

Planning Board
Village of Tarrytown
Regular Meeting
February 27, 2017 at 7:00 p.m.

PRESENT: Members Tedesco, Aukland, Raiselis, Birgy, Counsel Zalantis;
Village Engineer Pennella; Village Planner Galvin, Secretary Meszaros

Absent: Chairman Friedlander

Mr. Tedesco chaired the meeting in Chairman Friedlander's absence and called the meeting to order at 7:00 pm.

APPROVAL OF MINUTES – January 30, 2017

Mr. Aukland moved, seconded by Ms. Raiselis, that the minutes of the January 30, 2017 meeting be approved as submitted. All in favor. Motion carried.

CONTINUATION OF PUBLIC HEARING - Peter Bartolacci – 67 Miller Avenue

Paul Berté, PE, of Fusion Engineering, appeared on behalf of Mr. and Mrs. Bartolacci, also present. He said since the January meeting, he has developed a landscape plan to provide screening between the two tiered walls. The plan remains to construct 2 tiers in the backyard which exceed the 6 foot height requirement. The lower tier will have a maximum height of 7.7 feet; the upper tier will have maximum height of 10.2 feet. This is to achieve a grade transition from the back of the existing house at an approximate elevation of 202, to the elevation at the rear yard line of 176, about a 26 foot in elevation change. This application is to replace a deteriorated railroad tie retaining wall. He continued and said that at the previous meeting he talked about the amount of fill required for this project. Originally, he had anticipated the possibility of excavating away the backyard to expose at the elevation of the basement, but now there is concern to expose that footing without knowing the correct depth needed to provide for frost. The fill required has therefore been adjusted to reflect that approximately 330 cubic yards will be needed to accomplish the 2 tiered plan.

Mr. Tedesco referred to Mr. Pennella's memo and asked if the applicant responded to his comments.

Mr. Pennella said he has reviewed the plan and his comments were addressed. He will work with the engineer to address phasing and staging in order to perform the work. The walls are the same height; the applicant will be submitting revised plans for elevations. At this point, the plan is acceptable.

Mr. Tedesco advised the applicant that he will need a final landscaping plan and a revised narrative will be needed before the March 16, 2017 work session. If the variances are approved at ZBA, the Board can consider site-plan approval at their March meeting.

Mr. Tedesco asked if the Board had any questions or if anyone in the audience had any questions.

Geraldine Baldwin, of 66 Riverview Avenue, approached the podium. She said she appreciates the opportunity to have reviewed the plans and the latest plan dated 2-24-17. She will read a statement that will consist of 2 parts: Part 1 will address the applicant's refusal to comply with this Board's recommendations; Part 2 will detail applicant's failure to justify a waiver of the code's prohibition against the disturbance of steep slope. She gave a detailed presentation outlining the reasons why she feels this application should be denied. This presentation is a part of the minutes and is attached at the end of the minutes as, "Appendix A".

After the presentation, Mr. Tedesco thanked Mrs. Baldwin. He referred to a portion of her comments and said that the wall height was never established and we are dealing with the application we have before us now. In addition, this was the first time he has heard that this construction will completely obliterate the steep slope in the rear yard and create severe drainage problems. He asked both the applicant's engineer and the village engineer to respond to this.

Paul Berté, the applicant's engineer, explained that the nature of steep slopes with regard to stormwater runoff, the steeper the slope the faster the velocity of the runoff, which causes erosion. By stabilizing the slope with vegetation, proposed in the landscape plan, or by lessening the slope, it will allow water to infiltrate and the velocity of the water to slow down. By maintaining the steep slope going toward the rear property line provides no opportunity to mitigate any runoff. This is a universal condition of steep slopes.

Mr. Pennella agreed with Mr. Berté and said as you change the incline of the slope, the flatter it is, the less runoff you will get. The existing site is eroding away; it is not maintained, there is no grass, and the yard is not level. With regard to railroad tie vs. Mesa wall construction, he explained that the same excavation for the railroad tie wall would be needed as the proposed Mesa wall construction; the railroad tie wall requires a deadman in a tieback to hold it requiring the need to excavate an equivalent distance as the geogrid wall. In addition, if you look at the slope it was a gradual slope into the neighbor's yard. A soil analysis will be needed to ensure the soil has enough bearing capacity to support the design.

Mr. Tedesco said the Board will read the steep slope waiver narrative carefully and determine whether or not it should be granted. In terms of the heights, this argument should be presented to the Zoning Board, in detail, along with the type of the wall.

Mrs. Baldwin came back up and asked Mr. Pennella if he really thinks there is much excavation and backfill needed when you are only putting a timber every 6 or feet along the wall, rather than the grid to excavate the whole back of the wall.

Mr. Pennella said typically when you design a wall you have a tie back that goes perpendicular to the wall, you may only excavate a foot or two, but this is unlikely because you still have to go to the same depth to stabilize the wall.

Mrs. Baldwin asked if this would be the same for a stone wall. Mr. Pennella said a stone wall uses a footing which is a different principal design. It is typically a 1:2 ratio, so if you go up 10 feet, you have to go back 5 feet.

Mr. Birgy asked about the tree removal permits; he is concerned about the condition of the slope since these trees were removed. Mr. Pennella said once an application is in the Planning Board process, you should not be making any changes, but he will look into it further. He noted that one tree was a Locust tree and heavy winds could have pulled it down.

Mrs. Suzanne Bartolacci, 67 Miller Avenue, came up to speak and said that they did get permits to remove these trees since there were safety concerns about the trees leaning toward the house. The Locust tree was of particular concern and the arborist agreed that it was to be removed due to its shallow root structure. Both permits were granted. Mr. Birgy said he has no issue if the trees were removed with a permit.

Mr. Tedesco asked Mr. Pennella to explain the need for additional fill. Mr. Pennella said he discussed this with the engineer and it was an error in computation. He said that this would require 33 truckloads of soil coming in. You always have to import material for your base so material would be needed for the base but also to level off the upper area.

Mr. Birgy was concerned and commented that if you are going to build a retaining on a slope you should be doing it in the natural contour of the slope, not putting up 18 foot high walls to get more backyard. He feels that stepping it down to the original angle would be better than bringing in the fill and the walls.

