

Planning Board
Village of Tarrytown
Regular Meeting
Village Hall – 1 Depot Plaza
November 28, 2022 7 pm

PRESENT: Chair Raiselis; Members Aukland, Gaito, Mendez-Boyer; Counsel
Zalantis; Village Engineer Pennella; Secretary Meszaros

ABSENT: Dr. Friedlander, Alternate Member Mezey

Chair Raiselis called the meeting to order at 7:05 p.m. and announced that the public will be given the opportunity to address the Board on agenda items only. Each speaker will be given 3 minutes during the public comment period. The Board welcomes public written comments emailed to imeszaros@tarrytowngov.com or mailed to the Village of Tarrytown, Planning Dept. - 1 Depot Plaza, Tarrytown, NY 10591, and should be received no later than the Friday before the meeting, in order to be distributed in advance of the meeting. She advised that the December meeting next month has been rescheduled to **Tuesday, December 27, 2022** in observance of Christmas and Hanukkah.

ADJOURNMENTS:

Ms. Raiselis announced the following adjournments:

Joseph DeNardo
1 Emerald Woods
Construction of a single-family residence

First Korean Methodist Church of NY
500 S Broadway
Site plan approval for the construction of a parking lot
with related stormwater and site improvements to include
ingress and egress access from properties located at 14
and 18 Walter Street, respectively.

APPROVAL OF MINUTES: October 24, 2022

Mr. Aukland moved, seconded by Ms. Mendez-Boyer, to approve the minutes of the October 24, 2022 meeting, as submitted.

The secretary recorded the vote:

Chair Raiselis:	Yes
Member Mendez-Boyer	Yes
Member Aukland:	Yes
Member Gaito:	Yes
All in favor. Motion carried.	4-0

CONTINUATION OF PUBLIC HEARING – Edward Vergano, PE – 140 Leroy Avenue

Mr. Pennella advised the Board that the applicant advised that he will be delayed. There was no one present in the audience; however, the meeting is being televised. Ms. Raiselis asked the Board if they would like to proceed with this application. The Board had no objection with moving forward with continuing the public hearing. Ms. Raiselis advised that the applicant is requesting site plan approval for the construction of two retaining walls and a patio in the backyard of the property. After the last public hearing, the Planning Board conducted a site visit with the applicant and the neighbors and some work was omitted in the front of the property. Comments have been received from Suzanne Nolan, the Village Landscape Architect and Stephen Coleman, the applicant's environmental consultant who are in agreement with tree removals and tree protection, as indicated in Ms. Nolan's final report dated November 28, 2022.

Ms. Raiselis asked the Board Members if they had any comments.

Ms. Mendez-Boyer had some concerns that the retaining walls and contours are not coordinated on the site plan. Ms. Raiselis agreed and asked Mr. Pennella to comment. Mr. Pennella advised that the walls were imposed into the plans; however, elevations will be required, and a wall analysis, signed and sealed by the design professional shall be submitted prior to getting a building permit. There are also specific conditions in the draft resolution requiring survey monuments to be placed prior to construction to define property lines and tree protection and a pre-construction meeting must take place with the owner, their professional representatives, and village staff prior to any start of work. He advised Mr. Gaito that there are limitations to the height of the walls which will be no taller than 6 feet and a final set of plans will be provided and reviewed for the building permit.

Ms. Raiselis asked about the 20" Norway Maple tree to the west that lies on the property line which is proposed to be removed and asked Mr. Pennella what will happen if they do not get permission from the neighbor to remove the tree. Mr. Pennella said that an executed agreement will be needed from the adjacent property owner to remove the tree prior to getting a building permit. If they do not get permission to take down the tree, then a building permit cannot be issued and they cannot move forward. In addition, any other work that is proposed outside of the property boundary will also require permission from the adjacent owners, which is why the monuments are required to be placed and fencing installed prior to construction.

There were no other comments from staff. Before closing the public hearing, Mr. Auckland and Counsel Zalantis noted for the record that there is no one in the public present to comment on this application.

Mr. Aukland moved, seconded by Mr. Gaito, to close the public hearing.

