldon Avenue in the Village of Tarrytown and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.190, Block 119, Lot 10; Sheet 1.190, Block 115, Lot 47; Sheet 1.190, Block 112, Lot 1; and Sheet 1.200, Block 120, Lot 2 and is located in an R-60 (Residential) Zone.

Documents are available for inspection in the Planning and Zoning Office. All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing-impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

*By Order of the Planning Board
Dale Bellantoni
Secretary to the Planning and Zoning Boards
DATED: October 17, 2014*

John Kirkpatrick on behalf of the Holy Spirit Association Unification of World Christianity (Church) said they are here for final subdivision approval. They received preliminary approval from this board. The approval is for a nine-lot subdivision with houses on three of the lots and a large parcel of open space land which is to be transferred to the Village of Tarrytown. The new houses will be off the new road as shown on the plan.

Mr. Kirkpatrick said they are in the process of complying with all of the conditions of the preliminary approval and today submitted to the planning board secretary documents pertaining to the Homeowners Association.

Mr. Kirkpatrick said they have a signed contract with the Town of Green to deliver the 28.7 acres to the Village of Tarrytown which is adjacent to Taxter Road Park and is planned as an extension of the Taxter Road Park. He said this is pursuant to an agreement made by the East Irvington Civic Association with Avalon Bay and Robert Martin Corporation for the funding of this parcel. He said the Town of Greenburgh already is in receipt of the check and they must close before December 1, 2014.

Mr. McGarvey asked if they are cleaning up the area to be given to the Village because there is a lot of junk and we would like to see it cleaned up and we don't want to do it. Mr. Kirkpatrick said yes the open space and the pond, which will be the responsibility of the HOA, will be clean out; that has always been understood.

Mr. McGarvey asked about the fire hydrants that are almost buried below grade on that private road, Gracemere extension. Keith Staudohar said he took a look at those and they believe they are part of the 16" transmission line that the Village owns. He is not sure if they are responsibility but will work it out with the Village. Mr. McGarvey said are you saying that you are not responsible for any of the watermain. Mr. Staudohar explained that there is a 16" line from the tank down to Gracemere and to the intersection of Gracemere and Browning Lane that ties into an 8" main which ends at approximately the Viertel property; it was part of the 1985 subdivision approval. That 8" continues to the 16" and then there is another 8" that runs down Browning Lane. The 16" t's and runs westerly to

Route 9. They believe the Village owns and maintains the 16" and the two 8" mains. He said there is another 8" line off of Walnut Street and through the proposed lot 3 and terminate in a hydrant. That is where the out property (A, B & C) get their service. Mr. McGarvey asked if the Village has an easement through that property. Mr. Staudohar said we don't be so currently but we are providing the Village with a large easement through there. Mr. McGarvey said he does not believe those hydrants are Village owned or maintained; he believes they are on private property. Mr. McGarvey asked that this be a condition as part of the approval.

Mr. Tedesco said we received an e-mail from Linda Viertel of 8 Gracemere who has lived there for over 25 years. She would like to know some details on how the 15 conditions she addresses in her e-mail (attached) will be enforced. Mr. Kirkpatrick said he will address them.

Chairman Friedlander went over some of the issues addressed in Ms. Viertel's letter:

- HOA: neighbor's ability to opt-out/join the HOA. Mr. Fitzpatrick said there that is in the documents that he gave Counsel Shumejda. There is a Class A membership and a Class B membership, so the out parcels have the choice.

Chairman Friedlander opened the meeting to the public.

Robert Kearns, 109 Tappan Landing Road and his wife, owns 25/23 Gracemere, known as the Maselli property, expressed his concern about the clean up as stated by Mr. McGarvey. People have been dumping there for years. Secondly he would like something that indicates private property and open space property. He is concerned about the water lines because they have been there for years and disturbing them could cause a problem down the road. He said the roadway into his property is split into their property and the HSA property. He would like fencing to keep people out and would like some kind of walkway for people to get into the open space; he does not want any vehicles going back there. He asked who is responsible for any liability on that roadway.

