

Planning Board
Village of Tarrytown
Regular Meeting
April 24, 2017 at 7:00 p.m.

PRESENT: Chairman Friedlander, Members Aukland, Raiselis, Birgy, Counsel Zalantis; Village Engineer Pennella; Village Administrator Slingerland; Village Planner Galvin, Secretary Meszaros

Absent: Member Tedesco

Chairman Friedlander called the meeting to order at 7:00 pm.

APPROVAL OF MINUTES – March 27, 2017

Mr. Aukland moved, seconded by Ms. Raiselis, that the minutes of the March 27, 2017 meeting be approved as submitted. All in favor. Motion carried.

Dr. Friedlander announced the following adjournment:

Theresa Beyer - 63 Storm Street

Legalization of the conversion of a one-family home into a two-family home pending a determination from the Zoning Board of Appeals.

CONTINUATION OF PUBLIC HEARING - Peter Bartolacci – 67 Miller Avenue

Dr. Friedlander announced that that if anyone in the public would like to speak while we wait for the applicant's architect to arrive to please come up. Mike McGuire, who lives at 80 Miller Avenue, came up and stated that he has lived in Tarrytown his entire life - 54 years. He grew up in the backyard of 67 Miller Avenue. As a child, he remembers climbing the wall and the yard being level all the way back to the retaining wall. He commented that it is nice to have a backyard and Mr. Bartolacci does not have a backyard for his children.

Paul Berté, PE, of Fusion Engineering, arrived, representing Mr. and Mrs. Bartolacci, also present. He presented a similar concept plan, which was not the plan submitted on 4-12-17. He explained that the last time they were before this Board, a plan was submitted that would require variances to re-create the backyard that once existed at this location. He has since revised the plan to restore the property to where the existing wall once was. He pointed to the plan and indicated that the wall will start at the property line bottom elevation of 172 ft. and will go up to a top elevation of 201 ft., which is about where the hedges are now.

Mr. Berté confirmed that the wall heights are all 6 feet each. Dr. Friedlander asked about the landscaping. Mr. Berté said that low bushes and ivy are proposed. He

explained that the Mesa wall manufacture requires a grid and any large tree roots would damage the structural stability of the wall.

Dr. Friedlander asked how much space was between each wall. Mr. Berté said about 5 feet from face to face. Ms. Raiselis said that Ms. Munz, in her report, said that Ivy is not the best choice and there are some existing trees that are mature and thriving in this area. Mr. Berté said there are some understory trees that are not regulated trees. He hasn't had a chance to review this report, since it was just received this afternoon.

Mr. Bartolacci came up and said that Ms. Munz is referring to trees that are not on his property. Ms. Raiselis said that maybe Ms. Munz is referring to trees adjacent to the wall. She asked how these trees would be protected during construction. Mr. Berté asked to be able to read the report before commenting. Ms. Raiselis asked the applicant to comment on the Munz report before the next work session.

Dr. Friedlander asked what type of bushes they could plant. Mr. Berté mentioned Azaleas, Rhododendron, or Boxwood, which do not grow more than 3 feet in height; evergreen roots would eventually jeopardize the integrity of the wall. Ms. Raiselis asked if there will be any trees to provide shade. Mr. Berté confirmed that no trees can be planted within the limits of the walls.

Dr. Friedlander asked if anyone else would like to speak.

Mr. Pennella commented that the wall shown is a conceptual plan. Mr. Berté has been advised that there will need to be a full design analysis of this plan including the geo-grid design and construction sequencing will need to be provided for a complete design.

Geraldine Baldwin, of 66 Riverview Avenue, came to the podium and read her presentation, which is attached as "Appendix A". She referenced the conceptual plan for the 4 new walls and pointed out that this sketch and each plan submitted by the applicant has been inconsistent with the application which is before the Board. She said that none of the plans or the sketch seeks any reconstruction of the original wall or to restore the wall to its original dimensions. She is requesting that the application be rejected and the applicant be instructed to reconstruct or restore the retaining wall that applicant asserts is failing. In addition, she stated that the application should be rejected because the applicant cannot justify a waiver of the village Code for steep slope prohibition.

She went through the criteria and showed pictures depicting that the walls will be clearly visible from the street and was concerned and her concern about the 545 cubic yards of fill that was necessary for this plan. She said that a petition has been signed by surrounding neighbors, and should be on record in the file.

She asked the Board if they would you like to have these walls in their backyard?

In summary, she said the applicant's plans are inconsistent with the submitted application for the restoration of a retaining wall on a steep slope. All the plans require construction of new mesa block walls and the destruction of the slope. The applicant has not established a compelling need for this waiver. The safety of all can be achieved by installing a simple code compliant fence at the top of the slope. Safety is not the applicants concern, he wants an enlarged yard.

Dr. Friedlander asked if anyone else would like to speak.

Mark Fry, who lived in Tarrytown for many years, informed the Board that he now resides in Briarcliff Manor, at the request of Mr. Bartolacci. He said the law allows for anyone to come and state their comments at a public hearing. He said as a land use planner, he reviewed the plans and Mrs. Baldwin covered most of the points. He pointed to the existing slope on the current plan. He referred to the Robert's property at 63 Miller Avenue, next door to 67 Miller, and this retaining wall, which is quite small compared to the proposed wall. He said if it is the intention to replace the existing wall with a massive wall, and the Planning Board allows this, a precedent would be established allowing anyone to bring in 550 cubic yards of dirt to create an area 75 feet wide and 50 feet deep. The disturbance of steep slope is prohibited unless there is a compelling public need. He made reference to the Whisper Hill wall that Ms. Baldwin included in her presentation, which was put there because of a need for access to fight fires. In this case, this slope can be restored in any number of ways. He said the whole point of this application is to increase the backyard. He said it is true that the grid precludes the landscaping that the village desires; but, the idea to restrict the recommendations of a consultant to fit a wall style does not make any sense. We should be changing the wall to get the right landscaping, not putting in landscaping to fit the wall. Masonry walls do not require geo-grid but allow for larger trees. Mr. Fry put forth the question whether this Board will permit the construction of this monstrosity in order to allow a private homeowner to dramatically increase the size of the backyard? The applicant bought this property on a steep slope.

Mike McGuire, of 80 Miller Avenue, came back up and said when they built the house, to put the foundation in, they built the large wall. He remembers trees that separated the yard. The wall was there.

George Bollenbacher, of 71 Miller Avenue, has lived in town since 1979. He said that anyone who thinks that this slope is stable has no idea. It is a threat to all people who may be standing or sitting below it. The idea of putting railroad ties in does not work for him. A wall is needed to stabilize the property. He is happy to answer any questions.

Mr. Berté referred to the profile and dashline which is that actual line on the plan. He showed where the existing wall is and said the applicant is not looking to capture any additional back yard. He also said the owner of 68 Riverview Avenue had disturbance of steep slope. They are not proposing to kill any trees since they are at a lower

elevation. This is not a steep slope variance; the property has been here since 1952. The slope was created from the deterioration of the existing wall.

Ms. Raiselis asked Counsel Zalantis to clarify the section of code for the steep slope waiver (zoning code section 305-67).

Counsel Zalantis said the applicant is not seeking a waiver under F(1)(a) which establishes a compelling public need. He is doing the balancing test described in F(1) (b). Mr. Bartolacci confirmed that he is seeking a waiver under in F(1) (b) and will be submitting a narrative.

Ms. Raiselis wants it to be clear to the applicant. Counsel Zalantis said to work concept into the narrative and that it is land that has already been developed.