The secretary recorded the vote:

Chair Raiselis:	Yes
Member Mendez-Boyer:	Yes
Member Aukland:	Yes
Member Gaito:	Yes
All in favor. Motion carried.	4-0

Mr. Aukland noted that the applicant is not present but he will read through portions of the draft Resolution and noted that a copy will be provided to the applicant and the entire Resolution will be recorded in the minutes of this meeting as follows:

**RESOLUTION
VILLAGE OF TARRYTOWN PLANNING BOARD
(Adopted November 28, 2022)**

**Application of Ed Vergano, PE
Property: 140 Leroy Avenue (Sheet 1.110, Block 80, Lot 11 and Zone R-7.5)**

Resolution of Site Plan Approval

Background

1. The Applicant (Mr. Ed Vergano, PE, Project Engineer) representing the owners, Stephan M. and Samantha K. Sperber), requested site plan approval for the construction of two 6' retaining walls (max. height) creating two relatively flat areas at different elevations as shown on the Site Plans. Applicant also proposes to install an 8' x 30' extension of the existing stone patio directly behind the home. In addition, a storm water infiltration chamber will be installed to maintain achieve a "no net increase" in stormwater run-off from the permeable paver stone patio. Connected to the proposed project, Applicant is seeking a Steep Slope waiver to eliminate much of the existing steep slopes up to Benedict Avenue in the rear yard of their home. Applicant indicates that this area of steep slopes is unstable, unusable, and unsafe to traverse.

2. The Planning Board on September 28, 2022, determined the proposed action to be a Type II Action under NYS DEC 617.5 (c) (12) ***"construction, expansion or placement of minor accessory/ appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;"***

3. The Planning Board has conducted a duly noticed public hearing on September 28, 2022, and continued on November 28, 2022, at which time all those wishing to be heard were given the opportunity to be heard.

4. The Planning Board has carefully examined the Application including the Applicant Engineer's description of the Project, the set of plans and site plan showing location of existing trees to be removed existing trees and those to be protected, the two proposed walls, stormwater management practices, location of steep slopes, erosion control plan, *Zoning Compliance Form* and *Environmental Clearance Form*, conducted a site visit on October 11, 2022 and received *Tree Evaluation and Proposed Mitigation Measures Report* from the Applicant's Arborist (Stephen Coleman) dated November 17, 2022. The Applicant subsequently decided to remove the proposed work in the front yard (i.e., the wall system) from the application. Applicant provided the Planning Board with revised plans. The Planning Board also received comments and recommendations from the Consulting Village Planner in memoranda dated September 13, 2022, October 11, 2022, and November 11, 2022, a landscape review provided by the Village Landscape Consultant dated September 22, 2022, and final review dated November 28, 2022, a denial letter from the Building Inspector/Village Engineer dated June 27, 2022, which the Planning Board has considered.

5. The Planning Board closed the public hearing on November 28, 2022. After closing the public hearing, the Planning Board deliberated in public on the Applicant's request for approval.

Determination

The Planning Board determines that based upon the findings and reasoning set forth below, the Application for site plan approval is granted subject to the conditions set forth below.

I. Findings

The Planning Board finds that the Applicant has satisfactorily addressed the criteria for granting the waiver for steep slope disturbance under 305-67(F)(1)(B) and the Planning Board finds that the Applicant has established that the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant. The Applicant's *Narrative* prepared by Ed Vergano, PE of Preferred Design and Construction dated September 5, 2022 is made part of the findings of the Planning Board and described below:

The Planning Board finds that the area of steep slope on the site totals 1,741 sf or 23 percent of the lot's total area of 7,500 sf. There will be a disturbance of 697 sf proposed with the construction of the two retaining walls with joining stairwells in the rear of the property. The Applicant also proposes to install an approximately 8' x 30' (255 sf) extension of the existing stone patio directly behind the home. This would not involve disturbing or creating steep slopes. A stormwater infiltration chamber will be installed to capture stormwater for the increase in impervious area from the permeable paver patio. A slope stability analysis was performed for the modular block wall design with safety factors exceeding the minimum code standards.

The Applicant desires to eliminate much of the existing steep slopes in the rear yard of their home at 140 Leroy Ave. Applicant's Engineer indicates that this area of steep slopes, is unstable, unusable, and unsafe to traverse. Applicant is proposing to construct two 6' retaining walls (max. height) creating two relatively flat areas at different elevations as shown on the site. These improvements will not only result in more usable land, but it will also help control stormwater

runoff which currently causes erosion on the subject area and flooding at the rear foundation of the existing home.

Neighborhood Character: The visual character of the area will not change in part due to the secluded location of the proposed work on steep slopes located in the rear of the subject property. Also, walls will not exceed 6' in height and earth tone colors will be used to maintain consistency with the character of the area.

