

Robert Falk
3 Willow Lane
Scarsdale, New York 10583

By Electronic Mail

Hon. Jane E. Veron
Mayor of the Village of Scarsdale
and the Village Board of Trustees
Village Hall
1001 Post Road
Scarsdale, New York 10583

Re: Comments on Proposed Stormwater Code Amendments, and Request For Information Regarding Stormwater Improvements in Cushman Road/Garden Road Area

Dear Mayor Veron and Members of the Board of Trustees,

Please include this letter in your Record of the proposed amendments to Chapter 254.

Comments on Code Amendments

The proposed amendments, which appear limited to dealing with grading activities within buffer areas and certain definition changes, have nothing to do with the core problems relating to Sensitive Drainage Areas (“SDAs”) in the Village. Given all the havoc caused by Hurricane Ida, it is time that the BOT updates our Village Code to deal with the modern reality of intense storms of shorter duration. The 100-year storm metric is no longer the answer for safeguarding adjoining properties in SDAs, as recognized by the Planning Board’s own engineering consultant (discussed below).

The simple fact is that the 100-year storm design criterion in Village Code Section 254-9G (as well as in the NYS Stormwater Management Design Manual) does not work well, or at all, to protect properties in SDAs from adverse stormwater impacts from development activities. This design metric fails to account for the severe risks posed in SDAs when storms, like Ida, dump a lot of water in a short time. This is especially true in areas that do not have adequate municipal infrastructure to handle excess water that is not managed by private systems. We all saw the damage that occurred during Ida, including to my home and property. And Ida was not a 100-year storm. As documented in prior correspondence to the Village, the rainfall from Ida was approximately 6.5 inches in a 24-hour period. This is far short of the rainfall from a 100-year storm: 9.4 inches in a 24-hour period.

The Village Planning Board’s engineering consultant, Mott MacDonald NY, Inc., opined during a Planning Board Meeting in September 2021 that a land-disturbing activity in an SDA is not guaranteed to avoid adverse impacts to adjoining property owners simply by meeting the Village’s and DEC’s minimum standards (see attached Scarsdale Inquirer article). Has the BOT conferred with the consultant from MacDonald’s Office? The BOT should do so before accepting the currently proposed bare amendments to Chapter 254.

More specifically, the BOT should consult with Mott MacDonald NY, Inc. (and Mr. Goessl) about further amending Section 254-9G – which governs land-disturbing activities of greater than 1,500sf on lands located in an SDA – to require robust technical analyses for the design of stormwater systems in SDAs. It is notable that Chapter 254 already identifies SDAs as areas requiring special consideration given their propensity for flooding. The Village’s standards for new development activities in SDAs should go much further than simply designing for the 100-year storm.

For example, Chapter 254 should mandate that in SDAs, (a) testing for percolation and seasonal high ground water levels be performed by an independent expert (retained by the Village), and (b) that the ground water testing include forensic soil analysis to establish historical high ground water levels. This is critical because one of the key data points in stormwater design is the seasonal high ground water level. This data point is especially important in SDAs, which are known to have a high water table – a common condition in Scarsdale. If the seasonal high ground water level used to model the system is inaccurate and the actual level is higher or becomes higher over time, this will, among other things, compromise the capacity of detention facilities, and impair the system’s performance. This is not some imaginary scenario – in the proposed 80 Garden Road subdivision, for example, when such testing was performed, the applicant’s engineer’s ground water table data proved to be false.

Another suggestion is for the Code to mandate that the Planning Board evaluate factors that are particular to each SDA in which a new land-disturbing activity is proposed. Not all SDAs are the same. The Code should be amended to require the Planning Board during its subdivision and site plan reviews to accept evidence of and review all matters relevant to the subject SDA, such as (1) already-existing stormwater problems within an SDA; (2) the presence of wetlands; (3) the condition of the municipal drainage system in the area and its ability to accept incremental runoff without increased flooding; and (4) other pertinent facts. Consideration of these matters would ensure that the Board is aware of the damage that may ensue if a proposed stormwater management system does not perform as specified, and allow the Board to make an informed decision.

The Village’s in-house and outside engineering consultant would certainly have other ideas for protecting properties in SDAs from the type of flooding destruction that resulted during Ida, when stormwater systems designed to handle the 100-year storm proved ineffective. It would also be helpful to solicit input from the Planning Board, as that Board is on the front lines of implementing Chapter 254.