Dr. Friedlander asked Mr. Berté about the cut line, where the original retaining wall was. Mr. Berté pointed it out and said the area we are talking about is 1000 square feet.

George Bollenbacher, of 71 Miller Avenue, came back up and said the wall was much more upright than it is today. The railroad tie wall has collapsed as the erosion has taken out the slope behind it.

Mrs. Baldwin, of 66 Riverview Avenue, returned and said she bought the house in 1986. The man who owned 67 Miller Avenue at that time, tried to maintain the wall but, as he got older, he could no longer do it. The applicant bought the home in 2009 and has not maintained the wall at all. She is aware the wall was constructed when the house was built. The wall is more fragile since the large trees were cut down in 2015. The application is to restore and reconstruct the wall and there was some discussion about people climbing walls when they are 8 years old. She said she remembers being 8 years old, and a hill really looks big to an 8 year old. She does not believe this is an accurate way of determining the height of the original wall. She referred to the Village Engineer's letter from 2013, indicating that the best estimate is that the wall was never more than 7 plus or minus feet tall. In addition, with respect to the fact that the steep slope code was created back in the 1950's, the language was amended to read that no distinction is to be made from a natural slope or artificial slope. This steep slope has been there since 1940.

Mark Fry came back and referenced a grandfather clause, which he said allows a person to reconstruct what was there, provided they do it within 6 months. The basic concept does not allow you to come back 30 years later. The clause has expired and, nonetheless, it is all new construction on the steep slope.

Mr. Berté said the walls that they are proposing are 6 feet high and are code compliant.

Mark Fry came back and said the walls are 9 feet high, the fill is making them look 6 feet. Six foot is exposed, three feet are hidden. Fill is added to create mini-steep slopes

that are 1 to 1.5, which is not permitted by village code. There is a slight difference to this plan than what was given to me today, but it is still the four walls. He said this is an application he urges the Board to carefully consider and exercise their authority to deny this application.

Mr. Berté said the construction of a reinforced concrete retaining wall would require a significant footing, so whether you are excavating for the grid behind a mesa block wall or a footing you are still disturbing behind the face of the wall. All types of wall have implications on how they are built.

Dr. Friedlander made a motion to continue the Public Hearing. Mr. Bartolacci said he has something more to say.

Suzanne Bartolacci, of 67 Miller Avenue, came up to speak. She began her presentation, which is attached as "Appendix B". She said she would like to show photos and prior statements from previous Planning Board meetings with regard to the height of the wall. It was always been there intention to restore the backyard to what was originally there. They have come back with a tiered design as requested but there seems to be some disagreement about what the original footprint of the wall was like.

Mrs. Bartolacci made reference to statements from the Planning Board minutes of 8/26/13 and this evening's meeting from individuals who remember the wall and how the backyard was flat, and that significant erosion has occurred and is still occurring.

She referenced a timeline of the people who made statements in terms of when they moved in the neighborhood. She commented that it sounds like there was a window when the wall may have collapsed and, if the wall was 7 feet high, as Ms. Baldwin feels, there would have been no erosion from 1986 until today, which she finds hard to believe.

She presented aerial photographs from Mapping Westchester, of the current backyard in 2013 (scaled 1 to 30 feet) and an older 1976 map (same scale) showing the retaining wall and hedgerow indicating that a significant amount of backyard was lost and gone down the hill.

She presented another aerial photo comparing the Robert's property (next door at 63 Miller Avenue) to theirs from 2013 to 1976 photos, which show that the backyard extended far beyond the SW corner of the Robert's property at 63 Miller Avenue in 1976. Mr. Bartolacci noted that the angle of the hedgerow and the top of the retaining wall follows the exact contour of the old retaining wall, which is additional proof that the backyard used to go from the house straight out to the top of the retaining wall. The steep slope which is there now is entirely due to erosion. This is corroborated by these pictures and all of the comments from former residents and neighbors who saw the wall, and played on the wall, as opposed to people who moved in later on and may have seen the wall in a state of disrepair and deterioration.

The next photo Mrs. Bartolacci presented shows the property and a 16 foot high retaining wall at 93 Miller Avenue, 5 houses down from 67 Miller Avenue. It shows a significant backyard built at 93 Miller Avenue and confirms that there are other properties in the neighborhood that were developed in a similar way to their home.

Next, she showed a picture provided by Thomas Nugent, who lived at 63 Miller Avenue from 1993 to 2006, showing the wall in the back after a stack or layer of railroad ties fell, which Mr. Bartoluzzi had witnessed when he lived there. He said that before 1993, the wall was about 10 feet higher than it is in the picture. The next illustration compares pictures of the wall from 1998 to 2015 which clearly shows each railroad tie and the height loss; and a picture taken sometime between 1993 and 1998, which shows the flat surface extending well beyond the hedgerow. The next photo shows that the backyard drops right at the hedgerow so there is no backyard. This corroborates statements made by Mr. McGuire and Ms. Katsaris. Mrs. Bartolacci said there is a huge hedgerow so there is not a safety concern about the children falling, they are concerned about erosion and the safety of the slope to the surrounding properties and to Mrs. Baldwin down below. Mr. Bartolacci said that there are also quite a few rusty nails that he is concerned about his children stepping on.

Mrs. Bartolacci showed a current photo of the wall taken in January of 2017, showing a significant change in the slope since the 1990's. Mr. Bartolacci pointed out that if you take the slope angle in the 1990's, at the top of the wall to where it flattens out, the slope angle is 128% or 52 degrees. This clearly shows a significant amount of erosion from the 1990's until now and the slope there now has been entirely created by erosion. The hedgerow is in the same position as the 1990's.

The next picture shows current backyard taken from the Robert's property. The railroad ties and the dirt piled up at the base of the retaining wall is consistent with the amount of fill needed for a higher wall. Mr. Bartolacci said the layer of railroad ties that fell off the wall is also shown at the base resting at the bottom, and there are probably more buried there. These ties corroborate Mr. Bartoluzzi's recollection of the layer of 12 railroad ties falling off the wall when he was trimming the hedges.

The next picture shows tie backs poking out 3 feet above the top of the existing wall which indicate that a higher wall was once present.

Mrs. Bartolacci said this presentation is important to refresh the Board since there has been a large period of time since this application was before them. They have had neighbors come and speak and submit statements and aerial photographs of what they think the wall was like. She feels they have presented a compelling case that there once was a significant wall there. The opinions were objective and independent. She feels that they have a right to repair the wall to what it was, which is why is it important to establish what the original wall was like. They have proposed a tiered design and are

prepared to address screening and the landscape report. If they can't rebuild what was there then she does not know what their options are.

Mrs. Bartolacci completed her presentation and asked if the Board had any questions about the wall and if her presentation has helped the Board.

Ms. Raiselis said that they did a good presentation.

Mr. Aukland said that this should be the core of the narrative. One thing he wants clarified is the stability of the slope now. They will continue the public hearing and he thanked the early commentators. He would like the narrative to include the stability of the slope.

Mrs. Bartolacci read a letter from the Roberts, of 63 Miller Avenue, who are out of town but are supporting this project. She read the letter which will become part of the record.

Mrs. Bartolacci said it is important to have the neighbors next door also have their say. They want this wall fixed as much as we do. She really wants her children to have a backyard. They are almost 8 years old. She wants to get this done and be very clear as to the next steps that have to be taken before the next work session so that we can get a resolution.

Dr. Friedlander asked Mr. Berté why they are submitting a different plan.

Mr. Bartolacci said we revised the plan to avoid a variance.

