

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
December 11, 2006 8 p.m.

PRESENT: Chairwoman Lawrence; Members Jolly, Brown, James, Maloney;
Counsel Shumejda; Village Engineer/Building Inspector McGarvey;
Secretary D'Eufemia

APPROVAL OF MINUTES

Mr. Maloney moved, seconded by Mr. Jolly, that the minutes of November 13, 2006, be approved as submitted. Ms. James abstained. All others assented. Motion carried.

CONTINUATION OF PUBLIC HEARING – PUTNAM AVENUE HOMES, INC. –
HILLSIDE STREET (NEW NOTICE)

The Secretary read the following Notice of Public Hearing:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 8:00 p.m. on Monday, December 11, 2006, in the Municipal Building, 21 Wildey Street, Tarrytown, New York to hear and consider an application by

Putnam Avenue Homes, Inc.
Hillside Street
Tarrytown, NY 10591

For an interpretation from Section 305-22.A of the Tarrytown Zoning Ordinance, which prohibits new construction and vegetation removal on areas containing steep slopes as defined in the Zoning Ordinance, and if a determination is made that such a variance can be granted, that the following variances be granted for Lots 3A and 4A of a previously filed subdivision map for Hillside Street:

Lot 3A: Gross Area	16,994 square feet
Net Area After Steep Slope Deduction	13,213 square feet
Amount of Steep Slopes Disturbed:	3,258 square feet
Percentage of Lot Area	19.2%
Lot 4A: Gross Area	11,379 square feet
Net Area After Steep Slope Deduction	10,003 square feet
Amount of Steep Slopes Disturbed	1,909 square feet
Percentage of Lot Area	16.8%

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. The property is shown on the Tax Maps of the Village of Tarrytown as

Sheet 21, Block 71, Part of Lots 1, 3, 4, 5 & 6 – Filed Map Lot 3 and Lot 7 and Part of Lot 6 – Filed Map Lot 4 and is located in an R-10 (Residential) zone.

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.

The certified mailing receipts were submitted.

Mr. Richard Blancato, attorney for the applicant, stated, “As you can see from the maps and drawings before you, we have been before the Planning Board for quite some time to try to get a final resolution of what homes can be built on these two lots. Assuming we approve the homes we have offered, we need a variance from the steep slopes and it was unknown whether the Planning Board or the Zoning Board of Appeals could grant a variance. The ordinance says building on steep slopes is prohibited. At the last meeting of the Planning Board we reached some compliance on the plans and the Board wants to hire an architect to review our plans, specifically with regard to one of the houses, to see if it can be reduced somewhat in size and affect the steep slopes to a lesser degree. They are in the process of hiring an architect so if you determine you have the power to grant a variance, we will have to wait for the Planning Board to make a recommendation to this Board for a variance.”

Chairwoman Lawrence questioned whether anyone wished to address the Board on this matter. No one appeared.

Chairwoman Lawrence stated Board members revisited the property yesterday. She reported receipt of the following memo dated December 7, 2006, from Ron Tedesco, Acting Planning Board Chair on this application before the Planning Board:

“At the Planning Board staff meeting held today, we reviewed the revised application to your Board made by Putnam Avenue Homes relative to new homes on Hillside Street. The Planning Board would have no problem with an interpretation being made by the Zoning Board of Appeals that the ZBA can consider variances from the steep slopes ordinance. If that is a decision your Board renders, we would just request that you do not take action at this time on the requested variances. The Planning Board would like more time to review revised plans to be sure that any recommendation we make to you relative to such a variance is the minimum variance we feel is appropriate to allow for the construction of these homes.

We appreciate your consideration of this request.”

Board members reviewed a proposed resolution, which would determine the ZBA could grant variances from Section 305-22A with regard to construction in areas of steep slopes.