I would also be happy to meet with Village officials to discuss how the process could be improved to assure that the Planning Board is making decisions under Chapter 254 on fully an informed basis. The application review process needs to be strengthened to compensate for the perverse incentives which affect fair application of the provisions of Chapter 254. From a practical point of view, under the existing process, there is no meaningful opportunity for interested parties to engage with Village officials who participate in the application review process. Structured engagement by interested parties will help to compensate for the fact that developers seeking to hold down construction costs are incentivized to cut corners for things like stormwater management systems that do not affect house design and appearance. After all, the developer usually doesn’t suffer any consequences for building a shoddy stormwater management system – overflow typically flows down-gradient and/or defaults to the Village’s drainage system, and becomes some other, unlucky property owner’s problem.

In sum, until amendments are made to Chapter 254 consistent with these comments, Chapter 254 will continue to be exploited by developers and others, and the protections supposedly afforded by Chapter

254 will prove to be as illusory as they have been in the past. It is time to require more than designing for the 100-year storm. The proposed amendments relating to buffer areas may have a salutary effect at the margins; however, stormwater conditions, which have deteriorated over time, will continue to deteriorate, unless our Village officials and staff are willing to take a realistic look at ways in which Chapter 254 (and the review process under it) has been exploited by developers and others, and to take meaningful steps to prevent this from happening in the future.

Clarification of Proposed Stormwater Improvements

As a separate matter, I have reviewed the Village-Wide Comprehensive Drainage Study, dated June 21, 2022, prepared by STV. While culvert improvements are recommended near my home to alleviate flooding in the Cushman Road Area, it is not clear whether this work includes rerouting one of the Cushman Road drainage lines so that it connects to the drainage line running down Willow Lane. This would help alleviate much of the risk to my home by diverting some of the stormwater collected by the municipal system beyond my property, farther downstream.

As the Village knows, this reroute is of great concern to me – and indeed to the Village too, as it supposedly has been slated to occur for years. I would appreciate someone contacting me to clarify whether this culvert work includes this pipe reroute.

Conclusion

Thank you for the BOT's and staff's consideration of my comments. I hope to hear from someone soon about the Cushman Road pipe reroute.

Very truly yours,

Robert Falk

Robert Falk

3 Willow Lane

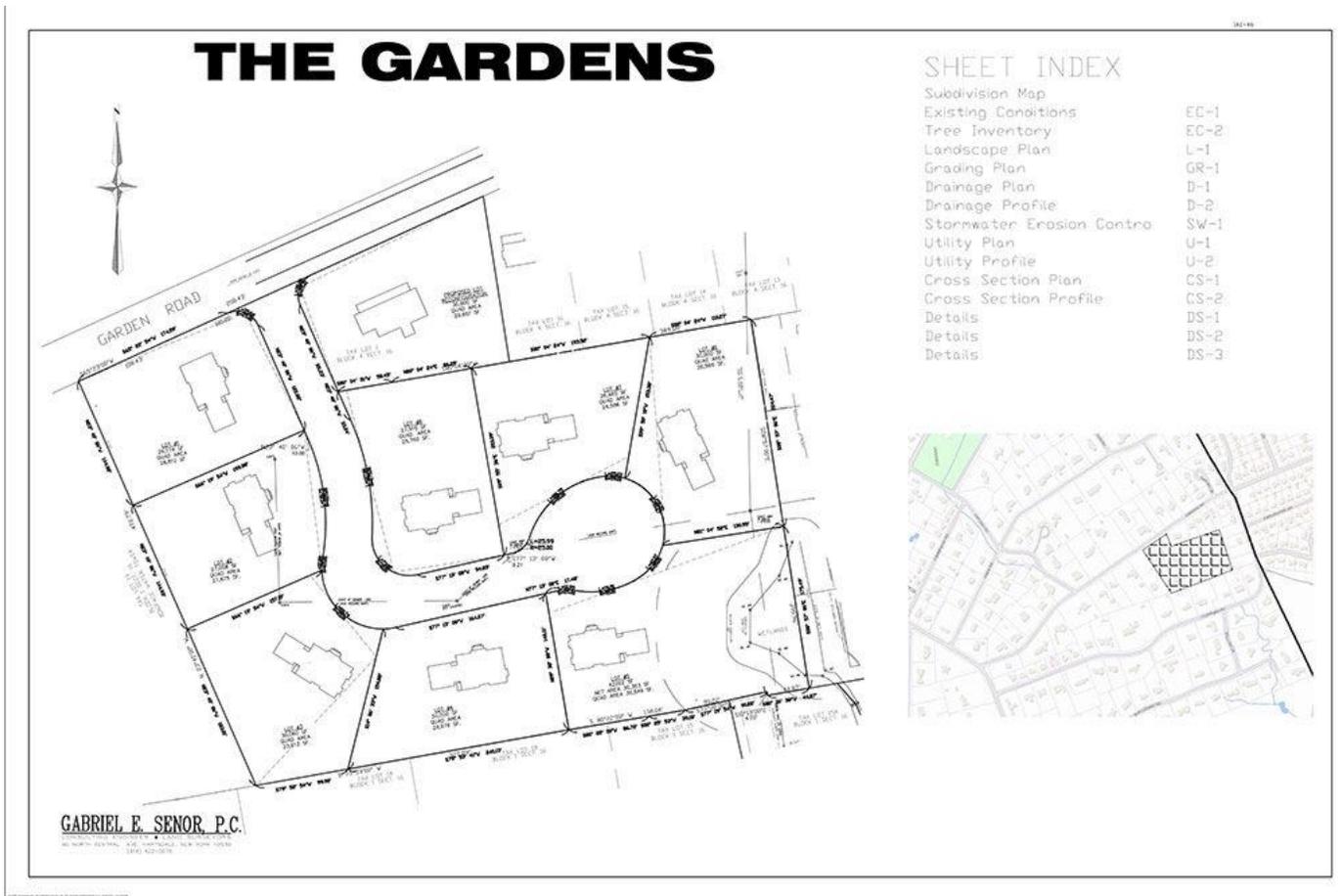
cc: Robert Cole, Village Manager
Alex Marshall, Deputy Village Manager
David Goessl, PE, Village Engineer
Jeff Coleman, Superintendent of Public Works
Greg Cutler, Village Planner
Frank Diodati, Building Inspector