Mr. Pennella said there are other alternatives, but this is the most cost effective. The geogrid holds the walls and this design is appropriate for slopes. You could consider other options, such as 3 tiers, but they have costs to them. Concrete walls are obtrusive looking and stone walls are very expensive and not practical. This option is the only way to stabilize the hill.

Mr. Birgy said if you stabilized it at a 45 degree angle it may be more stable and less severe. Maybe we should just get rid of the steep slope law and put up retaining walls all over. He doesn't think erecting 18 feet of walls and putting fill behind them should be a chosen method for stabilizing a backyard.

Mr. Berté said the elevation of 198, the top elevation, was chosen to recreate what may have once been what was the backyard; it wasn't arbitrary.

Mr. Birgy asked Mr. Berté to be reasonable. He asked him how many railroad ties were there and where did the fill go. Mr. Berté said it is a matter of restoring the property to where it was and having a benefit to the owner. Mr. Berté said he is not representing that 300 yards left the site. It is what is needed to construct these walls.

Mr. Birgy said this is to approximate the original state of what was there. It has to be one or the other, it can't be both.

Peter Bartolacci, 67 Miller Avenue, came to the podium and said that we are adding a second tier at your request. If that tier was not there, all of that fill would not be required if it were a single wall, which is what was originally on the property. Mr. Birgy said this does not make sense. Mr. Bartolacci said he wants to explain this to the Board before he leaves this evening. He referred to the plan showing the original wall. He said there was no fill there. He made reference to a statement made by Mr. Brian Tompkins, who lived next door at 63 Miller Avenue years ago, saying that it was a single wall which he used to climb on. He went to get the text of what was said. Ms. Raiselis stopped him and said this is just one person's opinion; there is no proof. She asked for a picture from 50 years ago and maybe they can consider that. He showed Mr. Birgy a picture and referred to a deadman above the height of the wall. Mr. Birgy said the wall could have been stepped back and they are not going to debate this tonight; we have what we believe and you have what you believe. Mr. Bartolacci showed Mr. Tedesco a picture from 1976 showing a single wall and asked if he could see tiering.

Mr. Tedesco said the wall height is the significant issue which needs to go to the Zoning Board for a variance. You have your facts that you can present at that meeting. He thinks the height and type should be addressed at zoning. He asked Counsel if it would be prudent for the applicant to go to zoning at this point.

Counsel Zalantis said the height needs to be addressed at Zoning. It is important that the narrative be revised to weigh the benefits to applicant vs. detriment to the community. She advised the applicant that at the last meeting they mentioned that there were higher walls in the neighborhood which may be relevant to the Zoning Board. You should specifically address the runoff issue and the design of the wall in the narrative as well. Mr. Galvin added that the applicant can also look at alternatives.

Scott Voth, of 64 Riverview Avenue, came up and said he had an issue with his neighbor who put up a 20 feet high mafia block wall. He said it is a bad precedent and he is not pleased with the wall. He has submitted a letter to the Board. He wants to know why the Board is not enforcing these laws. He said they have been burnt once, and do not want to be burnt twice.

Mr. Birgy said we cannot prevent any applicant from going to the Zoning Board. You can address your concerns at the ZBA meeting.

Mark Fry, a former resident, came up and said he lived one block away from this wall. In 2012, he was asked to visit the site so he is familiar with the wall. At that time, the trees were there. He said at the end of the day, any combination you will reach the same two points providing that you do not change the slope. As to unlock construction, a wall that was put in nearby required an enormous amount of fill, but there was no intent to increase the depth of this backyard. If you do not increase the depth of the backyard then the slope issue is addressed.

Mr. Tedesco again said these matters should be addressed at Zoning. Mr. Fry asked if the Board will consider site-plan approval before the applicant goes to the Zoning Board. Mr. Tedesco said they will need the variances approved first before considering site-plan approval.

Village Planner Galvin said that it might be helpful to show the look and feel of the wall and how it will look with the plantings at Zoning.

Greg Gall, of Heritage Hill Road, asked that the Planning Board not approve this wall. He said you as the Planning Board will set a precedent how Tarrytown will look in the future. He said we are trying to conserve our natural environment. He asked if natural means have been explored to save the slope that would help mitigate erosion of the steep slope. He asked where the water is going and would like these two matters addressed.

Mr. Pennella said it is an interlocking block wall with no joints. The water will seep through the wall it will percolate into the ground with a flatter slope. This landscape plan has trees in between which will also help and there should have less runoff in the future with this plan than what you currently have now.

Mr. Gall said there are many pre-existing walls in this area it does not mean they were built under present code. The applicant would have to find this out before he can use them as examples for justification to build this wall.

Mr. Tedesco asked if anyone else had any questions. No one appeared.

Mr. Tedesco also said it would be beneficial in the narrative to mention other alternatives then what is proposed, along with pictures of what is proposed.

Mr. Tedesco moved, seconded by Mr. Aukland, to continue the public hearing, after the applicant goes to the Zoning Board. All in favor. Motion carried.

CONTINUATION OF PUBLIC HEARING – Toll Brothers -112 Wilson Park Drive

Jennifer L. Gray, of Keane & Beane, PC, appeared on behalf of Toll Bros, Inc. for the continued public hearing on Lot 2 of the Wilson Park Subdivision, for the construction of a single family home. She introduced Rob Dowd, of Toll Brothers, and Doug Carver, of CMG Engineering. She said at the January meeting, Toll agreed to make revisions to

the plan to provide a wall around the drip line to save tree #170. She said that she attended the 2-16-17 Planning Board Staff Meeting and it was requested that the wall be further extended or perhaps the house re-oriented, pushed back a bit, and turned so it is facing the driveway. She said she discussed these comments with Toll and a revised plan was submitted which shows the extension of the wall further towards the front lot line. Two walls are proposed. The proposed length of the wall is 112 feet long with a maximum height of 4 feet and the second wall is 43 feet long with a maximum height of 2 feet. The wall is not a traditional retaining wall, it is a boulder wall with pockets to allow for plantings and provide a more natural look, at the suggestion of the Village Engineer.

Ms. Raiselis asked if there are any footings pushing into root system of tree #170.