Dr. Friedlander asked Mr. Berté why we went from 2 to 4 walls? Mr. Berté said the plan was revised in order to keep the wall height at 6 feet. He asked what the grade will be for the backyard. Mr. Berté said it is a 2% grade. He asked Mr. Berté what the ratio for increase in grade to height is and requested this information be submitted.

Mr. Aukland asked Mr. Pennella if he has an understanding of the increase in fill which should be included in the narrative. Mr. Pennella said it is very clear since they are creating individual pockets. Counsel Zalantis requested that this information regarding the fill be included in the narrative. Mr. Berté said part of that is stone, it is not all fill.

Mrs. Bartolacci came back and addressed the September 26, 2013 letter from Mr. McGarvey, which she will provide for the record, which corroborates what the wall was like. The evidence is the tie backs and we have demonstrated that 850 cubic yards was not calculated correctly, it should be about 220 cubic yards. Mr. McGarvey said in his letter that there were 3 walls of approximately 7 feet high. Mr. McGarvey never explained how he came up with this, but, for the record, this contradicts what all of the former neighbors have said.

Mrs. Bartolacci gave Secretary Meszaros the specifications for the mesa wall, email correspondence from Mr. Nugent, a letter from Michael McGuire that was included in her presentation and the Robert's letter supporting this project for the file.

Mrs. Baldwin returned and said there are 3 walls existing now on the property that were 7 feet high and asked, "Do you believe anyone would build 20 foot high railroad tie wall?" Also, if this is for a replacement in kind, mesa block walls with 55 truckloads of fill is not a replacement in kind of a simple system of railroad tie wall. Mrs. Bartolacci said that Whisper Hill had a railroad tie wall and were able to build their wall with liberty stone.

Mr. Aukland moved, seconded by Ms. Raiselis, to continue the Public Hearing. All in favor. Motion carried.

PRELIMINARY PRESENTATION – Berryman – 145 Altamont Avenue

Ralph G. Mastromonico, PE, appeared, representing Mr. and Mrs. Berryman. He explained that he is here for site-plan approval to construct a 6 foot high one tiered wall on a 25% slope. He presented the plan. Ms. Raiselis asked to see pictures.

He showed a picture of the wall, and said it will be versilock construction, which is a concrete product made to look like stone; it is an interlocking capped wall.

He also noted that he has proposed an access plan, and the wall is less than 6 feet so it is a code compliant plan.

Mr. Aukland asked Mr. Pennella if he needs anything else from the applicant.

Mr. Pennella said the original plan submitted was not zoning compliant and has been revised to make it compliant. He asked the applicant if this is the minimum relief required for this application and if there are any other alternatives to modify the wall to make it less intrusive. Counsel Zalantis asked that the "minimum relief" necessary be addressed in the narrative. Planner Galvin also would like to know how much of the wall is 6 feet.

Mr. Aukland moved, seconded by Ms. Raiselis, to designate this a Type II Action with no further action required under SEQRA; All in favor. Motion Carried.

Mr. Aukland moved, seconded by Ms. Raiselis, to set an escrow of \$2,500; All in favor. Motion carried.

Mr. Aukland moved, seconded by Ms. Raiselis, to set a Public Hearing. All in favor. Motion carried.

MS4 Annual Report Stormwater Management Meeting

Village Engineer Pennella reported that each year the village is required to post an annual Stormwater Management Report on the village website for public review and comment. The 2016 Draft Stormwater Management report has been posted on the website as of April 12, 2017. This report outlines the number of inspections and violations that were issued in 2016. In addition to inspections, whenever there is a project on land greater than 1 acre, the applicant is required to perform weekly stormwater inspections after rain events. In 2016, the village issued 3 stop work orders and 3 violation notices. Over the years, applicants have been more compliant since heavy fines have been imposed. We recently had a satisfactory audit from the NYS, Department of Environmental Conservation and we have also had student's from Purchase College volunteer to map out our catch basins using GIS. The village is also encouraging applicants to consider green infrastructure and green roofs in the planning process. The final report is due to be submitted to the NYS, Department of Environmental Conservation by June 1, 2017.

ADJOURNMENT

Mr. Aukland moved, seconded by Ms. Raiselis, to adjourn the meeting at 8:45 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 Tarrytown Planning Board April 24, 2017 re: Application of 67 Miller Avenue

Initially, I would like to point out, respectfully, that each Plan by the Applicant for these proceedings, including all the Plans tabulated in Appendix A, attached, and the Conceptual Sketch submitted by the Applicant on April 12, 2017, ("Conceptual Sketch"), is completely inconsistent with the Application for which Applicant is before this Board.

In describing the proposed project, Applicant's Application dated January 5, 2017 states the following:

1. The project is to "reconstruct the failing railroad tie retaining wall"
2. The Application is "solely for the purpose of reconstructing a failing retaining wall"
3. The project is to "restore an existing retaining wall to its original dimensions".

None of the Plans or the Conceptual Sketch seeks any reconstruction of the original wall. None seeks to restore the wall to its original dimensions.¹

Rather each and every Plan seeks to construct one or more new walls solely for the purpose of enlarging Applicant's back yard. At the same time, the new walls of Mesa blocks which require extensive geogrids for stability will completely destroy or obliterate the steep slope at the rear of Applicant's property. In fact, the most recent Conceptual Sketch requires backfill on the geogrids of 545 cubic yards or a convoy of about 54 truckloads of imported fill.

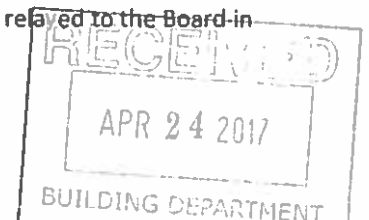
In view of such inconsistency, alone, it is submitted that the Application should be rejected outright by the Board and Applicant instructed to reconstruct or restore the retaining wall Applicant asserts is failing.

In the alternative, it is respectfully submitted that the Application should be rejected outright because the Applicant has not, and in fact cannot, justify a waiver of the Village Code's prohibition of the disturbance of steep slopes.

Since the 1990's, the Village Code Section 305-67 ("Steep Slope Protection") has sought to preserve certain environmental and sensitive features of the environment that identify the Village landscape including steep slopes. Such preservation must be particularly important for the Village because in 2005, the original text of the Steep Slope Protection was changed from the milder term "restrict" to the more emphatic term "prohibit" disturbance. This raised the bar for any waiver of the protection.

Under sub-Section F (a) of the Steep Slope Protection, a waiver may be granted, by this Planning Board ONLY if a compelling public need for the proposed construction is established.

¹ Applicant presented allegations and hearsay evidence about the height of the original wall; however, Applicant provided no actual factual evidence. After much discussion, at the meeting of August 26, 2013, the Board resolved that the then Village Engineer, Mr. Mc Garvey, would re-visit the site and using his best efforts determine the original height of the railroad tie wall. Mr. McGarvey did visit the site and his findings were relayed to the Board in a Letter dated Sept 26, 2013 in which he concluded that the original wall was "7' (±) high".



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.

Restoration or reconstruction of the original railroad tie retaining wall as requested in the Application, at the original height, 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.

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 Mesa block walls of each and every one of Applicant's Plans will result in a significant undesirable change to the neighborhood.

Appendix B attached to my Statement to this Board February 27, 2017 presented several recent pictures of walls taken from the view walking along Riverview Avenue facing the rear yards along Miller Ave. These pictures indicate that, if constructed, the proposed walls will be clearly visible from the street level along Riverview Avenue. These pictures further demonstrate that none of the current walls in any way look like the industrial Mesa block walls.

