



November 30, 2020

TO: Tarrytown Board of Trustees

RE: 29 South Depot Plaza Proposal

This is NOT an antidevelopment letter on behalf of a few disgruntled citizens. It is instead a respectful request that the Board of Trustees take the appropriate action required by the failure of the voting majority of the Planning Board to exercise appropriate due diligence leading up to their approval on November 23rd of a Negative Declaration relative to the environmental impact of the 29 South Depot Plaza development proposal. The Planning Board failed to carry out its responsibilities in two areas ... one involving Public Hearing Notice provisions of the Village Code and the other regarding SEQRA criteria for making a Negative Declaration determination.

The Planning Board was informed in writing prior to their November 23rd meeting of several violations of Section 305-111 of the Village Code, which relates to Notice of Public Hearing. These are listed below and supporting documentation is available. Yet they chose to proceed anyway. The Board was also informed in writing prior to their meeting by a professional with relevant expertise that the applicant's submission under SEQRA was characterized by notable omissions, rendering it incomplete, along with numerous substantive errors. The Board had therefore not taken the legally required "hard look" at all the important potential negative environmental impacts as required by SEQRA. They were further informed that they would not be meeting their responsibilities under SEQRA if they were to adopt a Negative Declaration. They were advised instead to adopt a Positive Declaration to ensure that the identified issues, along with any others that might arise, are addressed via a Draft Environmental Impact Study. Yet they chose to proceed anyway.

Violations of the Public Notice section of Village Code render any subsequent action taken by the Planning Board null and void. It would therefore be improper for the Board of Trustees to take up consideration of the zoning amendments required by the 29 South Depot Plaza proposal at this time. Beyond the public notice issues, it would be improper for the Board of Trustees to consider zoning amendments without benefit of access to the information that a DEIS would have provided them with regard to a project of such significance. The blatant disregard by the voting majority of the Planning Board of both the letter and the spirit of their obligations is reflected in the technical and procedural improprieties listed below.

- The public hearing for the proposed project was improperly noticed in violation of Village Code Section 305-111. The Planning Board was notified of the violations in writing ahead of their November 23rd meeting, yet chose to ignore them.
 - The public notice was posted on the wrong property (photographic evidence is available).

- The public notice does not include the correct information regarding the applicants (a documented fact).
 - The current Notice of Public Hearing describes the project as a sixty-nine (69) unit, four-story project (a documented fact). A new Notice of Public Hearing, which accurately describes the latest proposal for an eighty-eight (88) unit, five story project must be drafted. Dozens of changes have been made to the project which will dramatically affect the impacts and mitigations. While it is well-settled law that minor changes to a project require no new public notice, major changes of the sort that require new notice have been made to this proposed project. The changes include, but are not limited to, adding an entire story of residential construction, adding nineteen additional residential units, changing the unit mix, dramatically increasing the proposed monthly rental costs, changing the architecture to fit a generic factory-assembled-modular-construction. These are major changes and the resulting additional visual impacts and traffic impacts and fiscal impacts, to name just a few, require that the Applicants draft a new LEAF and draft a new Notice of Public Hearing in order to comply with the SEQRA process and local law.
 - Residents of neighboring Franklin Tower and Franklin Courts did not all receive Notices of Public Hearing. Numerous residents are prepared to attest to this.
- The property owner's original proposal was to improve his property in conformance with existing ID zone requirements as of right. Given that the self storage proposal was for a building located a few yards east of busy railroad tracks and a few yards north of a waste treatment facility and a busy commercial paper recycling warehouse, it was entirely legitimate. However, meeting minutes show that some Planning Board members pressured the owner to bring them a mixed use residential proposal instead. This was a particularly questionable path, given that the parcel was created by dumping unregulated fill in a swamp located in a flood plain. However, if it were to be explored, the Planning Board should have met their obligations to protect the interests of the community, the future residents of such a building, and the owner by making it clear that a DEIS would undoubtedly be necessary.
- The neighboring former American Paper property (Lot 39) was purchased several months after Lots 37 and 38 were purchased by Mr. Ferraro. It is our understanding that the Lot 39 owner and the family of Mr. Ferraro are well acquainted. At one point in the process of exploring the mixed use concept, Mr. Ferraro indicated that he could only do so as long as neighboring Lot 39 remained under its current ownership. We have reason to believe that plans have been made that will result in the Lot 39 owner pursuing a similar mixed use project on the same scale once the 29 South Depot Plaza project is approved and under way. It is anticipated that approval for the 29 South Depot Project will be cited as a supporting rationale for approval of the Lot 39 proposal. Both parties should be questioned in this regard so that the impact of the 29 South Depot project can be assessed in the context of potential future plans for the neighboring site.