Doug Carver, of CMG Engineering, the applicant's engineer came forward and said this wall is a natural boulder; no digging of a footing is required and there will be no carving into the root system of tree #170. Ms. Gray hopes that this revised plan satisfies the Board; it preserves the topography and slope.

Mr. Birgy asked why they can't rotate the house a little more. Ms. Gray said first there is a FAR concern and we are not interested in adding more time to get approval of the application. Secondly, if you rotate the house, the approach as you come up driveway is not visually pleasing since you would be looking at the side of the house vs. the front of the house.

Mr. Birgy asked Mr. Pennella if they rotate the house and drop the southeast corner 2 feet, wouldn't it be a wash on the FAR. Mr. Pennella said you can't tell but it would change the FAR and they would need variances. Your suggestion of lowering the house slightly would create a problem with the first floor elevation since you are pushing it further into the ground and would have to cut into the slope further. If anything you would want to pull the house up.

Mr. Birgy said he is not talking about lowering it just rotating it away so as to not disturb the area by the tree and the sloped area in front of it.

It might be a 5 or 10 percent change in the FAR, but the FAR is not the issue, re-orienting the house will result in other problems with grading. The tree has been protected and this is what they are proposing to do. This is what they feel is going to sell.

Mr. Tedesco asked Mr. Pennella if Ms. Gray is amenable to meeting with him to see if there are any further modifications to reduce the disturbance on the northwest corner of the property. Mr. Pennella clarified that this was in an email. In summary he asked if, prior to signing the plat, if Toll would agree to look to preserve the slope that is being cut into even further. Ms. Gray said she was amenable to having a discussion after this Board acts.

Ms. Raiselis asked Ms. Gray about an agreement that Toll does not build a house until it is sold. Ms. Gray said most of the homes built have been built with the approval of a buyer, but it was not a condition. Some of the duration to get through the process has resulted in a loss of buyers. Mr. Dowd said lots 5 and 12 have not been sold. Ms. Raiselis asked if they have sold the lot yet. They said they have a buyer.

Mr. Tedesco asked if anyone in the public wished to comment.

Mark Fry, representing Friends of Brace Cottage came to the podium. He had hoped to come and agree but has found some points of disagreement. He has objection to the clause in the draft resolution on page 7 where it references the dollar sale value. He feels that this dollar amount should not be included. Secondly, the valuation used is an outrageous error. No one would buy a \$500,000 lot for 1 million dollars. The house next door is valued at 1.4 million. He also feels that he should have an opportunity to review the plans further since new plans were submitted just 3 days before the meeting in gross violation of procedure. There is no way that application can be approved under law if papers were not submitted 10 days in advance. He also agrees that rotating the house would dramatically decrease the disturbance to the slope with minimal impact to the FAR and this is worth requesting and requiring as an alternative to this plan.

Mr. Tedesco asked Counsel Zalantis about including the dollar amount in the draft resolution. Counsel advised that this offer was put in since the applicant made this offer.

Ms. Raiselis asked Counsel why this amount has to be included.

Counsel Zalantis said on the record the specific offer was made; there was no other price out there and they don't have to agree to sell it to anyone.

Ms. Gray agreed that this draft resolution just says that this is the dollar amount offered by Toll. It does not preclude them from coming into another agreement.

Counsel Zalantis said the goal is to sell property in "as in" condition.

Ms. Gray said she has no objection to add in, "or such other amount agreed by Toll and the purchasing parties", into the resolution.

Ms. Raiselis said these drawings were submitted 3 days ago. Counsel Zalantis said that Toll did submit another plan at the 2/15/17 work session; they were responsive to additional concerns raised after the work session.

Mr. Tedesco said that these were minor changes made to the plan.

Ms. Gray said they have responded and have made further revisions.

Greg Gall, of Heritage Hill Road, made reference to the dollar amount included in the resolution and said he does not understand why the Planning Board said it would be beneficial at this price. He thinks it should be changed.

Mr. Tedesco said we are making this change.

Mr. Gall also questioned the date on the plan. Counsel Zalantis said this is a different plan. Plans are stamped when they are received.

Counsel Zalantis said there was a plan submitted prior to the work session and this is the same plan with small modifications. Mr. Gall said there is not enough time to review the plan and comment and the public has the right to make its own determination within the period of time, not the Planning Board.

Ms. Raiselis said this is a murky road. If in the work session, we ask for a revision it is very difficult to submit before the meeting. She asked Counsel if they legally formally have to waive the 10 day period of comment.

Counsel Zalantis said there is no separate requirement that plans be submitted at a certain point; you are not precluded from taking an action on this plan.

Mr. Tedesco asked if it would be useful for Ms. Gray to go over the plan.

Mr. Fry came up and explained the Planning Board procedure to the Board and basically said that the public should be able to have the 10 day period to review the plan.

Ms. Gray said they submitted revised plans on 2/15/17, the day before the work session. She attended the 2/16/17 work session, heard comments and submitted revised plans on 2/22/17. After that review, they responded to immediate comments in the 2/23/17 plan, which is the plan that is being reviewed this evening. The changes made from 2/15/17 to 2/23/17 are insignificant changes which she will go through.

Mr. Pennella confirmed that the plans revisions are insignificant and really only administrative changes. They are a matter of how you tie in contours. They do not change the concept or the direction of runoff.

Ms. Gray referred to the plan and explained the changes:

Minor revisions were made to contours; an additional second wall was added; these are big boulders that allow for pockets for plantings. Mr. Pennella confirmed that these were the only changes made.

Ms. Raiselis confirmed that nothing has changed the contours around the drip line of the tree. Ms. Gray said just the wall and minor contour changes.

Mr. Birgy asked Mr. Carver why there is 3 or 4 feet of existing grade being removed in the back. He does not understand why Toll does not respect grade of the property. Mr. Carver said Toll does not want to move the house.

Mr. Birgy said a statement was made by Toll and it is not reasonable. We were told by exposing the rear foundation that it would affect the FAR. There is no rational reason why the grade has to be cut 3 or 4 feet. Mr. Carver said there is a door there.

Mr. Carver and Mr. Birgy continued back and forth and could not come to an agreement. Mr. Tedesco said this is getting us nowhere. We need closure. Toll is not budging on this, but the Board has to decide if this is an acceptable application in order to get site-plan approval. Mr. Carver apologized to Mr. Birgy.