A Statement has been prepared and is being circulated among the neighbors of Riverview Avenue. The Signed Statements of 10 Residents of Riverview Avenue ("Residents' Statements") submitted at the end of March 2017(already of record in this file) relating to Applicant's then current Plan for 2 Mesa block walls further attest that construction of such walls, more suited to industrial or commercial properties, will significantly negatively impact the residential neighborhood.

Appendix C, shown on the Poster Board tonight, 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 in the Summer of 2015. As shown in Appendix C1, the vegetation on the slope is important to hold the slope and absorb water. Incidentally, it creates an aesthetically pleasing natural habitat. Appendix C2 and C3 are an Architect's Renditions of the Mesa block walls proposed in Applicant's Plan of February

24, 2017 and the Conceptual Sketch of April 12, 2017. The Architect used an actual picture of my yard to superimpose the proposed walls according to the Plan and the Conceptual Sketch.

When shown the picture in C2 in particular, some of the residents living along Riverview Avenue, reacted with exclamations such as: "I certainly would not want that in my backyard" and "That is going to set a really bad precedent for our neighborhood and Village". Thus, it is clear that the neighbors appreciate the significant negative impact of the proposed walls.

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

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 restoring or reconstructing 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

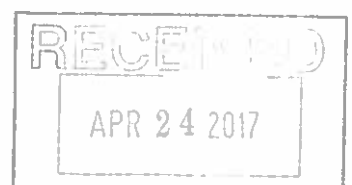
The purpose of the Steep Slope Protection is to safeguard and preserve specific characteristic features of the Village landscapes. Included in the objectives of the Steep Slope Protection are preventing habitat disturbance, minimizing storm water runoff as well as preserving the Villages' aesthetic character 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 in the Application. Such habitat disturbance is not consistent with the Village's objectives and Code.

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

Applicant has established no 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. Keep in mind that construction of the walls in C2 would require 330 cubic yards or 33 truckloads of fill and construction of the walls in C3 would require 545 cubic yards or 54.5 truckloads of fill. Nothing of the steep slope would remain. Applicant's yard would be substantially enlarged at the expense of the natural habitat of the steep slope.



In complete contrast, construction of timber or stone walls or even a code compliant concrete wall with stone facing 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, Applicant's Plans are completely inconsistent with the submitted Application for restoration of a retaining wall on a steep slope. Rather, all the Plans and the current Conceptual Sketch require construction of completely new Mesa block walls and the destruction of the entire steep slope and its aesthetically pleasing natural habitat. Never once has Applicant submitted any plan for any wall which would be less destructive of the steep slope.

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.

Respectfully submitted,



Geraldine F. Baldwin
66 Riverview Avenue
Tarrytown, New York 10591

April 24, 2017



APPENDIX A

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







APPENDIX B

PRESENTATION BY:
Mr. and Mrs. Peter Bartolacci
67 Miller Avenue
Tarrytown, NY 10591

Re: 67 MILLER AVENUE APPLICATION
RETAINING WALL AND PROPERTY PHOTOS

67 Miller Avenue – Retaining Wall and Property Photos

In support of Retaining Wall Design
Proposal

4/24/17

8/26/13 Planning Board Meeting:

Brian Tompkins, of 57 Cedar Lane Ossining, NY, stated: "I lived in the house at 63 Miller Avenue for the first 23 years of my life... He [Peter Bartolacci] asked me if I remembered the retaining wall in the back of Mr. Thompson's or Mr. Brekka's house. And I said "vividly". As a little kid we would constantly climb from the bottom to the top of the railroad ties straight up to the top...I also asked if I could walk around the backyard of his property and you could see some of the existing railroad ties at the base and that's where it started and it directly went straight up. When I was in his backyard, I was astounded to see how pitched and sloped and tiny his backyard had become. It was significantly smaller. Mr. Brekka had a manicured property and it was completely flat backyard that extended out to the railroad tie wall, and it was just, again, one wall. That's just coming from someone who spent years climbing and playing on it...I was really shocked to see how much property he has lost." (Mr. Tompkins lived at 63 Miller from 1954 to approximately 1976)

Despina Katsaris, of 48 Van Wart Avenue, Tarrytown, stated: "Before I lived at 68 Miller Avenue, across the street from Peter's house. I know that house almost 30 years and I went a lot of times in the backyard with the old man [Louis Bartoluzzi, former owner of 67 Miller Avenue]. We have coffee. It was nice and flat and after it go down. The guy was always fixing it every summer, you know he fixed the backyard. After, he got old, and he couldn't do anything. But I saw the hedges and it was up here [indicating a spot on the credenza] and once in a while he would take the them from here [original spot on credenza] and put them closer to the house [indicating another spot on the credenza, closer to her to simulate Mr. Bartoluzzi moving the hedges closer to the house] because it [retaining wall] go down. **Now I don't see the backyard but now I know it's down the hill but it was always flat..**.At the time I was living at 68 Miller Avenue I went to.. .Mr. Louie's house and I had coffee with him and his wife because we were very friendly with them. And now you can't put a table because it will go down the hill." (Ms. Katsaris lived at 68 Miller from 1974 – 2010)

8/26/13 Planning Board Meeting:

Ms. Katsaris's daughter, Sandy Kostaras, also addressed the Board to help interpret what her mother had said, stating: "I grew up at 68 Miller Avenue. I remember Mr. Louie always fixing the yard, but she was saying, which she wasn't able to say to you, that when she went back there, **there was a retaining wall back there and that is why the land was so flat and each year Mr. Louie would complain that the soil is falling and falling and falling and he would have to move his bushes back from the retaining wall [closer to the house] because of the soil erosion.** So I don't understand how bushes could stay flat like that if there was no retaining wall that high because there was flat ground back there...she remembers there was a wall because there wasn't a wall the ground would have gone, there would be nothing back there right now...Timeframe was 1974 to when he passed away [2003]."

4/24/17 Planning Board Meeting:

Michael McGuire, 80 Miller Avenue: During the late 1960s and early 1970s, I was friendly with Steven Thompson who lived across the street at 67 Miller Avenue in what is now Mr. Bartolacci's house, and would frequently play with Steven in his yard. I also attended several birthday parties in Mr. Thompson's backyard from around 1967 to 1971. Mr. Bartolacci asked me to come here tonight to describe the property at 67 Miller Avenue prior to the collapse of the railroad tie retaining wall.

Steven Thompson and I would often take the stairs down to the lower part of the yard and then climb from the base of the retaining wall up to the top. **This single retaining wall was massive – I would estimate the West face of this retaining wall to be 2 stories high, or approximately 20 feet, angled into the slope due to the slight offset of each railroad tie.** This offset is what gave us a toe hold to allow us to climb the retaining wall. Back then there was a post and beam fence at the top of the retaining wall, as well as a hedgerow to protect people from falling from the backyard down the 20 or so feet.