Ms. Raiselis read issues that were of concern to the residents in the area: The easement in front of the Aukland property; how are they going to preserve the tree. Mr. Staudohar said that is on the plan. He said they will connect to the new watermain once they get Westchester County Health Department. There will be a down time of approximately 6-8 hours. Ms. Raiselis said the residents asked if the soil is going to be tested once the houses are down. Mr. McGarvey said the building will be tested for asbestos and lead before they are demolished. Mr. McGarvey said he believes they are concerned about oil leaching into the ground from a oil tank; he asked if there was an oil tank there. Mr. Staudohar said he did not know but would look into it. He will put that as a condition. Lastly Ms. Raiselis asked if there is a plan for the reshaping of the junction at Gracemere Drive to prevent cut-thrus. Mr. Staudohar said they extended the Radius a bit with a mountable curb as discuss at the preliminary.

Robert Rachlin, 9 Gracemere asked if they are connecting the old water lines to the new water lines. Mr. McGarvey said the water will be connected to the new water main, not the water lines. Mr. Staudohar showed him on the plan. Mr. Rachlin asked if there is going to be a hook-up from the old sewer lines to new sewer lines. Mr. Staudohar said no because they can't get it by gravity.

Mrs. Rachlin of 9 Gracemere asked about the HOA. Mr. Friedlander said you will be given an option of joining or opting out.

The public hearing was continued to the special meeting on November 10, 2014.

Ms. Raiselis said the residents are concerned about the disposal, material and the replanting of the area once the existing cabins are taken down. Mr. Staudohar showed what would be taken down and explained that the material will be taken away and that they do have a planting plan for that area.

PRELIMINARY PRESENTATION – Coco Management – 39-51 North Broadway

Emilio Escalades on behalf of the applicant stated this proposed project consists of the construction of a gravity block retaining wall behind 45 North Broadway to contain garbage containers. He said it will not take away any parking spaces and it will be much better than what is there now; it will look much better. He said it is a linear wall with steps servicing the fire escape are in the back of the building.

Chairman Friedlander asked how large is the wall. Mr. Escalades said it will be L-shaped and it will be about 26'-10" long and 4 ½ to 5' tall. He said it will be 25-30' away from the building and will come in about 14' from the existing paved surface.

Mr. McGarvey told Mr. Escalades that he must note on the plan 25% grade.

Mr. Tedesco moved, seconded by Mr. Aukland, that the Planning Board declares their intent to be Lead Agency; all in favor. Motion carried.

Mr. Tedesco moved, seconded by Mr. Aukland, to set a \$2,500 escrow; all in favor. Motion carried.

Mr. Tedesco moved, seconded by Mr. Aukland, to set a Public Hearing for the November 24, 2014 meeting; all in favor. Motion carried.

CONTINUATION OF PUBLIC HEARING – Toll Brothers - Lot 10

Judson Siebert of Keane and Beane on behalf of Toll Brothers said at the September meeting there were two items of concern to the board. Landscaping which they feel has been addressed. They provided a landscape plan to Ms. Munz who approved the plan. the neighbor in Sleepy Hollow. They were sent a memo before the September meeting that endorsed that plan. He said he received an e-mail this morning about 10:15 from the neighboring property's counsel stating that a landscape plan has been provided to Ms. Munz but he has not had an opportunity to review it with his client. Mr. Tedesco said the neighbor you are talking about is at 4 County House Road. Mr. Siebert said that is correct, Ms. Bernacchia. Mr. Tedesco asked if 2 County House Road is satisfied. Mr. Siebert said yes; we gave Lucille Munz the comment and suggestion from the September meeting and she made comments, all of which we can abide by.