- At least one member of the Planning Board inappropriately gave assurances to the property owner, prior to the commencement of the required public hearing, that the Board of Trustees would be adopting new zoning regulations in the form of a proposed SAO and/or would vote in support of a TOD amendment. Further assurance was given that a larger scale mixed use project would be in conformance with the new zoning regulations. During a subsequent public meeting that same Board member flatly stated that the new SAO zoning regulations had already been adopted and had to be corrected by the Village Administrator and the Village Attorney.
- The public hearing session during the November 23 Planning Board meeting was not the first time that a large number of community members had expressed concerns regarding the proposal. It lasted approximately two hours, with 90% of the comments reflecting significant concerns. Chairman Friedlander noted that, with one possible exception, he could not recall any development proposal in his 48 years on the Board that has generated as much of a public expression of concern or has led to such divisive views among Planning Board members. Yet, at the end of the public comment session a Planning Board member read from a prepared statement in support of moving the project forward to the Board of Trustees. This reinforced prior observations of her arrogant disregard for public opinion and clearly revealed that she came to the meeting with no good faith intention to consider the issues that were raised by members of the public. When asked by Chairman Friedlander if she wished to respond directly to any of the issues raised by the public, she declined. Two other Board members simply stated their agreement with her and declined to respond to any of the issues raised by the public. Chairman Friedlander, in stating his opposing views, indicated that he was “surprised and disappointed that we didn’t really respond specifically to those questions and concerns.” A DEIS would provide an appropriate opportunity to more fully address concerns expressed by the public, especially with regard to information that was not previously available to the Village’s planning consultant.
- The residential density of the proposal is unprecedented for the Village of Tarrytown. Similar projects referenced by the developer are located in places like Yonkers, Greenwich, and Port Chester. The only Tarrytown project of comparable density cited in the LEAF submitted in support of the Negative Declaration was Franklin Tower (a HUD project not subject to normal zoning restrictions, and therefore irrelevant as a basis of comparison). The 6/11/20 Chazen Technical Report states: “... the proposed project’s residential density is somewhat disproportionate ...” The high density issue alone warranted a Positive Declaration.
- The parking provisions for the project do not conform to standard zoning requirements in terms of either quantity or width of spots and the resulting ratio barely exceeds the minimum ratio required for a TOD. Parking availability is based upon assurances of an agreement with the MTA concerning use of their parking lot that has not yet been

finalized. In an Interoffice Memorandum dated February 7, 2020 from the Village Engineer to the Village Administrator, the Engineer stated:

“With regard to parking spaces, please note on Sheet A-001, they are proposing to utilize the parking lot that the village leases from NYCRR. There are 39 parking stalls proposed with a 22 foot wide aisle width, which is substandard. At this meeting, I expressed that there might be legal concerns obtaining this parking area that the village currently leases from NYCRR, and if there are any benefits to the Village.”

The utilization of an unprecedented parking ratio alone should have warranted a Positive Declaration. Beyond that, the Board failed to exercise appropriate due diligence by not deferring action on the proposal until the legalities of the proposed MTA agreement were explored further and a signed agreement with the MTA was produced.

- The Chazen report utilized assumptions about personal vehicle use by project residents that are not aligned with the actual driving need realities of people living in the Village, as was pointed out by members of the public. Nor did the report take into account the potential long-term implications of the pandemic. The report also failed to take into account the traffic impact on the station area of the vehicles associated with the roughly 3400 parking spaces that have been allocated for the Edge on Hudson development under construction half a mile north. The development’s 1177 residential units are anticipated to house approximately 2400 residents. This issue alone should have served as a basis for issuing a Positive Declaration.
- The estimate for the potential number of school children who will reside in the building failed to take into account the emerging pandemic-driven realities of families with young children leaving the city and moving to this area, to which any local real estate agent could attest. Young parents who have been living in the city are very comfortable with apartment style housing. This analysis needs to be redone as noted by the Planning Board Chair.
- The height and mass of the building was misrepresented in the viewshed analysis material and the analysis did not include several important public viewpoints in the vicinity. The building as proposed will have a much more significant viewshed impact than has been disclosed. The Village should demand that a complete and accurate viewshed analysis be conducted.
- There are numerous environmental considerations, any of which individually, but surely all of them collectively warranting a Positive Declaration:
 - The current building was built on a parcel created by dumping unregulated fill into a swamp at a point in time before the EPA even existed.
 - This parcel is located in an environmentally sensitive area a few yards from the Hudson River, a National Scenic Resource and a few yards away from the train station, which is listed on the National Register of Historic Places. It is also

adjacent to a public housing project filled with children who play outside a few yards away. In addition, the site is substantially contiguous with important dedicated parkland including Lossee Park, Carmine Giaquinto Field, and Basher Field.