4/24/17 Planning Board Meeting (cont'd):

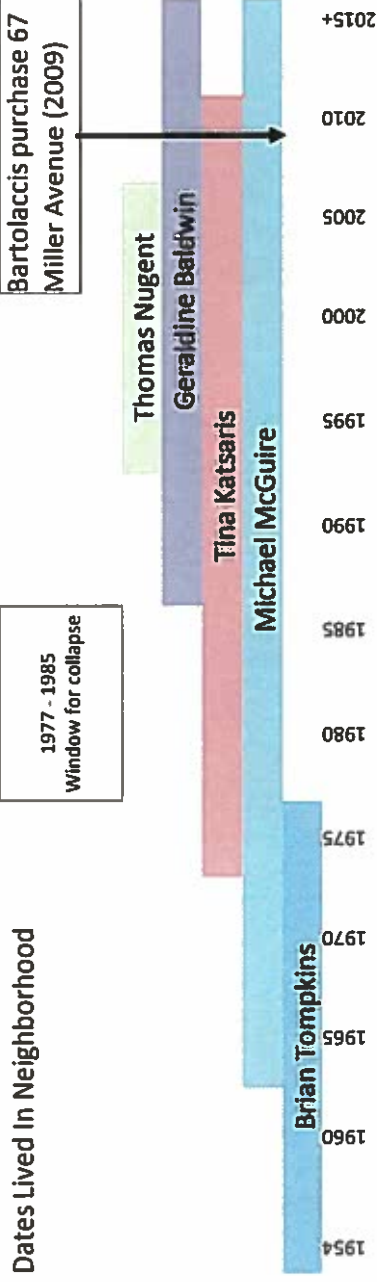
The backyard at 67 Miller Avenue was flat and extended from the house out to the top of the retaining wall. Mr. Bartolacci mentioned to me that some people have suggested that there was a tiered retaining wall back there. This is absolutely not the case. There was a single massive retaining wall that went from its base straight up to the lawn.

Mr. Bartolacci invited me into his backyard to see what it looks like now. I can tell you that Mr. Bartolacci has lost a lot of backyard due to the collapse of the railroad tie retaining wall. The sloped area that currently exists between the hedgerow and retaining wall used to be filled in and was flat.

Back when Steven Thompson and I would take the stairs down, there was also a large vertical railroad tie retaining wall going straight up from the side of the stairs to form the Southern border of the lawn. From what I saw during my visit, there is practically nothing left of this retaining wall and most of the dirt in this Southwest corner is gone.

4/24/17 Planning Board Meeting:

Thomas Nugent, formerly of 63 Miller from 1993 -2006: "This letter is in reference to the retaining wall between 63 and 67 Miller ave. I attached a picture of what the wall looked like in 1998. A Mr Bartoluzzi was the previous owner of 67 Miller ave. According to him while trimming his hedgerow, a "stack" or layer of 12 railroad ties fell off the top of the wall. So before 1993 the wall was about 10 feet higher than is in the picture."



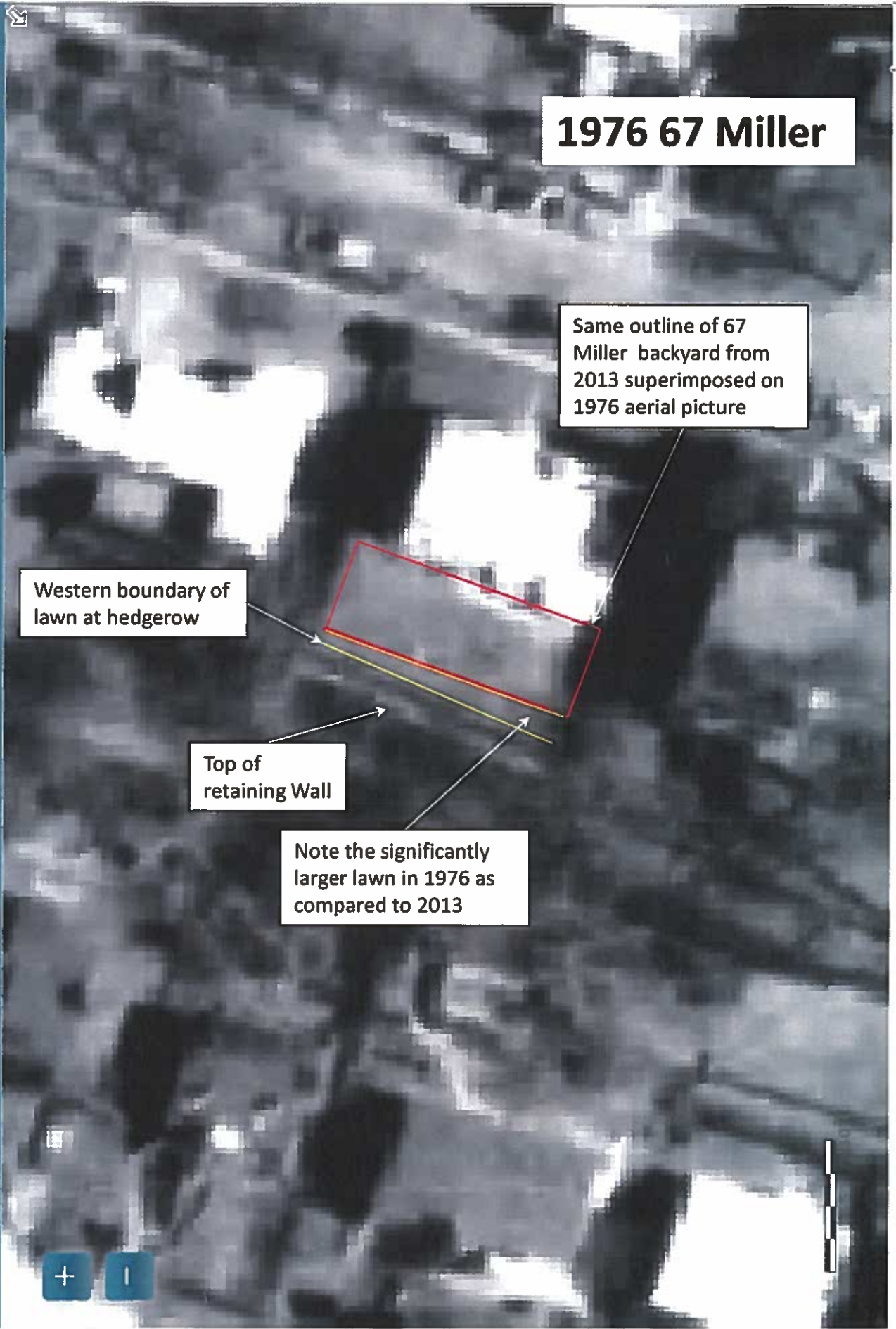
Per the timeline and testimony above, and in conjunction with Geraldine Baldwin’s statement that the retaining wall has never been higher than 5-8 feet since 1986, then all of the retaining wall collapse had to occur in the 8 years between 1977 and 1985, with little to no further decay to the retaining wall structure or erosion from 1986 to present.



