Planning Board
Village of Tarrytown
Regular Meeting
November 27, 2017 7:00 pm

PRESENT: Chairman Friedlander, Members Tedesco, Aukland, Raiselis and Birgy; Alternate Lawrence; Counsel Zalantis; Village Engineer Pennella; Village Planner Galvin; Secretary Meszaros

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

APPROVAL OF MINUTES– October 23, 2017

Mr. Tedesco moved, seconded by Mr. Aukland, that the minutes of the October 23, 2017 meeting be approved as submitted. All in favor. Motion carried.

Chairman Friedlander announced the following adjournments:

Broadway on Hudson Estates - 11 Carriage Trail
Three lot subdivision

Sisters of the Sacred Heart of Mary - 32 Warren Avenue
Driveway widening and construction of retaining wall and landscaping of rear yard.

Mark Morganelli - 1 Dixon Lane
Amend site plan approval to extend hours and periods of operation at the Jazz Forum.

CONTINUATION OF PUBLIC HEARING - Peter Bartolacci – 67 Miller Avenue

Mrs. Bartolacci, of 67 Miller Avenue, addressed the Board with a prepared statement to refute the information and statements submitted by Ms. Baldwin and her attorney, Ms. Kristen Wilson, at the October 23, 2017 meeting in order to ensure that the record is correct. During Mrs. Bartolacci's presentation, Dr. Friedlander respectfully asked her to kindly submit her materials for the record and for review by the Board. He explained that the Board is very familiar with the application and there is no need to go over the same material again. He is disappointed that, after all this time, there is no resolution between the neighbors and said the Board will base their decision on the facts. Mr. Tedesco said that he read through the entire ZBA minutes and feels that the Zoning Board did a thorough review of this application and their decision was sound. Mrs. Bartolacci's statement is attached as Exhibit A, including the arborist report for the Mulberry tree, which was requested at the last meeting and comments relating to the 10/23/17 Munz Landscaping report.

Dr. Friedlander asked Mr. Pennella if they have submitted any new plans.

Mr. Pennella said they have not submitted a new plan and also need a soil analysis.

Paul Berté, PE, the applicant's engineer, came up and said this application is for a steep slope waiver. Counsel Zalantis added that it is also for site plan approval. Mr. Berté said the site plan is for 2 tiered walls, the slope was disturbed when the house was built, and the Zoning Board approved the height variance. The two walls they are proposing are not uncommon for the material and location. He asked that the Board close the Public Hearing this evening so that they can do a proper design.

Mr. Tedesco advised Mr. Berté of the 10-23-17 memo from Mr. Pennella requesting information that still needs to be addressed and they also need a revised landscape plan. When this material is received, they can then make a decision at the public hearing. The Board agreed.

Counsel Zalantis said the Board cannot close the public hearing until plans have be submitted and reviewed.

Geraldine Baldwin, 66 Riverview Avenue, came up and said in the interest of time and consideration of the Board, she will submit her statements for the record with respect to the steep slope waiver, and corrections to the record, attached as Exhibit B.

Ms. Kristen Wilson, Ms. Baldwin's attorney, came up and also submitted a letter to the Board for the record, attached as Exhibit C. Ms. Wilson is concerned about the Cherry tree on her client's property and is requesting an arborist report for this tree.

Mr. Bartolacci, of 67 Miller Avenue, addressed the Board and said that it was confirmed at the last meeting that an arborist's report would not be necessary for this cherry tree since it was outside of the construction zone. He informed the Board that an arborist report has just been submitted for the Mulberry tree only located on the southern property line, as requested.

Mrs. Baldwin said the Cherry tree is very large and healthy and she is concerned that the Oct. 11 plan submitted by the applicant has the Cherry tree in the middle of the grass. Dr. Friedlander asked for a site visit from Lucille Munz to clear up this matter. Mr. Pennella said he will schedule a site visit with Ms. Munz to see if an arborist report is necessary. Mr. Birgy asked that the tree be identified on the plan.

Planner Galvin said the exact location of the tree should be clearly identified on the plan. Mr. Pennella said that Mr. Berté added it to the plan, it was not on the survey, however, the proposed wall will be 10 feet away and they are also up at a higher elevation so the root line is down. Again, he will schedule a site visit with Ms. Munz.

