



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 Miltenberger
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.

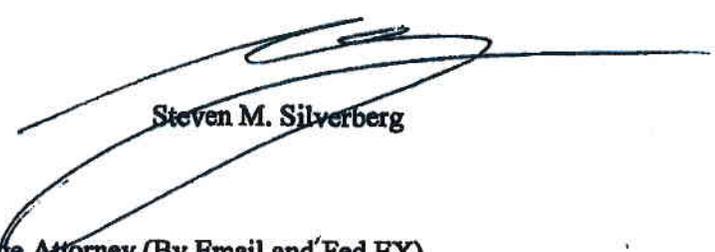
After a year-long moratorium, months of study and revisions your Board concluded that 38 days was appropriate. There appears to be no evidence, engineering or otherwise, to support the reasoning behind the new proposal, other than the desire to further limit the time for rock excavation. Although no 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)

Via Regular US Mail

March 20, 2017



Hon. Mayor Lorraine Walsh
Village of Larchmont
120 Larchmont Avenue
Larchmont, New York 10538

Re: Mechanical Rock Excavation – Local Law
Village of Larchmont

Dear Mayor Walsh,

We reviewed the Village's proposed Local Law to amend the Zoning Law by revising regulations concerning mechanical rock excavation within the Village of Larchmont.

Assuming a lot size of 10,000-15,000 sq. ft., we would expect that hammering for the mechanical rock excavation will be for a portion of this total lot area (not the entire footprint), and will be for the foundation and utility infrastructure construction. Based on that assumption, the proposed 15-day time frame, with the proposed 5-day extension, seems reasonable to complete the rock excavation work.

Should you have any questions regarding this matter, please feel free to give me a call.

Sincerely,

WOODARD & CURRAN ENGINEERING P.A. P.C.



Anthony Catalano, P.E., BCEE
Senior Principal

Enclosure(s)

cc:

Memorandum

From: John B. Parkinson, Jr.

Date: March 20, 2017

To: Mayor and Board of Trustees
Village of Larchmont
120 Larchmont Avenue
Larchmont, NY 10538

cc: Village Attorney

Subj: Review of proposed local law to amend the Zoning Law by revising regulations concerning mechanical rock excavation

At the request of the Village Board, the Village Planning Board has reviewed the proposed changes to the local zoning code related to mechanical rock excavation.

It is the considered opinion of the Planning Board that the proposed changes to the zoning code are appropriate for and consistent with processes that would facilitate reasonable land use policy and practice in harmony with the master plan for the Village of Larchmont. The proposed changes thoughtfully address issues of: public notice concerning development impacts, as well as the timing and duration of allowable mechanical rock excavation and extension of these services, when warranted and appropriately requested and approved; which appear to balance fairly the interests of property owners and the community as a whole.

Respectfully,



John B. Parkinson, Jr.
Chair, Village Planning Board



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March 21, 2017

VIA E-Mail and BY Hand

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 regarding our concerns with respect to the referenced proposed local law. I will not repeat my comments but wanted to note that we are now in receipt of a brief letter, dated March 20, 2017, from your consulting engineers Woodward and Curran. The letter notes that with a parcel of 10,000 square feet to 15,000 square feet the proposed law "seems reasonable". This is hardly an engineering analysis of the variables involving rock excavation, is limited to lots of only a certain size and indicates no consideration whatsoever of the variations as to the amount of rock that may occur on different lots.

As pointed out in the letter dated March 21, 2017 from our client's engineer, Joseph Riina:

Due to the many variables involved, we believe that it is extremely difficult, if almost impossible, to predict the time required for mechanical rock removal from a building site.... This could vary from site to site. For example, a 10,000-15,000 SF lot could require more than a one acre lot. One would have to know the extent to which rock may exist and the type of rock. Again, not easily predictable.

Your hard and fast, one size fits all, proposed rule ignores what happens if, among other things: (1) there is bad weather causing delays, (2) there is more rock

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than anticipated, (3) if the rock is hard, such as granite, and cannot be easily removed and (4) if the lot is more than 10,000 to 15,000 square feet?

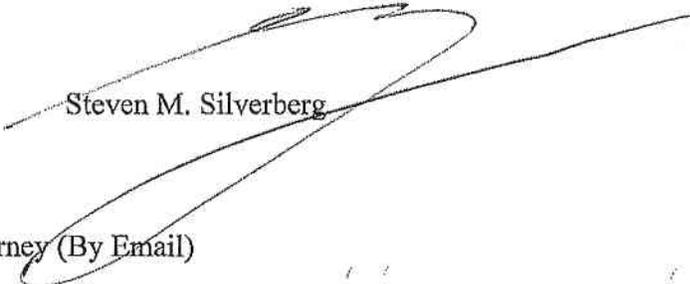
Our own client's experience with a property in Larchmont, ten years ago, was that it took over two months of work five days per week to remove a large amount of granite from a site. He spent \$2,250 per day and had no interest in delaying the process but the reality was that it took that long.

If you are going to give discretion to the building inspector to grant an extension of time it should not be arbitrarily fixed at five days. He should have discretion to allow continuation of work when the situation warrants permitting additional time.

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)