https://www.scarsdalenevents.com/top_stories/neighbors-dismayed-over-proposal-for-garden-road-development/article_88502562-1d44-11ec-90c0-0f8bd6e47c53.html

Neighbors dismayed over proposal for Garden Road development

By NICHOLAS PERRONE
Sep 24, 2021



If accepted by the planning board, the 80 Garden Road development, would include eight new houses and a private roadway.

Courtesy of Gabriel E. Senior, P.C.

Rutherford Hall was mostly filled on Sept. 22 as the planning board meeting was about to begin.

After a brief introduction, a presentation from the applicant and some questions, residents, consultants and lawyers voiced opposition to a proposal to build eight new houses on the approximately 7-acre plot at 80 Garden Road.

Although plans to develop the property were on the drawing board since 2006, none had been brought to fruition. After a few failed attempts, a new effort brought forth in May 2021 has made its way onto the planning board's agenda.

Still reeling from Tropical Depression Ida, which severely affected parts of the village earlier this month, residents on Garden, Cushman, Sheldrake and Cayuga roads are laser focused on flooding. The area has a high water table, poor soil and limited drainage options and was hit hard by Ida, leaving many who live near or downstream from the property critical of the proposal to build a development that might disturb the area further.

In a presentation to the planning board, engineer Eliot Senor pitched a preliminary plan that he and developer Eilon Amidor might build on the property.

To resolve the problem of the plot's high water table — which on average is 4 feet below the surface — Senor said they planned to clear-cut the trees on the property and then cart in soil to raise the surface by 4 feet.

The fill would allow them to install an underground water detention system with 36-inch pipe sections that would collect runoff and convey it into the plot's existing 6,623 square feet of wetlands at the southeast corner of the property.

At previous planning board meetings and in documents submitted to the board, Senor also proposed using underground wells to service the houses to be built there. According to estimates included in a letter to the board from lawyer Lucia Chiochio, who represents the applicant, each new house would generate a water demand of approximately 440 gallons per day, which would be entirely sourced from the wells. Although the houses wouldn't be hooked up to the municipal water service, the structures would use the village's sanitary sewer system.

The entire underground detention system, as well as a private roadway to the houses from Garden Road, would all be managed by a homeowner's association, with dues covering

any maintenance fees. Senor said if the homeowner's association couldn't agree on performing maintenance for the system, then the village would arrange to fix broken infrastructure and charge the cost to the affected homeowners.

"That's what we have lawyers for," he said.