Ms. Gray said we had a lengthy discussion at the January meeting. At the end of the day, the Board asked if we would we agree to put a stone wall around the drip line of the tree and preserve the existing grade in the front yard. She said what we have done is responsive to that request. She is disheartened that we are again talking about re-orienting the house. Ms. Gray said this is the plan that we have.

Mr. Birgy said you don't have to cut 3 or 4 feet out of the back to get a flat backyard.

Ms. Raiselis asked Village Engineer Pennella if the grading requires a variance or a waiver; is this subjective or does it involve the code.

Counsel Zalantis said it is a site-plan issue and the applicant wants a flat backyard.

Mr. Pennella suggested raising the wall a foot along the property line to make it better.

Mr. Birgy said that Toll agreed that they would not change the grading whenever possible. These are discretionary things that they feel like doing. Mr. Birgy said they are cutting the back and the front. Mr. Pennella said this is also fill material. What you see in the back is not the original ground, the front area is original, but in the back, it was fill, so removing it only brings it back to what it was before.

Mr. Tedesco was under the impression that the applicant did not want to re-orient the house even if they could get a variance for the FAR. Ms. Gray confirmed that they have a zoning compliant plan and are not interested in doing this. In addition, the rotation will not leave this house as visually pleasing; it won't be as marketable.

Ms. Raiselis said that unfortunately the way some houses are sited, cut and fill happens; until we change the wording in our code, it is compliant. She wishes everyone

would customize a house but this does not happen. She would like to close the hearing. She thinks opinions are clear.

Mr. Aukland said that the Planning Board is right, that there are better alternatives, but this site-plan is within code. The one point we discussed is the saving of the tree. As to the changes in the drawing, it was principally a correction. There is not a substantial change.

Mr. Fry came back up and said as he reads further, he agrees with the Planning Board. He again referred back to the dollar amount on page 7 of the Resolution, and Mr. Tedesco reminded him that the changes have already been made.

Mr. Fry said it should also say to include offering to sell it to any interested party for a price that is acceptable to both parties.

Mark Fry referred to the November 23, 2016 letter. Counsel Zalantis said the original offer was made to the Village. Now they are consenting to it for the same price to Friends or a designee. Counsel Zalantis said she will speak with the applicant to see if they will consent to this.

Mr. Fry said the error needs to be taken out. Mr. Aukland said we agreed to that a half hour ago.

Mr. Birgy said the way I view this is that we had an understanding that Toll would do a better job to site these houses. He is simply saying that he does not like the fact that they are dictating to this Board and basically saying if you don't not like it, lump it. Our job as a Planning Board is to make this application the best possible. He thought the Planning Board had discretion on how these houses are placed on the properties.

Counsel Zalantis said you have a 100% decision. You have to decide, as a Board, if the plan is acceptable. You have the discretion to consider the layout, placement and location. It is the consensus of the Board as a whole.

Ms. Gray said that this plan has been before this Board since 2014 and the house was shifted back. We addressed a litany of comments from the Village Engineer. We have added the walls to save the tree and we have made changes to landscape plan. To say the plan has not changed is unfair.

Mr. Tedesco said this project has had a long history. When this development came about we took great pain to have the houses sited, saving trees. It wasn't the places; it was the houses that Toll had to put on the land. We are here now with a compliant site-plan before us. The question is can we approve it or do we require down the road that the house be rotated not to violate the FAR, which is violation of our own code. Should we give take time to think about it?

Ms. Raiselis moved to delay until next month to give us some time change the wording discussed this evening and feels that the Board should discuss it further to include the Chair, who is not present this evening. Mr. Aukland said he does not see any egregious harm to the village as a whole and, although he is sure a better way could have been found to architect the site, he is ready to vote. Ms. Raiselis said it is an issue and she feels delaying it one month is beneficial for the village.

Mr. Tedesco moved, seconded by Ms. Raiselis to continue Public Hearing at the next meeting. All in favor. Motion carried.

Ms. Gray asked if we can close public hearing this evening. Mr. Tedesco asked for Counsel's advice.

Counsel Zalantis said it is up to the Board but if the goal is to get another plan than you can't close the public hearing.

Ms. Raiselis said she sees neighbors in the audience and it would be helpful if you would come up and speak about this. It is hard to make these decisions.

Anne Hull, 111 Wilson Park Drive, came up and said she said she has not been following the details of this application and it has been a lot going on with a lot of different parties involved. I live here and I am trying to figure out what is going on. What are the laws, what are the procedures? I have had meetings at my house before the project was developed. Traffic was discussed. She asked for sidewalks but never got them. She has nearly been killed on the road during a snow storm. People have their own agendas and get so angry that they just can't step back and say we have it pretty good.

Mr. Tedesco thanked Ms. Hull and asked her to come back. He said we work here for the benefit of the village. We try to be responsive to everyone. It is a balancing act. It is impossible to please everyone. Mrs. Hull said she believes in clear procedures and transparency. If you have that, then you can explain your decision.

Counsel Zalantis said it is important to read the rules which outline the standards considering site-plan approval. She referred to Zoning Code section 305-135 regarding site layout and section 305-135 (D) with respect to grading.

Ms. Gray asked if there are any specific plan revisions the Board is requesting.

Mr. Birgy said that five years ago you made an agreement to respect the land when siting houses. He does not feel that Toll has been true to those statements. If you had done that we wouldn't be here tonight.

Ms. Gray said plan has been before the Board since 2014. We got on the agenda in November of 2016. In January, it was the first time we heard about a request to re-

orient the house. Paul Birgy had said that Mr. Pennella had had mentioned re-orienting the house in the past.

Ms. Gray said at the January meeting there was lot of discussion, the bottom line was if we would agree to put a wall around the drip line of the tree and preserve the grade. This was a clear directive, which we made. Now we are back again and you are asking us to re-orient the house.

Mr. Birgy said you made a statement about the FAR, which was not accurate.

Nancy Curry, 110 Wilson Park Drive, the next door neighbor to this lot came up and said that every time I leave here, I am more confused. I need rules.