Mr. Tedesco moved, seconded by Mr. Aukland, to continue the public hearing. All in favor. Motion carried.

CONTINUATION OF PUBLIC HEARING –
New Cingular Wireless (AT&T) – 120 White Plains Road

Kristen Motel, Attorney, of Cuddy & Feder, representing the applicant, advised the Board that since the last meeting they have revised their plan to mount the antennas to the top of the penthouse underneath the existing parapet. The façade will be removed, antennas will be installed, and portions will be replaced with RF screening. She brought a sample of the screening, painted to match the existing façade on the penthouse, and photo simulations of the antenna which show that they will no longer be visible, except for the equipment cabinets that are mounted to the roof.

She respectfully requested that the Board approve this revised plan and a compatible use permit for this installation since they have addressed the visibility concerns and are eager fill the gap in wireless coverage for the area.

Chairman Friedlander asked in anyone in the public had any comments. No one appeared.

Mr. Aukland moved, seconded by Mr. Tedesco, to close the public hearing. All in favor. Motion carried.

Mr. Aukland said that only a portion of the resolution will be read but a copy of the general and specific site plan conditions will be provided to the applicant and the entire resolution will be recorded in the minutes as follows:

Resolution
Village of Tarrytown
Planning Board
(Adopted November 27, 2017)

Application of New Cingular Wireless PCS LLC (AT&T)
Property: 120 White Plains Road (Sheet 1. 140, Block 94, Lot 5.2 and Zone OB)

Resolution of Compatible Use Permit and Site Plan Approval

Background

1. The Applicant requests a compatible use permit and site plan approval to construct a new rooftop wireless telecommunication facility at 120 White Plains Road in an "OB" Office Building zoning district

2. The Planning Board on July 24, 2017 determined this to be a Type II Action under NYS DEC 617.5 (c) (7) "*construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area*

and not involving a change in zoning or a use variance and consistent with local land use controls".

3.The Applicant has made a preliminary presentation to the Planning Board on July 24, 2017 and, thereafter, the Planning Board has conducted a duly noticed public hearing on August 28, 2017, September 25, 2017, October 23, 2017 and November 27, 2017 at which time all those wishing to be heard were given the opportunity to be heard.

4.The Planning Board has carefully examined the Application including Applicant's *Narrative, Visual Impact Analysis, Alternative Site Analysis, Site Compliance Report, Radio Frequency Report* and a *Structural Analysis*. The Planning Board also reviewed several antenna options provided by the Applicant with and without stealth screening at various locations on the rooftop. The applicant with the consent of the Building Owner submitted another option on November 9, 2017 enclosing 12 antennas behind the height of the existing parapet wall along the top on the penthouse. The Village Engineer/Building Inspector indicated in his memorandum dated November 13, 2017 that this option would not need a height variance from the Zoning Board of Appeals.

5.The Planning Board received comments and recommendations from the Village Consulting Planner in memoranda dated July 13, 2017, August 17, 2017, September 14, 2017, October 12, 2017 and November 16, 2017 and from the Village Engineer/Building Inspector in correspondence dated July 18, 2017 and November 13, 2017.

6.The Planning Board has carefully considered comments and recommendations from HDR, the Village's consulting telecommunications engineers, prepared by Michael Musso, P. E. in reports dated October 20, 2017 and November 20, 2017. The latest HDR Tech Report (11/20/17) evaluated the proposed penthouse roof configuration. The Consultant found that the proposed penthouse option would include the removal of the existing penthouse façade for the antenna installations and replacement with a custom stealth screen. This custom screen would match the existing appearance of the penthouse. The submitted photo simulations and drawings show that the antennas will be concealed and the penthouse/parapet will look identical to existing conditions. The report reviewed the specifics of the option and made certain recommendations which the Planning Board has made part of the conditions of approval;

7.The Planning Board closed the public hearing on November 27, 2017. After closing the public hearing, the Planning Board deliberated in public on the Applicant's request for approval.

Determination

The Planning Board determines that based upon the findings and reasoning set forth below, the Application for a compatible use permit and site plan approval is granted subject to the conditions set forth below.