Alternate Feasible Method to achieve benefit sought by applicant: The goals are to create usable land that is safe to traverse and will help control stormwater runoff. These objectives together, cannot be achieved without disturbing steep slopes.

Impact on Other Properties: The proposed steep slope disturbance will not have an adverse effect or result in a substantive change to public safety and flooding. In fact, the proposed improvements will improve safety when traversing the site, stabilize currently unstable areas that are presently subject to erosion, and better control flooding by reducing the grades and installing a subsurface detention system.

Consistency of Project with Intent of the Steep Slopes Chapter: *The proposed improvements will have little visual impact to any, but two adjacent properties located on either side of the subject work area. Applicant will be using earth tone-colored materials and the walls be no higher than 6ft. Furthermore, Applicant will be matching existing grades at either side of the proposed construction while not changing current drainage patterns adjacent to the two neighboring properties.*

Granting the waiver will be consistent with the purposes, objectives of general spirit and intent of the "visual character and environmentally sensitive areas" chapter because the proposed improvements will:

- 1. make the subject area will be more stable than at present.*
- 2. make the subject area easier and safer to access.*
- 3. result in the control of stormwater runoff and reduce the potential for flooding.*
- 4. improve the aesthetic character of the site and provide protection to the public health, safety and welfare.*

Additionally, the Planning Board finds that under 305-67(F)(2) that for the reasons set forth above, the proposed development will not be materially detrimental or injurious to other properties and will not increase the danger of fire or flood, endanger public safety or result in substantial impairment of the slope area. Also, as set forth above, the waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of the chapter. Finally, the waiver is the minimum relief necessary to relieve the extraordinary hardship established by the Applicant. Granting this waiver based upon the Approved Plans (defined below) is the minimum relief that could be granted to address the Applicant's hardships, including but not limited to, the need to increase stability, to prevent flooding and to create safer living conditions and a safer rear yard.

The Planning Board considered the standards set forth in Village of Tarrytown Zoning Code ("Zoning Code") Chapter 305, Article XVI and finds that subject to the conditions set forth below, the proposed site plan is consistent with the site plan design and development principles and standards set forth therein.

Applicant's proposed project is located on a 7,500-sf developed property located in the R-7.5 district. The 1 ½ -story single-family residence fronts on Leroy Avenue. The property has 50' of frontage on Leroy Avenue and extends down to Benedict Avenue with no residences behind the site. The front yard setback is approximately 41' whereas 20' is required. The rear yard extends approximately 70' to Benedict Avenue. Applicant is requesting a Steep Slope waiver to construct two 6' retaining walls (max. height) with joining stairwells in order to create two relatively flat areas at different elevations as shown on the Site Plans. The constructed would consist of a two-tiered segmented block retaining walls using earth tone colors. Currently, 1,741 sf of the 7,500- sf lot is classified as steep slopes. The construction of the two walls would result in a disturbance of 697 sf or 40 percent of the site's steep slopes or approximately 9 percent of the total property. The extension of the existing stone patio directly behind the home by 255 sf will not involve disturbing any steep slopes. As a result of the Planning Board site visit to the property, the Applicant revised his plans to remove the proposed work in the front yard (i.e., the wall system) from the application.

The impervious coverage for the property is 2,425 sf which will be increased by 444 sf to 2,869 sf. The proposed stormwater management system will consist of one cultec infiltration chamber and associated drain inlets and piping. The Village Engineer indicates from a drainage perspective, the Applicant will be slowing down the velocity of the water going down the hill and more water will percolate into the ground. There are no environmental issues raised in the review of the Environmental Clearance form. The subject property is not located in the wetlands or a wetland buffer. The subject property is not in a flood zone nor in a critical environmental area. There are no historical landmarks in proximity to the site.

Applicant's arborist has provided a report indicating the location of the three trees to be removed (two Norway Maples and Balsam Fir) and the three trees to remain (American Elm, Red Maple and Sugar Maple) and provided tree protection details including tree fencing consistent with the Village Landscape Consultant's final review. Additionally, the Applicant's plans now identify the trees to be removed and those that will remain and be protected. Applicant has provided more detailed *Tree Protection Notes* on the Site Plan (S1) indicating that the *"Tree Protection zone is within the drip line of the tree. Where construction circulation enters this zone, the ground plane shall be protected from compaction with ¾' plywood over 6" bed of wood chips. Tree armoring may also be required."* Applicant has also added the following under Tree Protection Detail on the Landscape Concept Plan *"No Materials Storage within Tree Protection Zones"*. The Landscape Notes now indicate that *"planting within the drip lines of the trees shall be done by hand."* Finally, the Landscape Notes were further revised to reflect the applicable bubble areas on the Landscape Concept Plan.