Mr. Siebert said he feels that the dispute is not the purview of this board; it is private. He said he is trying to get Ward Carpenter, who did both subdivisions (Tarrytown and Sleepy Hollow), to meet and hopefully that will occur in the next few weeks. He said he had a conversation with their attorney today and if there is a way to resolve it in a practical way, they will do that, but if that does not resolve the issue, his legal position is his legal position. He said the description of that line is not in dispute; it is the way it was staked; that a dispute between property owners, not this board. He said nothing will be affected by this 1 ½' dispute; nothing that this board has to approve. Mr. McGarvey said he would like to get the surveyors out in the field; that's an excellent idea. Mr. McGarvey asked when the surveyors will be available. Mr. Siebert two are on board; it is Ward Carpenter that we have not been able to get on board; working on it.

Dana Amersante on behalf of Robin Bernacchia asked if the surveyors have been made aware that we are trying to resolve the dispute. She understands that Lucille Munz is going to look at the landscape plan.

The hearing will be continued at the November 24th meeting.

CONTINUATION OF PUBLIC HEARING – Toll Brothers - Lot 2

Judson Siebert of Keane and Beane on behalf of Toll Brothers recapped a number of items that needed to be addressed.

Regarding spring boxes on the lot which were not shown on the plan, On October 15th he met in the field with Mr. McGarvey, and Tom Capasella, who supposedly put in the spring boxes, the surveyor and Casey Devlin at the site and the result of the meeting is that there are none. This is a phantom issue for which we lost another month. Mr. Capasella said he did not put anything on this lot.

Mr. McGarvey said, for clarify, he did meet in the field and Tom Capasella said there were no spring boxes in the bottom where we thought they were. What we were referring to as a spring boxes, he was referring to as a drain inlets. Mr. McGarvey said it was agreed that should there be a spring box near the stone house, it will be pipe and he thought they were going to put that on the plan. Mr. Siebert said he believes it is on the plan as item #10, Mr. Carver confirmed that. Mr. Siebert said they will agree to that. He said if we find something in the field, we will consult with Mr. McGarvey and address it.

Mr. Birgy said to Mr. McGarvey, we know there are springs on that property. Would they require any special treatment because it fronts the lack; do we need any special treatment on that lot? Mr. McGarvey said we will know that when they dig the foundation and we can pipe around it. If we disturb that line it will be re-directed.

Mr. Birgy said the basement floor will be at around 300, so it will be on the existing grade in some areas. The fact that you will not be putting in a basement below grade is a plus. He said in the front of the property in a space of about 20' you are going down 8', why are you creating a steep slope when it is unnecessary. Doug Carter said we don't want to bring in fill to raise the house; you have to get from one grade to another. Mr. Birgy said to come back with a plan using the existing topo.

Chairman Friedlander said what can you do to modify the steep slope that you created slightly? Some of these have a very large drop in the rear. Here we have a chance to make one thing better.

Mr. Siebert said he received a letter on Friday reiterating Mr. Fry's request that a supplemental EIS regarding Brace Cottage is required. He said their position is that is not the case. That issue was covered through SEQR review that this board conducted, we have Findings that address the cottage and that issue is not raised, there is a subdivision approval now on record with the Westchester County Clerk, which clearly indicates that the cottage is to be removed. There have been no challenges in 6-7 years and there is no information regarding environmental impact. . SEQR recognizes the importance of predictability and finality, that is why there are 30 day statute of limitations on these decisions; that is why an SEIS is only warranted in very limited circumstances. He read from the SEQR Handbook, page 141, *"An SEIS is required when the lead agency acquires new information not previously available regarding environmental impacts."* Everyone has known about the cottage for years. It was vetted by the State Historic Preservation Office with no issues raised at all, an archeological and historic survey was done in connection with the DEIS and the FEIS. That ship has sailed; and while it may be a difficult decision, the decision has already been made on the removal of the cottage. You could not have approved the subdivision or the lot, which would have been non-conforming, with the cottage remaining in place. He asked the board to set it aside and move forward.

Chairman Friedlander opened the meeting to the public:

Mark Fry spoke about several people who were at the meeting to speak on behalf of the Brace Cottage.