I. Findings

The Planning Board has considered the standards set forth in the Village of Tarrytown Zoning Code ("Zoning Code") Chapter 305, Article XIII and Article XVI and finds that subject to the conditions set forth below, the proposed site plan is consistent with the site plan design and development principles and standards set forth therein.

The Applicant has proposed to relocate its rooftop wireless telecommunication facility from 303 South Broadway to a new site on the rooftop at 120 White Plains Road. The proposed facility includes the rooftop installation of 12 panel antennas, two GPS antennas, 12 remote radio head (RRH) units, rooftop equipment platform and a natural gas backup generator. The backup generator is proposed to be located in the existing building garage in proximity to a generator that currently services the commercial building and other ancillary equipment.

During the application review process, the applicant presented several antenna options to include: 1) stealth screening walls around the antenna arrays; 2) locating antennas on top of the penthouse roof; and 3) greater setbacks from the main roof parapet walls with increased antenna heights. The final design proposal includes the installation of equipment (dunnage, cabinets) on the main roof of the building and panel antennas and ancillary equipment on the penthouse roof behind stealth screening. The top of the panel antennas will reach a height of 106'. The top of the penthouse parapet wall is at 108'.

Some of the existing penthouse façade will be removed for the antenna installations and replaced with a custom stealth screen that will match the existing appearance of the penthouse. HDR's Tech Report (11/20/17) has evaluated the photo simulations and drawings and concluded that the antennas will be concealed and that, after installation, the appearance of the penthouse/parapet will match with the existing conditions. Samples of the stealth screen and descriptions of color matching and the penthouse parapet's shape/angles will be provided by applicant. The applicant will also relocate the AT&T equipment cabinet area to the northern portion of the main roof.

II. Approved Plan:

Except as otherwise provided herein, all work shall be performed in strict compliance with the plans submitted to and approved by the Planning Board.

The Applicant has provided an application supported with the following exhibits and plans prepared by Stephen A. Bray, P.E., KMB Design Group dated 8/10/16 and last revised 11/8/17 unless otherwise noted:

1. T01 *"Cover Sheet, AT&T, Rooftop, 120 White Plains Rd."*
2. Z01 *"Area Plan, AT&T, Rooftop, 120 White Plains Rd."*
3. Z02 *"Roof Plan (Option 1), AT&T, Rooftop, 120 White Plains Rd."*
4. Z02A *"Elevation (Option 1), AT&T, Rooftop, 120 White Plains Rd."*
5. Z02 B *"Roof Plan (Option 2) AT&T, Rooftop, 120 White Plains Rd."*
6. Z02 C *"Elevation (Option 2), AT&T, Rooftop, 120 White Plains Rd."*
7. Z03 *"Equipment Plan, AT&T, Rooftop, 120 White Plains Rd."*
8. Z03A *"Equipment & Antenna Specifications, AT&T, Rooftop, 120 White Plains Rd."*
9. Z03B *"Equipment Specifications & Signage Details, AT&T, Rooftop, 120 White Plains Rd."*
10. Exhibit A *Specifications for Stealthskin V (SSV) Concealment Panels.*
11. Exhibit B *Revised Visual Impact Analysis with photo simulations of the proposed facility concealed behind the replacement penthouse panels,* prepared by Kyle Planning and Design" dated 11/7/17.
12. Exhibit C *Revised Full Environmental Assessment Form* prepared by DMS Consulting, dated 11/9/17.

(the "Approved Plans").

III. General Conditions

(a) Prerequisites to Signing Site Plan: The following conditions must be met before the Planning Board Chair may sign the approved Site Plan ("Final Site Plan"):

i. The Planning Board's approval is conditioned upon Applicant receiving all approvals required by other governmental approving agencies without material deviation from the Approved Plans.

ii. If as a condition to approval, any changes are required to the Approved Plans, the Applicant shall submit: (i) final plans complying with all requirements and conditions of this Resolution, and (ii) a check list summary indicating how the final plans comply with all requirements of this Resolution. If said final plans comply with all the requirements of this Resolution as determined by the Village Engineer, they shall also be considered "Approved Plans."

iii. The Applicant shall pay all outstanding consultant review and legal fees in connection with the Planning Board review of this Application.

