

Robert P. Astorino  
County Executive

County Planning Board

March 6, 2017

Justin Datino, Village Administrator  
Village of Larchmont  
120 Larchmont Avenue  
Larchmont, New York 10538

**Subject: Referral File No. LAR 17-001 – Zoning Text Amendment – Mechanical Rock Excavation**

Dear Mr. Datino:

The Westchester County Planning Board has received a proposed local law that would amend the text of the Larchmont Zoning Ordinance by entirely repealing Section 381-44 which regulates mechanical rock excavation and rock blasting and replacing it with updated regulations.

We have reviewed the proposed amendment under the provisions of Section 239 L, M and N of the General Municipal Law and Section 277.61 of the County Administrative Code and find it to be a matter for local determination in accordance with the Village's planning and zoning policies.

Respectfully,  
WESTCHESTER COUNTY PLANNING BOARD

By:



Eileen Mildemberger  
Acting Commissioner

EM/LH



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March 15, 2017

**VIA OVERNIGHT MAIL and E-Mail**

Mayor and Board of Trustees  
Village of Larchmont  
120 Larchmont Avenue  
Larchmont, New York 10538

Re: Proposed Mechanical Rock Excavation Law Scheduled for Hearing on March 21, 2017

Dear Mayor and Trustees:

As you know, this office represents the owner of 40 Ocean Avenue.

We previously wrote to you and appeared at your hearings to express our client's concerns with aspects of what was then called Local Law K, relating to rock excavation and blasting. At that time we noted, depending on the amount and nature of the rock on a site, the proposed 38 calendar days appeared to create potential problems. In response, your Board modified the conditions somewhat to allow the Planning Board, as part of subdivision and site plan review, to modify the time periods in appropriate situations.

Your current proposal, while no longer counting days when no work is permitted, reduces the already short 38 days to 15 days. Thus, in even the worst-case scenario I previously cited, where holidays and weekends could reduce the actual work time to 22 days, you are now cutting even that meager timeframe. Perhaps more worrisome is that you have also taken away the discretion of the Planning Board to accommodate an appropriate situation by allowing it to extend the time frame. Instead, you have substituted allowing the Building Inspector to grant a maximum of five (5) additional days. Thus a maximum, with extensions, is now 20 days.

While you have also reduced the mandatory hiatus for continuing work from 18 to 12 months, that still creates significant potential issues. As I noted in my previous correspondence, delaying any further work for 12 months can cause loss of financing, loss of purchasers and foreclosure on properties. Moreover, what is the benefit to the Village or the residents of having a partially excavated lot sitting idle for 12 months; or worse, a partially excavated lot going into foreclosure? Fill cannot be brought to the site until excavation is completed. If the maximum 20

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days is insufficient would you have an open hole remain for 12 months until excavation can begin again? Or would you force the property owner to go to the expense of bringing in fill only to have to remove it, when the excavation can begin again in 12 months. Does the time removing that fill get added to or deducted from the new 15 day period for excavation?

The proposed law is a "one size fits all" that really does not fit all. It gives no consideration to the size of the area to be excavated, the amount of rock or the nature of the rock. Some rock is harder and takes longer to excavate. Moreover, at approximately \$2,500 per day to conduct the rock removal process, no developer will seek to drag out the process longer than is necessary.

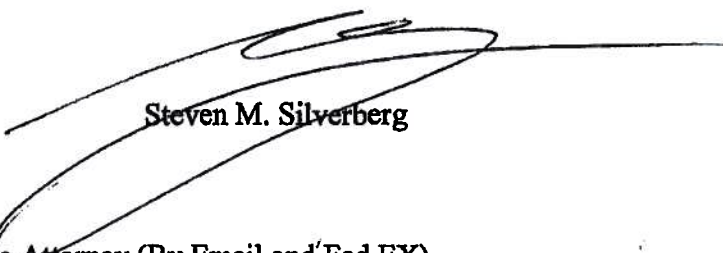
After a year-long moratorium, months of study and revisions your Board concluded that 38 days was appropriate. There appears to be no evidence, engineering or otherwise, to support the reasoning behind the new proposal, other than the desire to further limit the time for rock excavation. Although no one, including a developer, should want to drag out the excavation longer than necessary that does not mean an arbitrary constraint should be placed on such activities. The goal of fifteen days is laudable and in some instances may be accomplished, but the Board should, at a minimum, give the Planning Board discretion to increase the time when it is presented with evidence that additional time is necessary under the circumstances relating to a specific property. The provision for the Building Inspector to add up to an additional 5 days should also be included, as there may be instances where weather interferes with work resulting in the loss of several days. However, the 5 days at the discretion of the Building Inspector should be in addition to discretion for the Planning Board not in lieu of that provision.

Finally, in paragraph C (1) you have a notice provision that appears reasonable, except you add that the Building Inspector or Village Engineer may require that notice go to additional lots. Yet, there are no criteria in the law applicable to that provision. Could a developer be required to notify the entire Village? There should be some standard to provide guidance.

Thank you for your consideration of these additional comments.

Very truly yours,

SILVERBERG ZALANTIS LLP



Steven M. Silverberg

SMS:no

Cc:

James Staudt, Esq. Village Attorney (By Email and Fed EX)