II. Approved Plan:

Except as otherwise provided herein, all work shall be performed in strict compliance with the plans submitted to the Planning Board and approved by the Planning Board as follows:

-Plans prepared by Mr. Ed Vergano, PE of Preferred Design and Construction, Inc. for Stephan M. & Samantha K. Sperber, *Yard Regrading at 140 Leroy Avenue, Village of Tarrytown, Town of Greenburgh, Westchester County, New York* dated 8/26/22 and last revised 11/28/22, unless otherwise noted.

- S1 *“Site Plan”*
- S2 *“Rear Yard Plan & Details”*
- S3 *“Construction Access & Erosion Control Details”*
- L1 *“Landscaping Concept Plan”*

Topography of Property prepared for Stephan M. and Samantha k. Sperber situate in the Village of Tarrytown, Town of Greenburgh, Westchester County, New York survey by TC Merritts Land Surveyors, March 17, 2021, map revised April 19, 2021 to show topography

(the “Approved Plans”).

III. General Conditions

- (a) Requirement to Obtain Approvals: The Planning Board’s approval is conditioned upon Applicant receiving all approvals required by other governmental approving agencies without material deviation from the Approved Plans.
- (b) Changes to Approved Plans: If as a condition to approval any changes are required to the Approved Plans, the Applicant shall submit: (i) final plans complying with all requirements and conditions of this Resolution, and (ii) a check list summary indicating how the final plans comply with all requirements of this Resolution. If said final plans comply with all the requirements of this Resolution as determined by the Village Engineer, they shall also be considered “Approved Plans.”
- (c) Commencing Work: No work may be commenced on any portion of the site without first contacting the Building Inspector to ensure that all permits and approvals have been obtained and to establish an inspection schedule. **Failure to comply with this provision shall result in the immediate revocation of all permits** issued by the Village along with the requirement to reapply (including the payment of application fees) for all such permits, the removal of all work performed and restoration to its original condition of any portion of the site disturbed and such other and additional civil and criminal penalties as the courts may impose.
- (d) ARB Review: No construction may take place and a building permit may not be issued until Applicant has obtained approval from the Board of Architectural Review in accordance with applicable provisions of the Village of Tarrytown Code.
- (e) The Applicant shall pay all outstanding consultant review and legal fees in connection with the Planning Board review of this Application.

IV. Specific Conditions

- (a) Survey monuments will be placed to define property lines prior to the field coordination meeting and no work shall be done on Applicant's property without the approval of the Village Engineer.
- (b) Prior to the issuance of a building permit a wall analysis specific to the manufacturer of products used signed and sealed by the design professional shall be submitted.
- (c) Prior to commencement of construction and the installation of the silt erosion fencing a field coordination meeting with the owner's representatives, contractor, Village's landscape consultant and Village Engineer must be held to review the proposed tree protective measures to be installed.
- (d) A signed and executed agreement with any adjacent property owner for the removal of any tree that is not located entirely within subject property must be filed with the Building Department prior to the issuance of a building permit.
- (e) Prior to the issuance of a building permit, Applicant shall provide a *Construction Management Plan* for the review and approval of the Building Inspector/Village Engineer that will provide for staging of construction.

Mr. Aukland moved, seconded by Ms. Mendez-Boyer, to approve this resolution.

The secretary recorded the vote:

Member Mendez-Boyer:	Yes
Member Aukland:	Yes
Chair Raiselis:	Yes
Member Gaito:	Yes

All in favor. Motion carried. 4-0

Mr. Vergano arrived and was advised that the discussion of his application took place, the public hearing was closed, the resolution was read and it was approved by the Planning Board. She gave Mr. Vergano a draft copy of the resolution. A neighbor also appeared after the hearing was closed and Ms. Raiselis advised him that the public hearing had been closed. Mr. Pennella advised that he can discuss his concern's with Mr. Vergano outside of the meeting room.

ADJOURNMENT

Mr. Aukland moved, seconded by Ms. Mendez-Boyer, to adjourn the meeting at 7:25 p.m.

The secretary recorded the vote:

Member Mendez-Boyer:	Yes
Member Aukland:	Yes
Chair Raiselis:	Yes
Member Gaito:	Yes
All in favor. Motion carried.	4-0

Liz Meszaros, Secretary