In regard to inquiries from Ms. James, Counsel Shumejda stated the following:

- This is the first time the ZBA has been asked to grant a variance from this statutory provision.
- This statute was enacted in 1990; however, in the summer of 2005 the Board of Trustees modified a portion of the ordinance and deleted the word restrict and added the word prohibit.
- The ZBA cannot change the statute; however they can determine that they may grant a variance. Counsel Shumejda stated in his opinion granting a variance from this statute would be no different from an application to the ZBA for someone who wants to build in the front yard in a single-family residential zone. The ordinance does not say that you are “prohibited” from building in the front yard but that is what is meant by a front yard setback.
- He researched cases in other municipalities but could find none where the word prohibit had been challenged.
- The Board of Trustees amended the statute in 2005 by adding the word prohibit and deleting the reference to a waiver being allowed for landscaping, draining, access or public safety because the Village found those things were destroying the steep slopes. The Board of Trustees having that experience decided to limit the effect of the exemptions and thus gave more weight to the environmental impacts.
- The Board of Trustees has not reviewed the resolution being considered by the ZBA tonight; however, they are aware of the issue and they are considering an amendment to the ordinance to allow the Planning Board in the future to grant a waiver from this section. For the current application, the Planning Board does not have the jurisdiction to waive the provision.
- Although the Tarrytown code states what is permitted and not what is prohibited, like some other communities, all communities have Zoning Boards of Appeals.

Mr. Jolly questioned whether the ZBA should get into the issue of the extent of the variance. Counsel Shumejda stated the Planning Board took the unusual step of requesting an architect be hired to work with the applicant’s architect to come up with a plan for the smallest amount of variance. The Board of Trustees approved that request. The architects may not come to an agreement but they can help the Planning Board make the determination as to the minimum steep slopes variance.

Ms. Brown noted this ordinance also refers to hilltops, ridgelines, and hillsides. She questioned whether the Board’s determination tonight relative to steep slopes would apply to those as well. Counsel Shumejda stated it would not but the Board might be asked in the future about those provisions. That would be a different discussion.

Ms. Brown questioned if the Planning Board recommends a variance to the ZBA, is it a yes or no by the ZBA. Counsel Shumejda stated it would only be a recommendation by the Planning Board, which is the only ability they have. When a Zoning Board

application is published it is done with the maximum requested; however, the ZBA by law is only allowed to grant the minimum variance that is necessary.

Trustee James moved, seconded by Mr. Jolly, and unanimously carried, that the following resolution be adopted:

**ZONING BOARD RESOLUTION ON
WHETHER A VARIANCE MAY BE GRANTED FROM
STEEP SLOPE LAW**

Whereas, the Zoning Board of Appeals of the Village of Tarrytown has jurisdiction to interpret the zoning law, and

Whereas, because it is impractical for a Village Board to adopt a zoning code that is both completely definitive and all-encompassing for every scenario, discretion in the interpretation of the zoning code is delegated to Zoning Board of Appeals (see, Arceri v. Town of Islip Zoning Board of Appeals, 16 A.D.3d 411, 791 N.Y.S.2d 149 (2nd Dept., 2005), and

Whereas, Section 305-51. A. of the Zoning Code of the Village of Tarrytown specifically states that the Zoning Board of Appeals "...shall have the authority to decide any question involving the interpretation of any provision of this chapter", and

Whereas, Section 7-712-b of the Village Law of the State of New York provides in part that the Zoning Board of Appeals has the authority to modify any interpretation and "...shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law..." and

Whereas, Section 305-22A of the Zoning Code of the Village of Tarrytown prohibits the Planning Board from permitting construction in areas determined to be steep slopes within the Village of Tarrytown.

Now Therefore Be it Resolved, that pursuant to both the Laws of the State of New York and the Zoning Code of the Village of Tarrytown, the Zoning Board of Appeals declares that it may grant a steep slope variance from Section 305-22A of the Zoning Code of the Village of Tarrytown which prohibits the Planning Board from permitting construction in areas determined to be steep slopes within the Village of Tarrytown; however, in making a determination as to whether to grant said steep slope variance, the Zoning Board of Appeals, pursuant to Section 7-712-b shall consider (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether

the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Now Therefore Be it Further Resolved, that should any steep slope area variance be granted, the same shall, pursuant to Section 305-51.B. of the Zoning Code of the Village of Tarrytown, be the minimum variance the Board of Appeals deems necessary and adequate and which at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community; furthermore, the applicant must submit to the Zoning Board of Appeals the minimum variances sought to implement said application.

Chairwoman Lawrence stated the Board would wait on the variance issue until they hear back from the Planning Board. All agreed to continue the hearing at the Board's next meeting.

MEETING ADJOURNED 8:20 p.m.

Kathleen D'Eufemia
Secretary