Because of the proposed grade change, retaining walls would be built on the north, south sides of the property, and partly on the west side of the property 5 or 6 feet from the property line.

"We're not changing the grade between the property line and the bottom of the wall. It's going to remain exactly the way it is," said Senor. "That way, if there is some sort of water that flows across property lines onto our property, it can still flow and still end up down on the wetlands area."

When the property development is fully built, Senor estimated there would be a 5% decrease in overall runoff during a 100-year storm event. However, members of the public, members of the board and various lawyers representing clients in the area took issue with the calculation, and questioned whether it was enough to persuade nearby residents abutting the property that they wouldn't get increased runoff as a result.

"The concern I have is that it's such a small number. In particular, it seems like that's going to be dependent on assumptions, calculations that everything that you're projecting here is in fact going to come out exactly the way you've said," said planning board member Harold Porosoff. "Should there be errors — what if it's instead of plus 5%, it's minus 5% — you're operating on such a thin margin here that there's concern that this could in fact be worse and that's not acceptable."

Senor said the 5% reduction was based on a 100% build-out of all the properties, the road and driveways being impervious (Senor's stormwater pollution prevention plan calls for the installation of porous pavement) and the ground not absorbing any water.

"We show initially 5%, but it could be much higher. It's 5% after everything is built out to its maximum percentage," said Senor. "Even if we add in pools to this — because the previous submission showed pools on each lot — we're still much lower than the maximum allowable [amount] of impervious surface of each lot."

Following Senor's presentation, planning board chair John Clapp shared his concern about the proposed development's effect on an already strained local stormwater management system. He said there was "very little margin for error," especially with the planned removal of approximately 322 trees on the property, which absorb 489,432 gallons of runoff on the site in a given year.

"The applicant is going to need to satisfy us that the proposed stormwater [detention] systems and other mitigating factors will be sufficient to offset what is being taken away in terms of coverage," said Clapp.

Aaron Schmidt, a certified wetland delineator and arborist who serves as the town of Greenburgh's deputy commissioner of community development and conservation, was brought in by the applicant to supply data on the property's existing trees and their replacement strategy.

According to Schmidt, the applicant would replant 438 trees on the property to help reduce runoff over time through absorption. According to the analysis though, even when the trees reach mid-maturity (an 8-inch diameter for small trees, a 12-inch diameter for medium trees and an 18-inch diameter for large trees), they would absorb 410,694 gallons of water in a year, less than what is currently being absorbed. The calculation for trees currently on the property didn't include invasive species.

According to the analysis dated Aug. 30, trees planted at 3-inch caliper size would absorb 62,118 gallons of runoff in a year, or approximately 13% of what is currently being absorbed on the property. Ten years from planting, the trees would absorb 208,970 gallons of runoff in a year.

Senor said the 5% reduction in runoff was based on the village's code and did not take the trees into consideration.

Although there's no greenlight for the project and no wetlands permits have been issued, in July a neighbor reported to the planning department that the developer was cutting and removing vegetation, plants and trees on the property. In an email exchange with the neighbor, Village Planner Greg Cutler said the applicant was told to stop the cutting.

When questioned about the cutting at the planning board meeting, Senor said none of the

trees that were removed were of “a protected size” and that most of the removal included brush to allow them to complete their work.

“It was underbrush and small saplings. No tree was removed that was above 6-inches in size,” said Senor.

However, according to Village Engineer David Goessl, there were 43 removals on the property, which included 12 trees greater than 6-inches in diameter. He said that was a violation of code, and a summons had been issued. Senor said he wasn’t aware of the larger removals.

Although flooding on the property itself has been their main concern, a majority of residents are skeptical about where water on the property will convey and its potential downstream effects. According to John Ruschke, an engineer with the firm Mott MacDonald which was brought in to analyze the project for the village, the entire 80 Garden Road property drains through an 18-inch concrete pipe that juts out from the property’s wetlands. A previous consultant’s analysis, he said, found that the pipe’s capacity was only rated for a one-year storm.

“I’m not 100% convinced that meeting the minimum standards of the state is going to protect the adjoining property owners,” said Ruschke, who asked the applicant to submit an off-site drainage analysis. “I say that because this property is unique.”

Ruschke also asked for multiple clarifications and further analyses on the plan in a memo to the planning board dated Aug. 19. Chiochio said the applicant would submit detailed responses to that memo and a similar memo from Mott MacDonald submitted in April.