Mr. Tedesco advised her that the proposed plan is available and is code compliant. Mr. Birgy is suggesting that the plan not upset the grading.

Mr. Birgy asked Ms. Gray to work with the contours of the property. You do not need to have a dead flat back yard. There is no reason to cut the back and the front so much. Work with what you have and take into consideration Mr. Pennella comments that were made about six months ago.

The hearing will be continued as moved earlier by Mr. Tedesco, seconded by Ms. Raiselis. All in favor. Motion carried.

NEW PUBLIC HEARING – WILDEY GROUP LLC – 130 WILDEY STREET

Mr. Tedesco read the Public Hearing Notice:

PLEASE TAKE NOTICE that the Planning Board of the Village of Tarrytown will hold a public hearing on Monday, February 27, 2017, at 7:00 p.m. at the Municipal Building, One Depot Plaza, Tarrytown, New York, to hear and consider an application by:

Wildey Group LLC
PO BOX 383
Croton on Hudson, NY 10520

for change of use to convert storefront retail space into a restaurant.

The property is located at 130 Wildey Street Tarrytown, NY and is shown on the tax maps as Sheet 1.40, Block 9, Lot 11 and is in the RR District.

Documents are available for inspection in the Planning and Zoning Office. 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.

Additional approvals will be required from the Zoning Board of Appeals and Architectural Review Board.

By order of the Planning Board
Lizabeth Meszaros
Secretary to the Planning Board

DATED: February 17, 2017

The certified mailing receipts were received and the signs were posted.

Joanne Landau, on behalf of Wildey Group LLC, manages and operates the Walgreens Shopping Center, a block away from village hall. She has a pizzeria tenant interested in the space at 130 Wildey Street, the last vacant space at this property. From a diversification standpoint, they have different foods, Osaka Hibachi, Dunkin Donuts, Grassroots Kitchen, who will be moving in 3 or 4 months, and organic food takeout. The the last food piece is the proposed pizzeria, serving dinner, lunch and assuming there will be a liquor license secured. The proposed tenant has a restaurant in New Rochelle.

In terms of the request for site-plan approval, she is requesting 25 SF to add to square off the property. This will require a variance in setback. There is no parking issue. The parking area variance granted for Grassroots Roots fulfills the current parking needs. The change of use is from restricted retail to a restaurant. Ms. Landau showed the additional indent she is referring to on the plan that she would like to bump out for extra space.

Ms. Raiselis asked if this addition was for aesthetic purposes. Ms. Landau said it was for the storefront, mainly for light and exposure, not necessarily for space.

Mr. Tedesco said you are here for site-plan approval for a change of use.

He asked if anyone had any questions.

Mr. Pennella commented that they have re-allocated parking values based on number of employees at the Chase Bank which reduces the space requirements. Therefore, no variance is required for parking.

Mr. Galvin also added that they also will build a new garbage enclosure which was considered with the Grassroots Restaurant.

Mr. Tedesco advised the applicant that they will also need to go to the Architectural Review Board for approval of the storefront and the signage.

Mr. Tedesco moved, seconded by Mr. Aukland, that this is a Type II action with no further action required under SEQRA. All in favor. Motion carried.

Mr. Tedesco moved, seconded by Mr. Aukland, that an escrow in the amount of \$2,500.00 be established. All in favor. Motion carried.

Mr. Tedesco moved, seconded by Mr. Aukland, to continue this application at the next meeting. All in favor. Motion carried.

Mr. Tedesco moved, seconded by Mr. Aukland, to end the meeting and go into executive session at 9:30 pm to discuss procedural matters. All in favor. Motion carried.
The Board left the meeting room at 9:30 pm and returned back at 9:44 pm.

ADJOURNMENT

Mr. Aukland moved, seconded by Ms. Raiselis to come out of executive session and to adjourn at 9:45 pm. All in favor. Motion carried.

Liz Meszaros
Secretary

APPENDIX A

(pages 1-7 with chart and pictures)

PRESENTATION BY:
Geraldine Baldwin
66 Riverview Avenue
Tarrytown, NY 10591

Re: 67 MILLER AVENUE APPLICATION – PETER BARTOLACCI



Statement to the Tarrytown Planning Board February 27, 2017 Re: Application re 67 Miller Ave.

Initially, I would like to say that I do appreciate the opportunity to review the single page Sketch of a plan submitted by the Applicant on Jan 27, 2017 and the more detailed Plan submitted in the afternoon of February 24, 2017 (herein, the "Current Plan"). My Statement comprises two Parts:

Part I details Applicant's refusal to comply with this Board's recommendations and

Part II details Applicant's failure to justify a waiver of the Code's prohibition against disturbance of the steep slope.

Part I. Applicant Has Never Tried to Meet the Recommendations of the Planning Board

At first blush of the recent plans, it would appear that the Applicant had at last taken one of the Board's recommendations, i.e., for 2 walls, shorter in height than earlier proposed providing a terraced slope and was endeavoring to bring this overly long process to a positive conclusion. However, careful examination of the Current Plan shows that such conclusion is absolutely wrong! Rather such examination makes it completely obvious that the Applicant has in no way moved from his initial determination to construct a new retaining wall that will completely obliterate the steep slope at the rear of his yard.

Firstly, the Current Plan is in all significant respects identical to a plan for 2 Mesa Block walls sent by Applicant to me on June 12, 2012 (the "2012 Plan", copy attached as Appendix A). The 2012 Plan provided for: (1) a first wall of 10 feet high, just about 10 feet down slope from the hedge at the top of the steep slope and (2) a second wall of 8 feet high, 7 feet up slope from the rear property line. The walls will each be 157 feet in length, covering the entire rear of the property and extending perpendicularly to the property lines on the north and south.

In fact, throughout the proceedings before this Planning Board since 2012, Applicant's plans have included the walls tabulated below:

Date	Height at North End	Height at South End	Length of Geogrid
June 12, 2012	Top wall 10 feet Lower wall 8 feet	10 feet 6 feet	10 feet
Sept 5, 2012	One wall 20 feet	6 feet	
April 1, 2013	One wall 14 feet	6 feet	16 feet
June 1, 2013	One wall 12 feet	6 feet	
August 22, 2013	One wall 20 feet	14 feet	16 feet
January 27, 2017	Top wall 10 feet Lower wall 8 feet	10 feet 8 feet	10 feet 10 feet
February 24, 2017	Top wall 10 feet Lower wall 8 feet	10 feet 8 feet	10 feet 10 feet

I will not belabor the point by reciting the Table. Suffice it to say that each and every one of the walls of Applicant's plans exceeds the maximum limit of 6 feet in height of the Tarrytown Village Code Section 305-47(7).