Counsel Shumejda stated that the Lakes Committee cannot retain any counsel; that is a Board of Trustees decision. Mr. Turner is here and he can speak but he cannot speak as a Lakes Committee representative. Mr. Fry thanked Counsel Shumejda and said he will ask Mr. Turner to talk about that with you directly. Gregory Gall, 33 Heritage Hill Road, an architect, resident of Tarrytown, member of the Historic Society and Lakes Committee read into the record two letters (attached); one from him dated June 1, 2012 and one from Early Ferguson dated May 25, 2012. He feels that the cottage is in excellent condition and well-maintained and should not be demolished.

Mr. Fry said that Joanne Tall, an architect specializing in historic preservation, submitted a letter which will not be read into the record, but was distributed to the board for their review.

Mark Fry introduced members of the Brace family:

David Brace read a letter from Constance Brace, great granddaughter of the owner of the former estate, in support of the cottage (letter attached).

Frederick Scott Brace, Jr., from Millersburg, Ohio, great grandson of Dr. Charles Brace, said history is important and we need to repurpose things. He hopes the board will take a good long look at the cottage.

Mr. Fry spoke briefly about the Brace family and their contribution to the area. He showed a rendering done by Stephan Yarabak, who could not be present, of how the lot could be subdivided with a new house and the cottage using landscaping to screen the cottage from the Wang house.

Debra VanSteen, historic architect and historic preservation professional with experience in environment review and compliance issues said that it appears that the original EIS did not appropriately reflect the historic significance of this building. She feels that it is important that an SEIS be conducted with emphasis on the historic evaluation of Brace Cottage. She hopes that this property can be preserved.

Frederick Turner, with the law firm of Turner and Turner, said he is here tonight to ask the board to conduct a supplemental environmental impact statement which he feels is warranted by the facts and the SEQR regulations.

He said the significance of Brace Cottage was not addressed. Five architects tonight stated that the cottage and architectural and historic significance; and therefore, warrants preservation. He said there are five references to the cottage in the environmental review but no mention of its demolition, but that can be corrected; there are alternatives. SEQR has a mechanism to review it again if new information is provided to the decision maker. He submits that the information provided by Mr. Fry (two binders) merits your attention. The information provided may be wrong but a second look will determine that. He said SEQR requires that before an action is taken all areas of environmental review must be identified, which he believes was not done; and it requires that the board take a hard look at those impacts, which is what we are asking you to do. Mr. Turner said the applicant completed the defunct short environmental form; that form has been replaced and the applicant, at a minimum, should complete the updated form completely and clearly and that part II be completed as well by the lead agency.

Mr. Turner said he represents himself, Mark Fry and others that are concerned with historic preservation. He feels it is very important to preserve our past; it gives meaning to life today. He respectfully requests that the board require the applicant to make a supplemental filing and to comply with the appropriate forms and ultimately require an SEIS which will look at alternatives for preserving this cottage.

Mr. Fry said they have presented five alternatives and all of them provide greater mitigation to the impact.

Ben Sands, 131 Neperan Road, said one problem is that Tarrytown doesn't have a concept of history. There is no way of preserving a house in the Village. He spoke about his personal issue with his neighbor's house. He spoke about a house on Grove Street in Tarrytown in 1989 whereby the Planning Board directed the owner to take down an addition to preserve its historic character. He supports saving the cottage. He said there is a responsibility to preserve.

Alexander Roberts, a resident of Tarrytown, said he was asked by Mark Fry to come to this meeting to listen to both side and he believes they have made a good argument to save the Brace Cottage. On the other hand he has some sympathy for Toll Brothers; they went through the process and were given approval. It is not their fault that the architectural sensitivity study that was done was defective. He said this cottage has been talked about since 1984 when an attempt was made to add it to the historical records, but it did not succeed at the time; so it is not something new. He feels it would be nice, rather than going through this legal process, if they could sit down with the Historic Society and figure out a way, perhaps with some further action by this board, that they could be financially whole and reconfigure the site; development is hard enough.