- A well-known attorney who specializes in the New York State Department of Environmental Conservation Brownfield Cleanup Program has indicated that this site, like all sites on the New York Central Railroad between New York City and Albany, is most likely a “contaminated” brownfield site. It is our understanding that the contiguous site does contain contaminated soil. Yet, to our knowledge, no documentation has been produced by the applicant relative to environmental engineering site investigations, if any, or results of soil and water testing.
 - No documentation has been provided by the Applicant regarding the results of certain monitoring well tests which were reportedly performed at the site on or about October 24, 2020 in conjunction with, or concurrent with, the removal of several abandoned underground heating oil tanks.
 - The site is going to be disturbed to a much more substantial degree than originally disclosed. After two and one half years of the applicant insisting, in letters and other submissions prepared by project attorney Linda Whitehead, that the Applicant wanted to re-use the existing concrete slab, Collins Enterprises LLC’s new project architect, Do H Chung and Partners, provided a new Building Section, Drawing A-005 on April 4th of 2020. That drawing shows that the existing slab will be cut in 44 places to allow the installation of approximately eleven rows of four columns to support the upper four floors. The columns will rest on poured concrete pad footings, presumably supported by tapered concrete friction piles driven to refusal. Based upon the scale drawing it appears that each heavily reinforced poured concrete pad will be roughly six to eight feet square. Assuming an average of 64 square feet per pad, times 44 pads, about 2,800 square feet of the existing slab on grade will need to be removed.
- The Village has typically required developers to offer a substantial public benefit in exchange for approving zoning amendments needed for a project. In this case, the Planning Board presumed a public benefit associated with the TOD residential development concept, which arguably does not even apply in the technical sense of that term to a suburban village environment. The other public benefit involved affordable housing. Yet 9 new units of affordable housing does not even begin to make a dent in terms of meeting demand. The remaining residential units will be offered at market rates ranging up to \$4100/month, which seems a bit ambitious for apartments located a few yards away from noisy train traffic, a noisy, dirty commercial paper recycling operation, and a waste treatment facility. The bottom line is that the public benefit is largely theoretical and is not proportional to the significance of the zoning amendments that are being sought.

The Planning Board has earned the trust of village residents over the years by exercising cautious due diligence in evaluating project proposals. Recently, they even required a homeowner to submit a DEIS relative to a retaining wall on his property. Yet this same Planning Board, by virtue of a 3 to 2 vote, is not requiring a DEIS for a major, historically unprecedented project in an environmentally sensitive area that will be regarded by other developers in waiting as representing the new benchmark for redevelopment projects all over the village. This raises serious questions as to what possible motivation the three members who voted to proceed with consideration of this project could have had for disregarding their own well established due diligence standards and pushing forward with a Negative Declaration (following public hearings that, in spite of not even being properly noticed, produced overwhelming negative reactions from the Tarrytown community). Please give careful consideration to the minority report from the Planning Board members who did not vote in favor of the Negative Declaration.

Having failed to carry out the responsibilities with which they have been entrusted, the voting majority of the Planning Board has left the Board of Trustees no choice but to send their zoning amendment recommendation back to them with a formal notice stating that you will not accept a recommendation from the Planning Board with regard to a 29 South Depot proposal until such time as any forthcoming recommendation is preceded by a public hearing noticed in full compliance with Village Code and by appropriate due diligence in evaluating a DEIS produced in accordance with a Positive Declaration.

Further, in light of the substantial expression of public concern regarding the height, mass, and density of the current proposal, we would request that your notice to the Planning Board also include a directive that they encourage the property owner to revert to his earlier more modestly scaled and sensitively designed mixed use proposal. It is well established that developers typically overreach in their initial project proposals and Village officials have wisely sent them back to the drawing board in the past. The owner's original proposal for residential mixed use requested 46 units in a 4-story, 40-foot-tall building, which would be consistent with the maximum building height currently permitted in that zone. Since he submitted the proposal, it is reasonable to assume that he believed it was financially viable. Given that the 29 South Depot Plaza proposal is the first proposal of its kind to be considered by Village Officials, a compromise of this nature might represent a more prudent first step in this direction, which would go a long way towards generating broader public support for pursuing it. Tarrytown deserves better than the flawed process that was followed leading up to the Planning Board vote on November 23rd and the resulting project proposal you have been asked to consider.

Sincerely,

Howard W. Smith
Tarrytown Legacy Connection