Secondly, and more importantly, each and every one of Applicant's plans specifies Mesa block walls. As shown in detail in Appendix A and the Current Plan, construction of Mesa block walls requires excavation in back of each wall to install a leveling pad for placement of geogrids, necessary to keep the wall upright. Each geogrid needs to be about 10 feet back from the base of each of the 2 walls. Thus, construction of these 2 walls requires excavation of the entire steep slope.

Additionally, construction of Mesa block walls requires significant fill to replace the cut slope and cover the geogrid in order for it to provide stability to the walls. For example, the Current Plan for 2 Mesa block walls indicates that a whopping Net of 332 CY of fill will be needed.

Nothing in the Current Plan indicates the underlying geology of the steep slope. It does note that soil tests will be needed to ensure that the soil will of sufficient quality to ensure the stability of the geogrid and the walls. What happens to the property downslope if this filled soil and or the slope's underlying geology fails after construction of these massive walls?

Thirdly, the Current Plan requires 2 walls, each of height exceeding the maximum limit of the Village Code. This begs the question: once the upper wall of 10 feet is erected replacing the original railroad tie wall retaining the slope, what is the purpose of the lower 8 foot wall? Is this wall simply a "fig leaf" to make it appear to comply with the Board's recommendations for 2 walls terracing the slope? These massive walls do not provide terracing which would enable preservation of the aesthetics of the slope and mitigation of runoff. Rather, these walls require complete destruction of the steep slope, which the Village Code endeavors to preserve.

The Village Code seeks to preserve vegetation on the steep slopes in order to prevent erosion and mitigate the impact of water runoff to down slope properties. It should be taken into account and made of record that, while he adjourned his application (for more than 3 years while he sought a legal end run around the Planning Board), Applicant removed 2 very substantial trees, one of 30 inches and one of 36 inches in diameter from the steep slope. The actions of the men scrambling up and down the slope and dragging the pieces of the cut down trees up the slope has made the slope more fragile and caused a few of the railroad ties to fall. Prior to this, the ties had survived for more that 40-50 years.

It is noted, in reviewing the file of the Planning Board, I could find no record of permission or permits granted to Applicant for the removal of the significant trees from the steep slope. This is troubling. When removal of these trees was discussed at the meeting of the Planning Board on June 24, 2013, Mr. Blau, the Village Administrator explained that "the decision to remove the trees is not the decision of an arborist or landscape consultant, it is the decision of the Planning Board" (Minutes of the Planning Board June 24, 2013, page 10).

In summary of Part I, each and every one Applicant's plans requires significant excavation and hence obliteration of the steep slope. Each and every one of the walls exceeds the maximum limit of 6 feet in height of the Tarrytown Village Code. None of the submitted plans meets any of the Planning Board's recommendation of: either a retaining wall in kind with a railroad tie wall in the same location as the original, the height determined by the Tarrytown Village Engineer to be 7± feet or a "two-tiered" wall, i.e., terracing of the steep slope, which should have "aesthetically pleasing stone facing with landscaping for screening", and which would afford preservation of the slope.

Part II. Applicant Does Not Justify a Waiver of the Code Protection of Steep Slopes

Section 305-67 of the Tarrytown Village Code (herein, "Steep Slope Protection") provides for the preservation and safeguarding of particular environmental and aesthetically sensitive features – indeed features that identify the landscape of the village including specifically: steep slopes. According to this Code Section, the Planning Board "shall prohibit [restrict] new construction and/or vegetation removal" on steep slope areas.

- A. Under sub-Section F(a) of the Steep Slope Protection, a waiver from the provisions of this chapter, may be granted, by the Planning Board ONLY if a compelling public need for the proposed construction is established based on one of the following:
 - 1. The proposed construction serves an essential health or safety need such that the public benefits override the importance of the protection of the slope area ; the construction is required for existing needs of the residents and "no feasible alternatives exist . . . to meet such public need"; or

2. The proposed construction is an adaptive reuse of an historic or ecological resource, necessary to ensure the integrity and continued use of the resource.

In the present case, the Applicant has not, and indeed, cannot demonstrate a compelling public need for the proposed construction/destruction of the steep slope. The steep slope is at the rear of the Applicant's property. The public has no right (and no need) to access such area.

There is a reasonable and eminently feasible alternative: construction of a code-compliant fence at the top of the steep slope. Such fence would certainly assure no public access to the slope. Such fence would address any and all safety concerns that might be posed by access to the steep slope by the public or the Applicant and his family and guests.

Repair or replacement of the original railroad tie retaining wall, installed sometime in the 1950's or more than fifty years ago, at the original height of 7 ± feet, at the original position on the slope would assure the integrity of the steep slope and preserve it for years to come. In fact, a wall of pressure-treated pine, rated for ground contact, should survive for 40 years.

- B. Under sub-Section F (b) of the Steep Slope Protection, the Planning Board may grant a waiver if the applicant establishes that the benefit to the applicant outweighs the detriment to the neighborhood or community. In order to make such determination, the Planning Board takes into consideration four factors :

Factor 1. Whether it will produce an undesirable change in the character of the neighborhood

The proposed two walls on the Current Plan will result in a significant undesirable change to the neighborhood. In fact, the Mesa Block walls are completely unlike anything in the neighborhood along the property lines between Miller Avenue and Riverview Avenue.

Appendix B, attached, presents several recent pictures of walls taken from the view of Riverview Avenue facing the rear yards along Miller Ave. None of the walls approach the massive structure of the proposed Mesa block walls.

Appendix C, attached, presents several illustrations of my backyard facing the steep slope at the rear of 67 Miller. Appendix C1 is an actual photograph of the slope viewed from my yard. This picture, taken in the Spring of 2013, shows the natural state of the steep slope with lots of shrub vegetation and 2 large trees of 30 and 36 inches in diameter. All this vegetation is extremely important for preventing run off from the slope to properties down slope.