2013 67 Miller

Outline of 67 Miller
backyard in 2013

0 15



1976 67 Miller

Same outline of 67 Miller backyard from 2013 superimposed on 1976 aerial picture

Western boundary of lawn at hedgerow

Top of retaining Wall

Note the significantly larger lawn in 1976 as compared to 2013

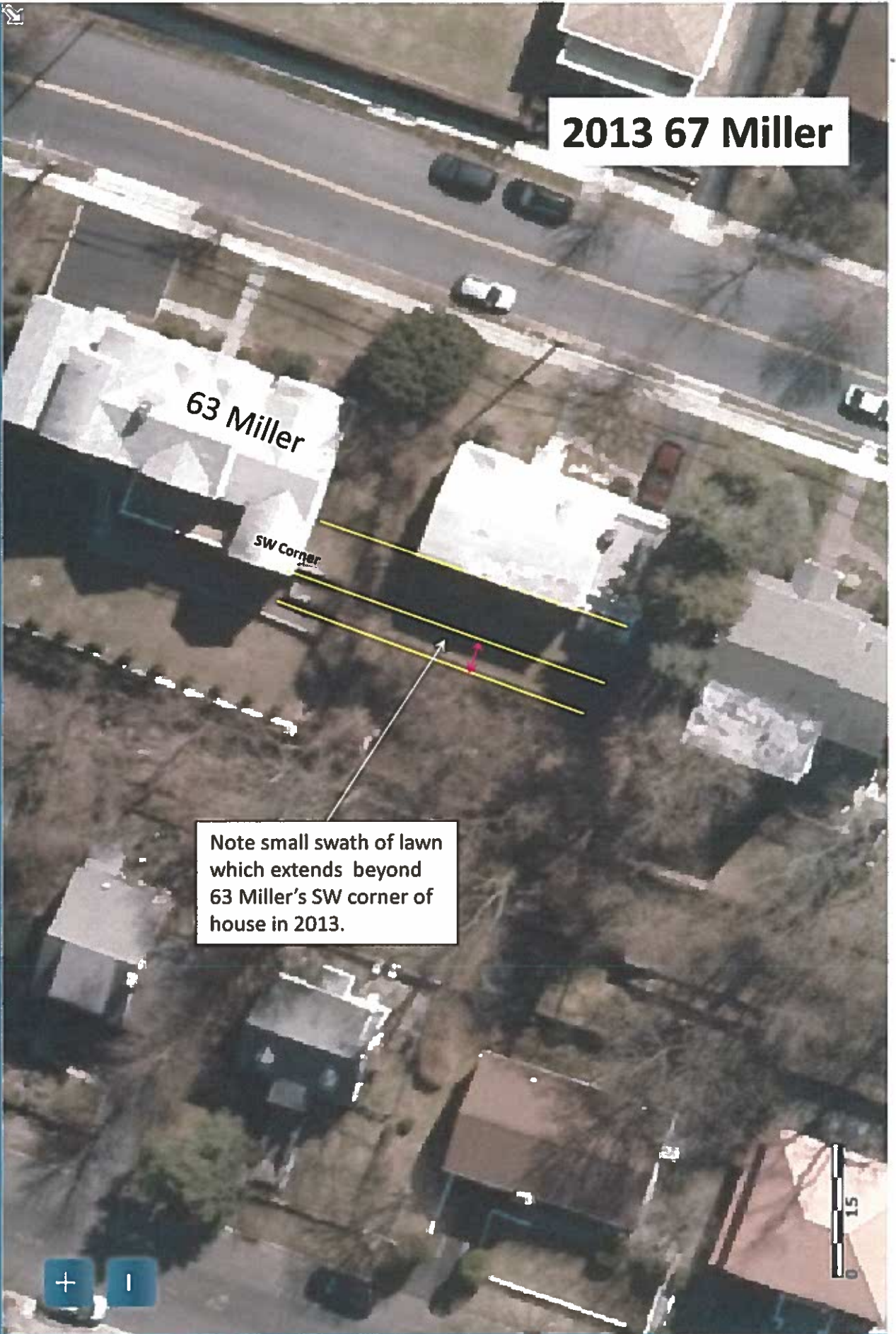
1976 67 Miller

63 Miller

SW Corner

In 1976, the backyard of 67 Miller extended far beyond the SW corner of 63 Miller house.





2013 67 Miller

Note small swath of lawn which extends beyond 63 Miller's SW corner of house in 2013.

Comparison of retaining wall at 67 Miller vs. 15+ foot high retaining wall at 93 Miller as seen in aerial picture from 1976.



93 Miller as it looks presently



1998 Picture of NW Corner of Retaining Wall Provided by Thomas Nugent, Owner of 63 Miller Avenue from 1993 to 2006

"My name is Thomas Nugent. I lived at 63 Miller from 1993 -2006. This letter is in reference to the retaining wall between 63 and 67 Miller ave. I attached a picture of what the wall looked like in 1998. A Mr Bartoluzzi was the previous owner of 67 Miller ave. According to him while trimming his hedgerow, a "stack" or layer of 12 railroad ties fell off the top of the wall. So before 1993 the wall was about 10 feet higher than is in the picture. If you have any questions about the retaining wall from that time , let me know."

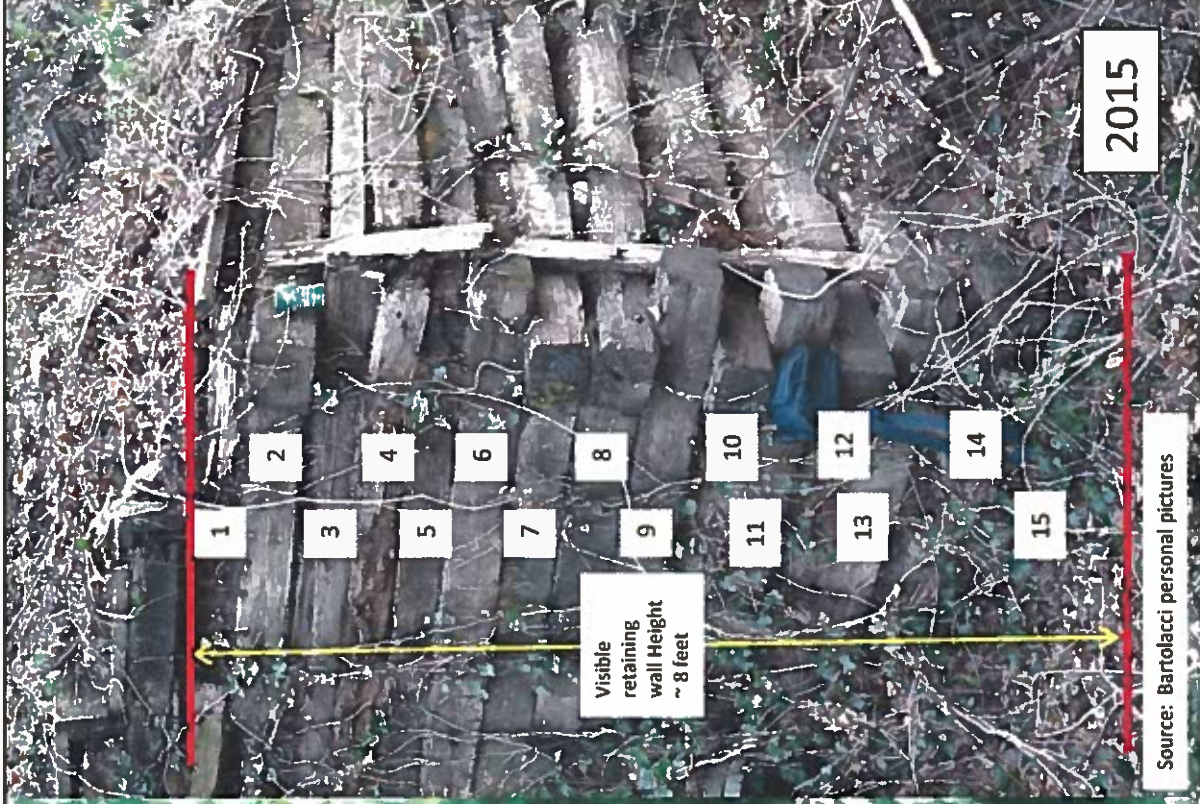
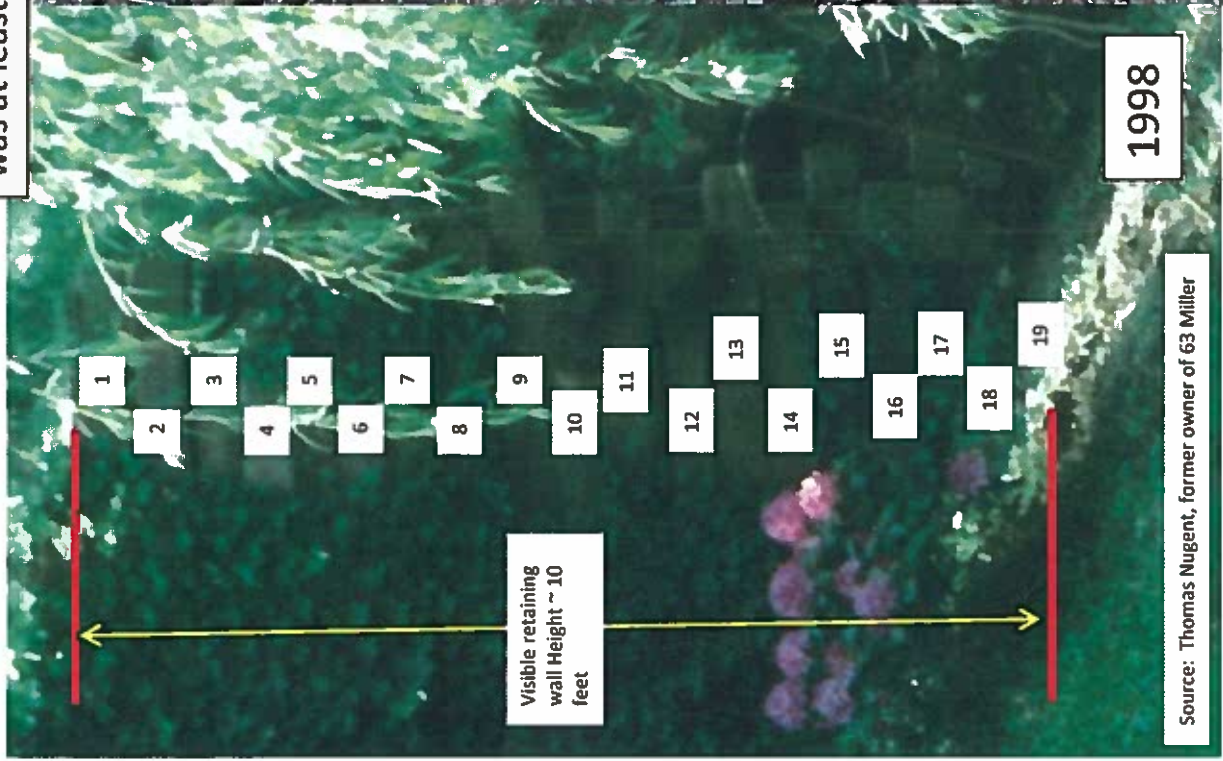
Text Source: Email message from Thomas Nugent to the Planning Board 1/22/17