Mr. Siebert said Mr. Turner's letter referred to a package entitled "Brace Cottage Package For Planning Board," which he said he did not receive. Mr. Fry said they have all been submitted and are part of the record. Mr. Siebert said he assumes one has been provided to the Board. Mr. Fry said yes. Mr. Siebert said as of what date. Mr. Fry said they were all provided previous to 10 days before this meeting. Chairman Friedlander said his binder is a compilation of things submitted throughout the entire process; some of the material is new and others are from earlier submissions.

Mr. Siebert said he is trying to clarify for the record who Mr. Turner is speaking on behalf of tonight. Mr. Turner said this is a public hearing and I am a member of the public. I am representing myself and all of the people in this room just as you represent many people who are not here tonight. Mr. Siebert asked Mr. Turner if he is here on an official capacity. Mr. Turner said yes he is here on an official capacity. Mr. Siebert asked him on whose behalf; who does he represent. Mr. Turner said I represent myself, I represent Mark Fry, I represent people in this room; I represent a lot of people. Chairman Friedlander said to be specific; he is representing Mark Fry, which is the best way to state it. Mr. Turner said there is no obligation for me to disclose my client.

Mr. Siebert said regarding some of the letters that were read into the record tonight, they were letters to the Board of Trustees in 2012; and as of today, there is no historical designation under Chapter 191 for this structure by the Village; he thinks that should be noted. He stated that the issues raised are not new information. Case law and the DEC handbook all related to new information as information that could have been available at the time of the initial SEQR review. It is not our position that your SEQR review was deficient; there was a DEIS, an FEIS, these issues were vetted; there is a Findings Statement, a recognition of the Findings Statement with a reference to the cottage. There is a subdivision that was approved with the cottage specifically stated to be removed. In terms of the SEQR regulations, what is before this board is an application to construct a single-family home on an approved lot. Under Chapter CNYCRR, Chapter 617.5C9 it is a Type II action categorically exempt from SEQR, construction and expansion of a single-family home on an approved lot. Mr. Siebert said this is precisely what we have. He said there is a time when the door closes. He asked the board to forego the SEIS and to approve the site plan.

Mr. Fry read a portion letter from Toll Brothers (which was given to the board on October 14, 2014) addressed to Mr. Mark Fry, Tarrytown Lakes Committee. He quoted, "...any further actions by you to delay this process will be looked on as frivolous, interfering, and possibly damaging on us and the contract purchaser..." Mr. Fry said when he asked

several attorneys, they said those words mean they are going to sue you. He said Mr. Gaffney must not be aware of the anti-slap statute which is a strategic lawsuit against public participation. He said things that were stated by the speakers tonight is new information.

Ben Sands stated that he indorses Mr. Roberts' suggest of mediation.

Mr. Turner said the SEQR form that was submitted has been superseded and can no longer be a predicate for any action; it's an outdated form and has to be redone.

Ms. Raiselis moved, seconded by Mr. Tedesco to direct the applicant to prepare a Supplemental Environmental Impact Statement that addresses the cultural and historical architectural significance of the Brace Cottage. This motion is based upon newly discovered information presented to the Planning Board during the various hearings and that this newly discovered information evidences that important and relevant information related to the Brace Cottage was not included in the DEIS and the FEIS. The Planning Board deems this new discovered information to be important and relative to their deliberations and believes that the razing of the Brace Cottage may cause a significant environmental impact. All in favor; motion carried.

Chairman Friedlander said he would like to limit the SEIS of the Brace Cottage to historical, architectural and cultural contributions. He said considering the time spent on this application, he would like to receive it in two months and then the board will have 30 days after that to read it and make a determination. If it can be done in less time, we will receive it then and start the 30 review process from that point. He said they are trying to be fair to everyone involved and are sympathetic to both sides. He said this board has a long history of preserving historic structures in Tarrytown.

Chairman Friedlander moved, seconded by Mr. Tedesco to establish a 60-day time period for the receipt of the SEIS for Brace Cottage. All in favor; motion carried.

Chairman Friedlander moved, seconded by Mr. Tedesco and unanimously carried that the meeting be adjourned.
Adjournment: 9:30 p.m.

Dale Bellantoni
Secretary