Appendix C2 is an actual photograph of the slope viewed from my yard in the Summer of 2015. Despite the fact that, at the time, Applicant's application was "adjourned" before the Planning Board, in May 2015, the 2 large trees, with diameters of 30 and 36 inches, were removed by Applicant without notification of the adjoining property owners. As shown in Appendix C2, the vegetation recovered somewhat in the Summer without the two large trees and still is important to curtail the runoff.

Appendix C3 is an artist's Rendition of the Mesa Block walls of the Current Plan as would be viewed from my property at the same location as the photographs of Appendix C1 and C2. As shown in Appendix C3, the Mesa block walls cover the entire slope adjoining my property and a portion of the property of my neighbor to the south on Riverview Ave. The construction of the walls will obliterate all the natural vegetation including that which has grown back since the 2 large trees were removed. Additionally, as seen in Appendix C3, the two closely positioned walls appear as a single wall, 18 feet in height, when viewed from my yard and the yards of my adjoining neighbors. No amount of native or non-native vegetation will mitigate that monstrous view of the wall(s).

An online brochure of the manufacturer of Mesa block walls advertises the walls, of greater than 4-6 feet in height, as well suited for walls along highways, elevated railroad beds, commercial or industrial properties and at high rise multi-family residential properties. None of the single family residential properties along Miller/Riverview Avenues are suited to such wall.

Installation of such type of walls will be a bad precedent and could possibly lead others in the neighborhood to demand similar changes to their yards. This would surely be severely detrimental to the character of the residential, village neighborhoods.

Factor 2. Whether the benefit to applicant can be achieved without a waiver

As indicated above, herein, the benefit sought by Applicant can surely be achieved by the simple expedient of installing a code-compliant fence at the top of the steep slope and repairing or rebuilding a code compliant wall similar in kind to the railroad tie wall at the original height and the original location of the wall. Such action would provide the benefit of a safe backyard without the necessity of a waiver.

Factor 3. Whether the waiver is inconsistent with the Objectives of the Steep Slope Protection

The purpose of the Steep Slope Protection is to safeguard and preserve specific characteristic features of the Village landscapes. Included in the objectives of the Steep Slope Protection are preventing habitat disturbance, minimizing storm water runoff/ flooding as well as preserving the Villages' aesthetic character and property values.

The waiver required by Applicant will result in the complete obliteration of the steep slope and removal of the remaining vegetation on the slope. Applicant has in fact, admitted this on his most recent application. Such habitat disturbance is not consistent with the Village's objectives and Code.

As explained to me by my next door neighbor Lin Snider at 64 Riverview Avenue, when a large weeping willow tree was cut down from the gently sloping yard behind her property and a cinder block wall erected along the property line, water has infiltrated her basement as a result. Water also poured into my property adjoining the neighbor and I have struggled to deal with it. This never happened in all the

years since 1986 (when I purchased my Property) until the tree was removed and the gentle slope was replaced by the current cinder block wall.

The massive Mesa block walls are inconsistent with preservation of the aesthetic character of the neighborhood. Thus, grant of the waiver required by the Applicant is completely at odds and is in no way consistent with the purpose, objectives or general spirit of the Steep Slope Protection in the Tarrytown Code.

Factor 4. Whether the waiver is the minimum necessary to relieve extraordinary hardship

Applicant has established no ordinary, much less any extraordinary, hardship. The only reason ever alleged for the required waiver, is to safeguard his back yard which can be accomplished by the simple expedient of installing a code compliant fence at the top of the steep slope.

Grant of the required waiver to construct the 2 Mesa block walls is certainly not the minimum necessary. Construction of the Mesa block walls requires significant excavation, in fact, complete excavation of the steep slope and significant backfill in order to secure the walls. Nothing of the steep slope would remain.

In complete contrast, construction of timber or stone walls would not require such significant excavation and in fact the steep slope would remain. This would constitute the minimum necessary to provide Applicant with the ability to safe guard his property and family and friends.

Summary and Conclusion

In sum, submission of the Current Plan demonstrates that, despite the fact that the Applicant's proposed project has been before this Board since early 2012, Applicant has never attempted to meet any of the Board's recommendations. Nor has he ever come to any compromise position. Rather Applicant has persisted in sticking to his original purpose: to remove the entire steep slope so that he can have an enlarged, flat backyard. There is no attempt to mitigate such destruction by the Current Plan.

As mentioned above, he persists in seeking:

1. Mesa blocks wall(s), well above the Code height limit of 6 feet;
2. Construction of Mesa block wall(s) resulting in destruction of vegetation and obliteration of the steep slope which the Code and this Board seeks to preserve; and

3. Construction of walls more suited to commercial or industrial properties rather than the residential Village neighborhood. No amount of native or non-native vegetation is going to camouflage such walls.

Applicant has not established a need, much less, a compelling need for a waiver to construct the Mesa block walls. Safety of all can surely be achieved by the simple expedient of a code compliant fence at the top of the slope.

On numerous occasions before this Board, Applicant has alleged that his concern is for the safety of this family and neighbors. Never since he has owned the property, has he put up even a temporary fence at the top of the slope to provide for safety.

Safety is not his reason for the walls. Rather as he admitted to my neighbor, Lin Snider, as stated in her Letter of Feb. 7, 2017 (already of record in the file) he is interested in having an enlarged backyard. Such admission is the true reason for the requested destruction of the slope and detrimental change to the character of the neighborhood.

When Applicant purchased the property, it was not level. In fact, a full one third of the property is a steep slope. The railroad tie wall was erected so that the house could be built originally. It retained the steep slope for over 50 years and simply needs to be replaced in kind with a code compliant retaining wall.

Applicant's recently filed new application, dated Jan. 5, 2017, asserts that his project is simply to "repair" or "restore" the railroad tie wall to its original dimensions. The original height of the railroad tie wall has already been determined by the Village Engineer to be 7± feet. How can Applicant now demand 2 Mesa block walls of 10 and 8 feet as restoration of the railroad tie wall? Further, in this application, Applicant admits that the Mesa block walls will "eliminate the steep slope" but unbelievably alleges that the steep slope was created by the collapse of the retaining wall. This is absurd! The steep slope is an original feature of the property, pre-existing the house built on it.