(b)Force and Effect: No portion of any approval by the Planning Board shall take effect until (1) all conditions are met, (2) the Final Site Plan is signed by the chair of the Planning Board and (3) the Final Site Plan signed by the Planning Board Chair has been filed with the Village Clerk

(c) Commencing Work: No work may be commenced on any portion of the site without first contacting the Building Inspector to ensure that all permits and approvals have been obtained and to establish an inspection schedule. **Failure to comply with this provision shall result in the immediate revocation of all permits** issued by the Village along with the requirement to reapply (including the payment of application fees) for all such permits, the removal of all work performed and restoration to its original condition of any portion of the site disturbed and such other and additional civil and criminal penalties as the courts may impose.

Specific Conditions

a) Final design/configuration, colors, textures, and other aesthetic aspects of all proposed equipment are subject to Planning Board review and approval. Visible portions of the proposed AT&T equipment (dunnage, cabinets, screening walls) will be color matched to the existing rooftop / building features. A matted finish (dark grey, or brown to match the building's parapets) should be used for the cabinets and other equipment proposed on the main roof.

b) The proposed FCC signage should be installed and routinely inspected and maintained in accordance with all FCC rules, regulations, and guidance. Prior to issuance of building permit, an updated Site Safe (RF emissions evaluation) report shall be submitted to the Building Department which is based on the penthouse antenna configuration.

c) Any building roof maintenance or inspection activities by persons not trained in RF exposures should be coordinated appropriately between the owner/operator of the building and AT&T to eliminate the potential for RF exposures at levels above the general public MPE (this measure is recommended as a supplement to the proposed signage). Documentation of such coordination protocol should be provided to the Village Building Department.

d) The specifications and orientation of the proposed emergency back-up generator (gas) shall be reviewed by the Building Inspector and the local Fire Department as part of the Building Permit phase of the project. Details of the gas line meter, shutoff valve and piping (including location, color, and associated signage) are to comply with all applicable codes and are to be approved by the Village Building Department during the building permit phase of the project.

e) Prior to the issuance of a building permit, a final structural analysis shall be submitted to the Building Department.

f) Prior to the issuance of a building permit, a removal bond shall be submitted to the Building Department in an amount to be specified by the Village Building Inspector.

g) Prior to the issuance of a building permit, a construction plan which provides a scope and schedule for the rooftop/penthouse installation shall be submitted to the Building Department. Plans for site access and construction equipment to be used (including crane and other heavy machinery) should be described. All work associated with the construction of the AT&T facility will be coordinated with the Village Building Department as part of the building permit, and work hours/other logistics shall comply with Village requirements.

h) Inspection of the stealth screening should be performed by the Village after construction to confirm that it matches the existing penthouse parapet's appearance. An Inspection and Maintenance Plan (which includes an annual inspection and response plan should the stealth screening materials become damaged or faded by wind/weather) shall be provided to the Building Department prior to the issuance of a building permit.

i) Operations should be maintained in accordance with the Village's Wireless Ordinance and all other relevant Village code items. Any proposed modifications to AT&T's equipment (e.g., number of antennas, antenna sizes, or number/sizes of equipment cabinets), shall be approved by the Village prior to any modifications. Any additional equipment proposed shall also be approved by the Village prior to installation.

j) Co-location that may be contemplated at the site by other wireless carriers in the future must first be approved by the Village and not be exempted from the zoning review process.

k) It is understood that the Applicant and the Applicant's engineer maintain full responsibility for the accuracy and adequacy of all aspects of the design, for the construction and maintenance/operation of the approved AT&T facility, and for compliance with Code Chapter 305 and all other applicable Village code criteria.

Mr. Tedesco moved, seconded by Mr. Aukland, to approve this Resolution. All in favor. Motion carried.

NEW PUBLIC HEARING -
American Independent Paper Mill Supply Co. LLC – 29 South Depot Plaza - Subdivision

Chairman Friedlander recused himself from this application and left the podium. Mr. Tedesco chaired this portion of the meeting and read the public hearing notice into the record:

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

American Independent Paper Mill Supply Co., Inc.
23 Bronson Avenue
Scarsdale, NY 10583

For subdivision approval to subdivide a 2.72 acre parcel of land into 2 lots each with existing buildings thereon.