"I spoke to a neighbor who lived in Brian Tomkins's house, the gentleman you heard from earlier, he moved in after they had moved out. His comment to me was that Louis Bartoluzzi, the owner of our property, had said to him one day "I was trimming the hedges and I took a step and a layer of 12 railroad ties came off the top of the wall and down the hill.""

Text Source: Statement made by Peter Bartolacci at the 8/26/13 Planning Board Meeting. See recording of meeting. Meeting Minutes do not accurately reflect Mr. Bartolacci's statement.

NW Corner of 67 Miller Retaining Wall – In 1998 it was at least 10 feet high.



Picture provided by Thomas Nugent, resident at 63 Miller from 1993 to 2006



Same Thomas Nugent picture zoomed, cropped, and tilted to make horizontal



Need to tilt picture
to level off using
the deck as
horizontal
reference

Magenta line
shows position of
hedgerow in the
1990's

Triangle drawn
capturing yard
level, West slope,
and North
retaining wall
angles

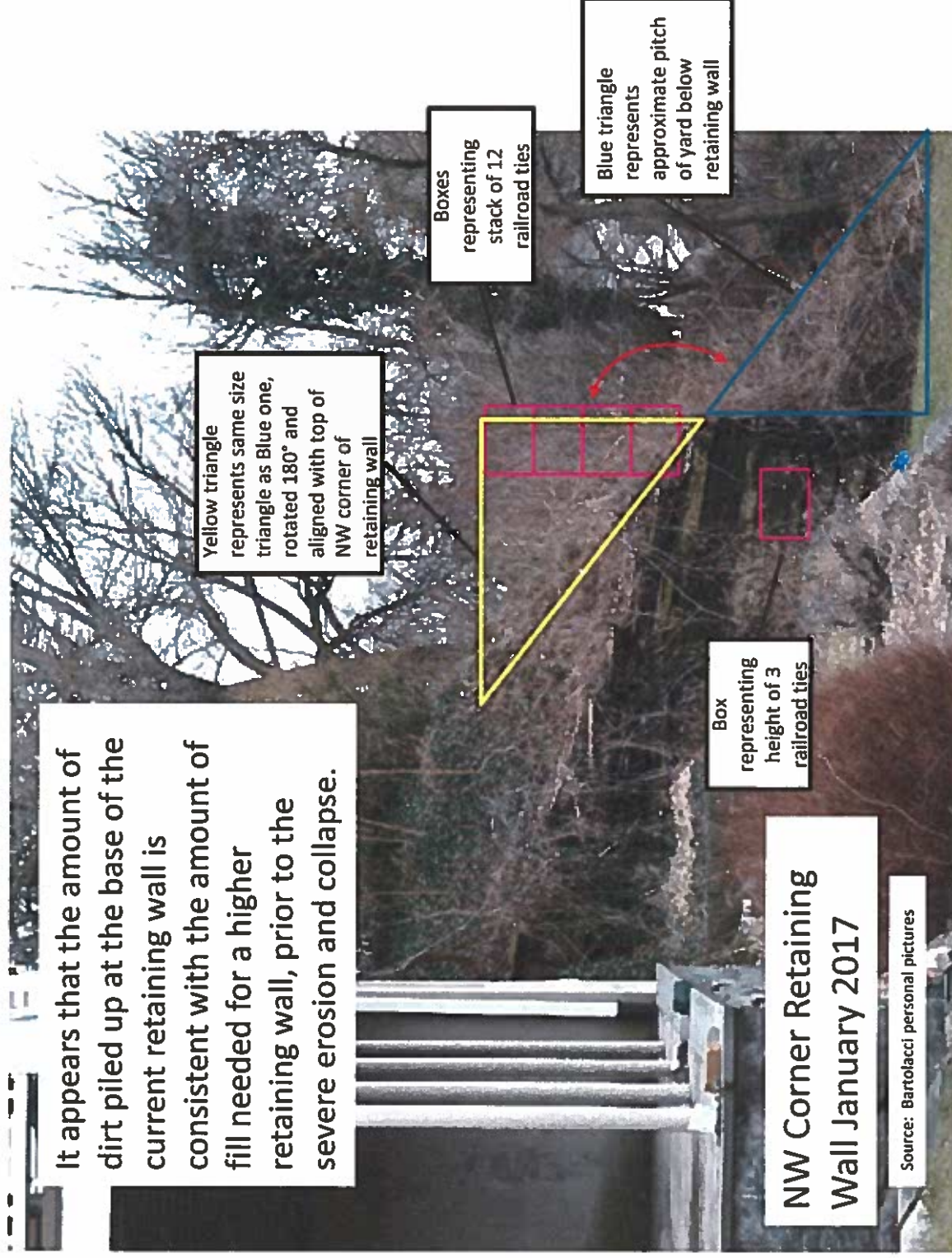
100



100

100

It appears that the amount of dirt piled up at the base of the current retaining wall is consistent with the amount of fill needed for a higher retaining wall, prior to the severe erosion and collapse.