Respectfully submitted,



Geraldine F. Baldwin
66 Riverview Avenue
Tarrytown, NY 105

February 27, 2017

Date	Height at North End	Height at South End	Length of Geogrid
June 12, 2012	Top wall 10 feet	10 feet	10 feet
	Lower wall 8 feet	6 feet	
Sept 5, 2012	One wall 20 feet	6 feet	
April 1, 2013	One wall 14 feet	5 feet	16 feet
June 2013	One wall 12 feet	6 feet	
August 22, 2013	One wall 20 feet	14 feet	16 feet
January 27, 2017	Top wall 10 feet Lower wall 8 feet	10 feet 8 feet	10 feet 10 feet
February 24, 2017	Top wall 10 feet Lower wall 8 feet	10 feet 8 feet	10 feet 8 feet

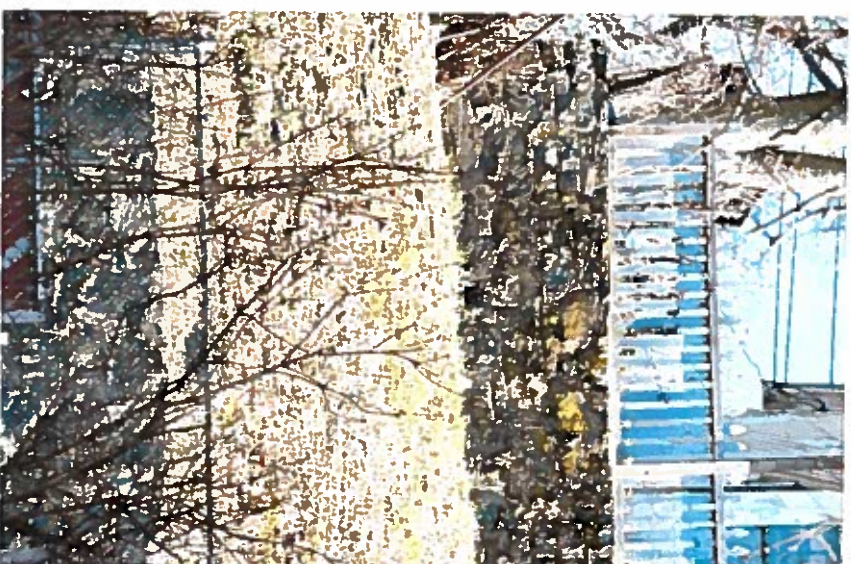
*Baldwin Presentation
2/27/17 PBMG*

APPENDIX B

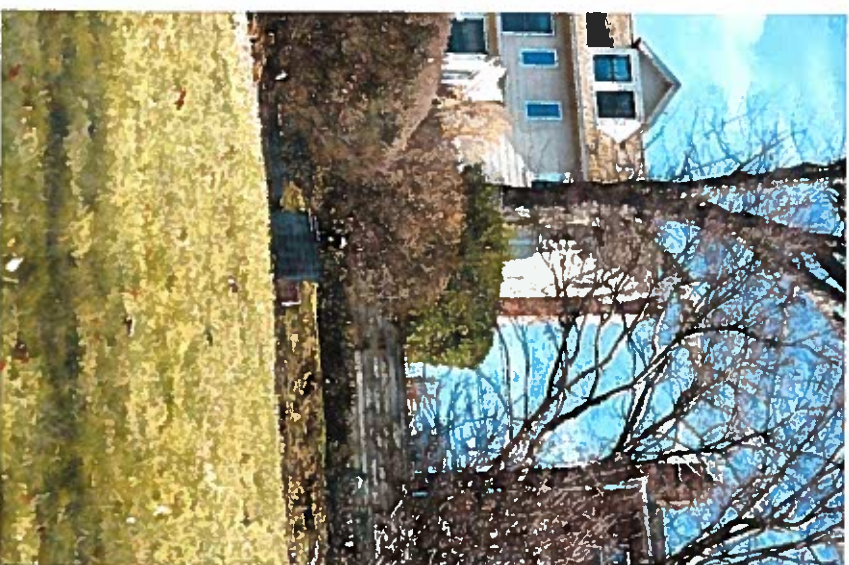
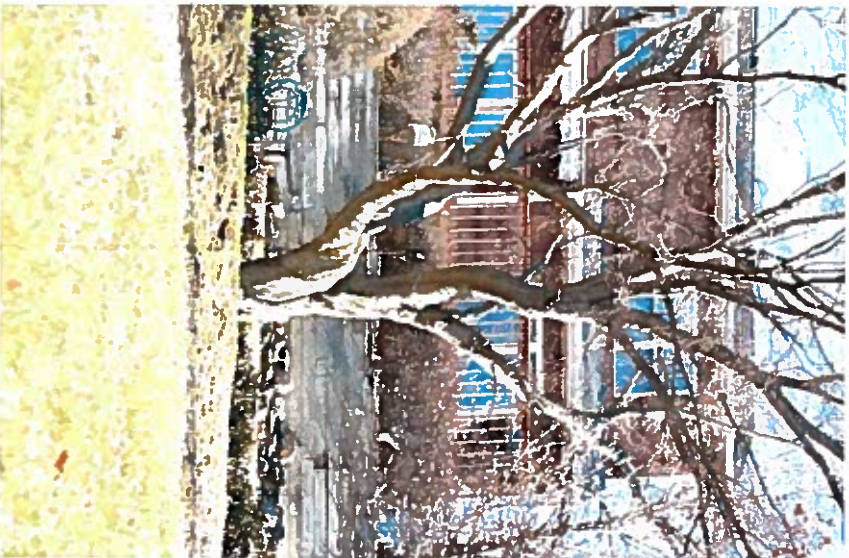
RECENT PICTURES: REAR PROPERTIES OF MILLER AVE VIEWED FROM RIVERVIEW AVE



APPENDIX B2



APPENDIX B3





Appendix C1

Baldwin Feb 27, 2015



Appendix 2
Baldwin Feb 27, 2015



Appendix C &
B&B in Feb 27, 2015