The property is located at 29 South Depot Plaza, Tarrytown, New York and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.70, Block 29, Lots 38 and 39, located in the ID zoning 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 approval will be needed from the Zoning Board of Appeals.

By Order of the Planning Board

Lizabeth Meszaros
Secretary

DATED: November 17, 2017

The mailing receipts were received and the signs were posted.

Linda Whitehead, Attorney, from McCullough, Goldberger & Staudt, LLP, appeared on behalf of the owner, American Independent Paper Mill Supply Co., Inc., requesting subdivision approval to separate two lots (38 and 39 or 1 and 2 respectively on her plan), located at 29 S. South Depot Plaza. This application is filed in conjunction with the site plan application currently before the Board for the proposed self-storage facility at this location. She advised that these 2 lots were never subdivided but they have been separate tax lots for over 40 years. In addition, there is no new construction proposed; they are simply putting each of the existing buildings on their own lots.

Ms. Whitehead presented the plan and explained that they would be relocating the lot line to make lot 38 zoning compliant. She showed all of the access and turnaround easements and said that there are existing easements for Westchester County and the MTA which will remain unaffected. Ms. Raiselis asked Ms. Whitehead to give the public a description of where the lots are.

Ms. Whitehead explained that lot 38 is the existing Ontrack facility and Lot 39 is the American Independent Paper transfer facility. She showed the driveway on the plan which will become part of lot 38; lot 37 is not included since it was deeded separately to a prior owner. Lots 38 and 39 were deeded together. Lot 38 (lot 1) will be zoning compliant, but an 8.5 ft. side yard variance for lot 39 (lot 2) will be needed, and they are on the December 11, 2017 ZBA agenda to present their application.

Mr. Galvin advised that for SEQRA purposes, this is an unlisted action. The Planning Board's NOI to be lead agency was not circulated until November 9, 2017, therefore the ZBA will not be able to act on this application until after the Negative Declaration has been issued by the Planning Board. Ms. Whitehead said she is aware that a negative declaration cannot be issued until the Dec. 27, 2017 Planning Board meeting. They will go back to Zoning in early January and return at the end of January for consideration of subdivision approval by the Planning Board.

Mr. Aukland said that these parcels have been operated without subdivision up until now since they were under common ownership and the reason to subdivide is to facilitate the change of ownership. Ms. Whitehead agreed and said it will also make these lots more conforming than they were.

Mr. Tedesco asked if anyone in the public had any comments. No one appeared.

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

CONTINUATION OF PUBLIC HEARING –
202 Lexington Group LLC – 29 South Depot Plaza – Site Plan

Chairman Friedlander has recused himself from this application and remained in the audience. Mr. Tedesco continued to chair this portion of the meeting.

Mark Constantine, Attorney, representing the applicant, Mr. Peter Ferraro, also present, appeared and advised the Board that they have amended their application for lot 38 only, adding the driveway area to the lot as a result of the subdivision application before them for the two lots (38 and 39). The lot area will be increased and it will be more conforming. Parking variances are needed and they are before the Zoning Board and will return at the December 11, 2017 meeting. He asked that the Board issue a Negative Declaration to close out SEQRA this evening so that the Zoning Board can act at its December 11, 2017 meeting.

Mr. Tedesco asked if anyone in the public had any comments. No one appeared.

Mr. Tedesco said that only a portion of the Negative Declaration will be read but a copy will be provided to the applicant and the entire Negative Declaration will be recorded in the minutes. A copy of Part 3 of the Determination of Significance is attached as Exhibit D.

Mr. Aukland said, for the record, with regard to the parking situation, the Board sympathizes with your conclusion that less parking is needed for self-storage, but we need to note that in the event for a change of use under current code for the industrial zone, the village will need to consider parking requirements should the facility have a change of use. Counsel Zalantis advised that any change of use would require site plan approval.

Ms. Raiselis asked Mr. Constantine if there is an agreement for the bike shop. Mr. Constantine said not as of yet. Counsel Zalantis confirmed that they are proposing a retail component but not necessarily a bike shop. The Board asked Counsel Zalantis to revise the negative declaration by removing "Bike shop" from the negative declaration. The bike rack can be left on the plan. Counsel Zalantis said that Westchester County looks favorably on bike racks.