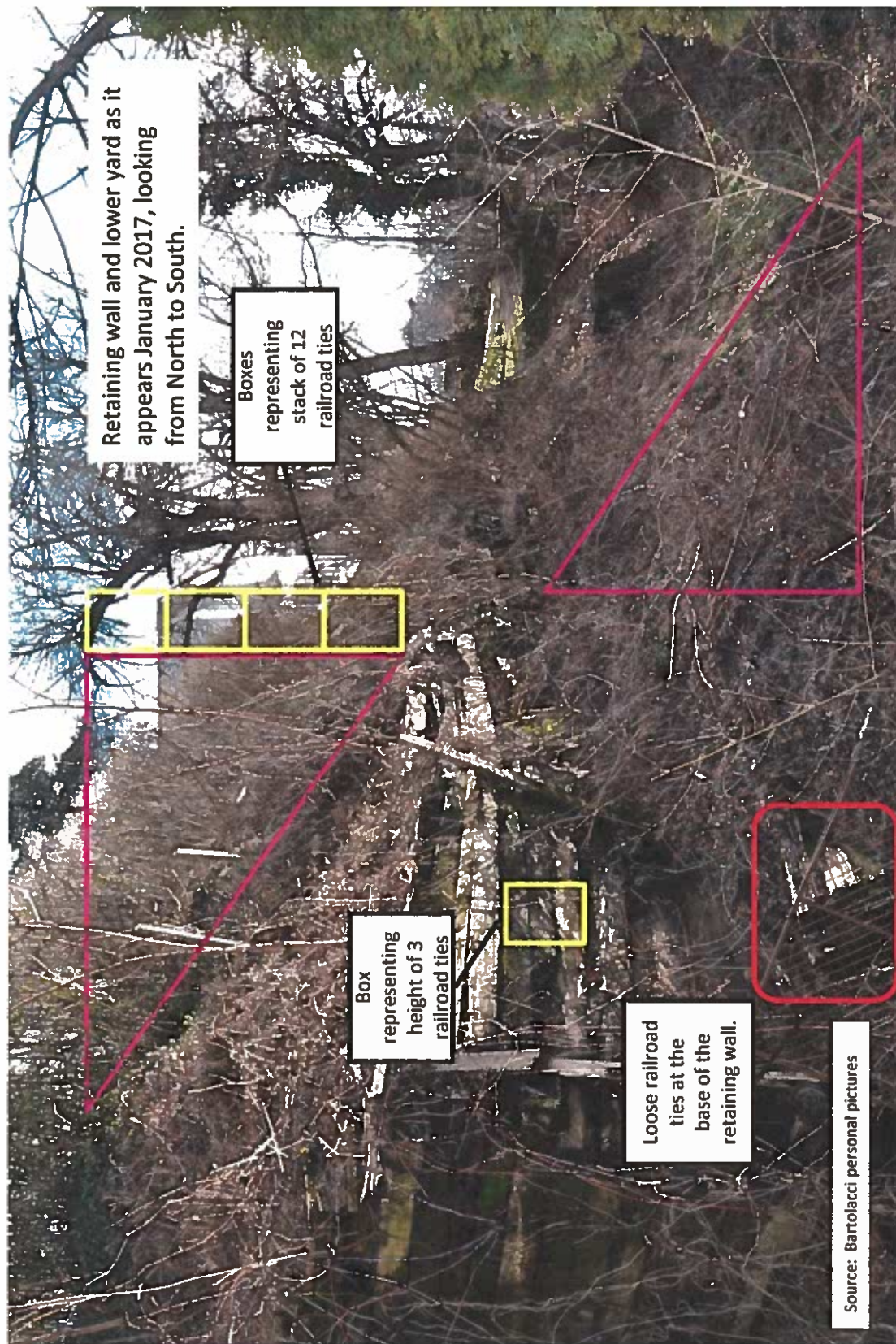


The amount of apparently eroded soil deposited at the base of the retaining wall appears consistent with a leveled off backyard extending out all of the way to the top of a large retaining wall. This is also consistent with testimony from former neighbors.



Retaining wall and lower yard as it appears January 2017, looking from South to North.

Source: Bartolacci personal pictures



Retaining wall and lower yard as it appears January 2017, looking from North to South.

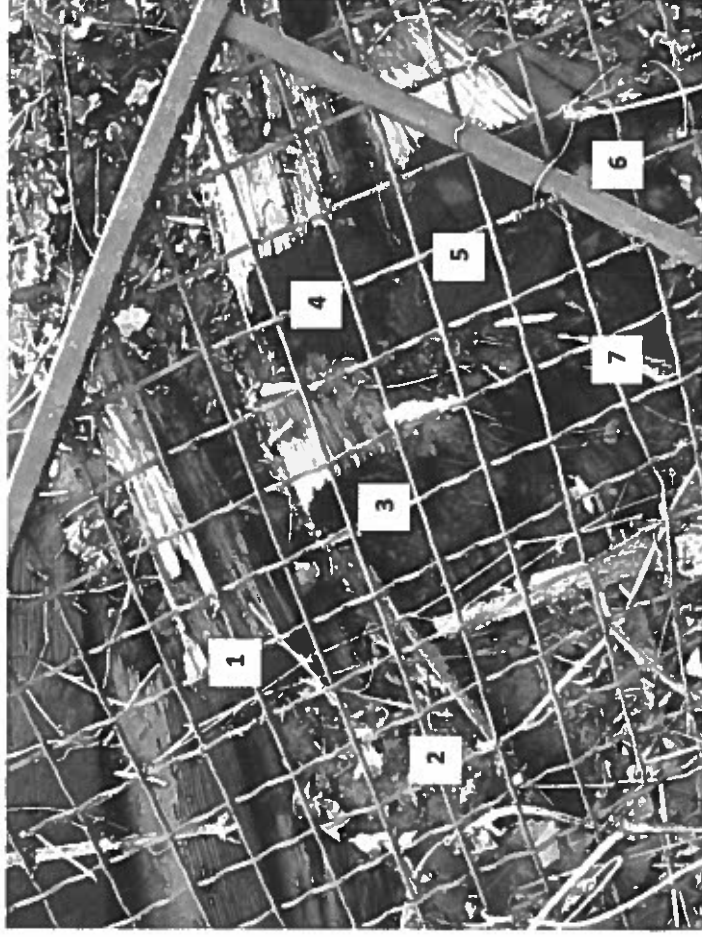
Boxes representing stack of 12 railroad ties

Box representing height of 3 railroad ties

Loose railroad ties at the base of the retaining wall.

Source: Bartolacci personal pictures

There are currently at least 7 visible railroad ties haphazardly piled at the base of the NW corner of the existing retaining wall which would appear to have fallen off of the top of the retaining wall. There are likely many more buried underneath the pile of dirt at the base of the retaining wall.



Dilapidated tie backs significantly above top of existing retaining wall indicate that a higher retaining wall was once in place, consistent with neighbor testimony.





White stake used to mark horizontal grade at end of level railroad ties

Source: Bartolacci personal pictures



Upper section of North retaining wall looking to the West January 2017

Railroad ties along the length of yellow arrow at the same level and pitch

Railroad tie is visible under the ivy

Line drawn at same pitch as white stake and upper retaining wall railroad ties, extending out to corner of retaining wall

White stake used to mark horizontal grade at end of level railroad ties on upper section of retaining wall

Box representing height of 3 railroad ties

4 of the same size boxes stacked on top of each other to represent the stack of 12 railroad ties which fell off the retaining wall sometime before 1993 according to Mr. Bartoluzzi

NW Corner Retaining Wall January 2017

Source: Bartolacci personal pictures