The day after Ida hit, Senor said he visited the property to assess the damage, but he didn’t observe a lot of standing water there or on Cushman Road. He also said when he looked at the Sheldrake River, he didn’t see it breaching its banks in many areas, though he did admit to seeing “the devastation” surrounding the Cayuga Pond, south of Fenway Golf Club.

“This project will not add to that system,” said Senor. “It will reduce it 4 or 5% at total build-out. What we showed here now is not a total build-out. So we are going to [have] much less, plus we’re also providing for 100% impervious surface, but we’re not building

that at the moment.”

But even with the reassurance, residents are still hesitant about the plan and its potential deleterious downstream effects.

Fenway Golf Club, which receives downstream runoff from 80 Garden Road through the Sheldrake River drainage basin, was hard hit by flooding during Ida. The club asked engineering firm Leonard Jackson Associates to review the Garden Road application and to analyze a potential runoff increase.

In a letter to the board dated Sept. 21, the firm concluded that even though analyses and data were submitted by the applicant showing various configurations of the project, there was still not enough data to prove whether the construction would increase the magnitude and frequency of flood flows, as outlined in the village’s stormwater management requirements.

“I’m a little disappointed in that the meeting tonight has even gone ahead, because the applicant is just putting in material piecemeal and I thought that the board at its last meeting in [a] resolution had admonished the applicant that that is not what [you] wanted,” said Clifford Davis, an attorney representing the golf club. “I think that they should put everything on the table.”

Brad Schwartz, an attorney representing resident Robert Falk, a homeowner on Willow Lane who directly receives the runoff from Garden Road through a tributary of the Sheldrake River in his backyard, brought in his own consulting team to denounce the project. Falk’s property was completely flooded during Ida, destroying the first floor of his house, according to Schwartz.

Greg Fleischer, an environmental scientist and wetlands specialist with Capital Environmental Consultants, said there needed to be more analysis completed on the downstream effects of runoff from the property after it enters and leaves the 18-inch concrete pipe which services the property’s wetlands.

“We feel that this project as a whole, with the lack of data and the inability to really understand how water ... is making it from this discharge point ... to the wetlands, to this pipe, it’s going to worsen this system down here,” said Fleischer, referring to a map of the

area south of the property. “Whether it’s from a failed analysis that’s going to cause mounding, whether it’s water being diverted over ditches or whether it’s going to be downstream to Mr. Falk’s property, you’re going to have excess water that will jeopardize those properties.”

Seventeen other residents spoke out against the proposed project. Greg White, who has lived on Garden Road for 30 years and is a trained civil engineer, said beyond the flooding and high water table issues, he also shared a concern that the project would add traffic on Garden Road, which as a cut through street is like “the Indianapolis speedway.”

“If we had eight houses [added] in the community, with more school buses and little children and maybe my granddaughter with people flying by in all this extra traffic, it’s going to be scary,” said White.

Senor submitted to the board on Aug. 26 a one-page traffic statement, which compared the property’s current traffic to an estimate after construction. Senor calculated that during morning peak hours, there would be one additional trip entering the property and less than four trips exiting. In the afternoon peak, he estimated there would be four additional trips entering and two additional trips exiting. The data was based on information in a manual by the Institute of Transportation Engineers, which indicates peak morning and afternoon trips generated for single-family houses.

Helen Maccarino, a resident on Cushman Road who has been organizing nearby residents to oppose the project, said she still didn’t have a clear answer on whether the underground detention system proposed in the project had been installed on a similar site, with a similar number of houses and environmental conditions.

“Risks of flooding to neighbors nearby and downstream are real, should any aspect of this project fail, and we won’t know until the land is clear cut, impermeable surfaces are in place and the eight homes are built,” she said. “Should the board allow the proposal to proceed, there is no way to undo the damage to this environmentally sensitive site.”

When asked by the planning board if Ruschke had seen a similar underground detention system, he said he had seen them, but that it was “not ideal” as compared to a normal detention basin, since those could be easily accessed for maintenance.

Other residents also shared similar experiences with flooding downstream from the property and questioned whether a homeowner's association would be a viable option to maintain the property's infrastructure.

The 80 Garden Road application was held over by the planning board, with further discussion planned for the board's Oct. 27 meeting.

"We have work to do to respond to the comments and analysis. We hear the comments from the neighborhood and understand the concerns and we have to comply with the village code, which requires no net increase in runoff," said Chiocchio. "We have a design that we believe will reduce the rate of runoff."

Nicholas Perrone