Mr. Tedesco, moved that the Planning Board issue a negative declaration as amended for this application, seconded by Mr. Aukland. All in favor. Motion carried.

Mr. Tedesco moved, seconded by Mr. Aukland, that the Public Hearing be continued in January in conjunction with the subdivision approval for this property. All in favor. Motion carried.

Dr. Friedlander returned to the meeting.

NEW PUBLIC HEARING – Family YMCA at Tarrytown- 62 Main Street

Chairman Friedlander read the Public Hearing notice:

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

Family YMCA at Tarrytown
62 Main Street
Tarrytown, NY 10591

to consider the extension of the hours of operation for the fitness center.

The property is located at 62 Main Street in the Village of Tarrytown and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.70, Block 33, Lots 17, 21, 22, & 23 and is located in the RR and M1.5 Zoning Districts.

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.

By Order of the Planning Board

Lizabeth Meszaros
Secretary to the Planning Board

DATED: November 17, 2017

The mailing receipts were received and the signs were posted.

Gerry Riera, CEO of the Family YMCA at Tarrytown, appeared before the Board to ask that the Fitness Center at their facility be allowed to operate 24 hours per day, year round.

Mr. Aukland asked about security at the facility. Mr. Riera said that they are currently opened 24/7 and the facility is always staffed. The only changes that will be made are the addition of security cameras. The main reason for this request is to accommodate police, fire and ambulance workers that have different shifts. It will also allow them to open this part of the facility on holidays.

Dr. Friedlander asked if anyone had any comments or questions. No one appeared.

Ms. Raiselis asked if there will be more lights in the parking lot. Mr. Riera said the existing parking lot has adequate lighting and there is ample parking for users since they do not allow overnight parking in their lot.

Mr. Tedesco moved, seconded by Mr. Aukland, to close the Public Hearing. All in favor. Motion carried.

Mr. Birgy said that only a portion of the resolution will be read but a copy of the general and specific site plan conditions will be provided to the applicant and the entire resolution will be recorded in the minutes as follows:

RESOLUTION
Application of Family YMCA at Tarrytown
Property: 62 Main Street (Sheet 1.70, Block 33, Lots 17, 21, 22 & 23 and Zone RR)
Adopted November 27, 2017

Resolution of Site Plan Approval
Background

1.The Applicant requests site plan approval for a change of hours of operation for the existing Fitness Center from 5 am - 10:30 pm to 24 hours daily.

2.The Planning Board determined that the Project was a Type II action under NYSDEC 617.5 (c) (7) *"construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls"*. The proposed action is only changing the hours of operation for an existing Fitness facility. There is no new construction or expansion proposed.

3.The Applicant conducted a duly noticed public hearing on November 27, 2017 at which time all those wishing to be heard were given the opportunity to be heard.

4. The Planning Board has carefully examined the Application and received comments and recommendations from the Consulting Village Planner in a memorandum dated November 16, 2017 and comments from the Village of Tarrytown Police Chief dated November 14, 2017 and from the Building Inspector which they have considered.

5.The Planning Board reviewed the Applicant's Letter dated October 23, 2017 and an email dated November 17, 2017 providing information requested by the Planning Board addressing member enrollment, utilization especially during the overnight hours, facility access, emergency response, staffing levels, type of equipment in the fitness center, proximity of front desk to fitness center, and lighting levels in the parking lot.

6. The Planning Board closed the public hearing on November 27, 2017. After closing the public hearing, the Planning Board deliberated in public on the Applicant's request for approval.

Determination

The Planning Board determines that based upon the findings and reasoning set forth below, the Application for site plan for a change of hours of operation for the existing Fitness Center from 5 am - 10:30 pm to 24 hours daily is approved subject to the conditions set forth below.

I. Findings

The Planning Board considered the standards set forth in Village of Tarrytown Zoning Code ("Zoning Code") Chapter 305, Article XVI and finds that subject to the conditions set forth below, the proposed site plan is consistent with the site plan design and development principles and standards set forth therein.

The Planning Board has reviewed the Applicant's application. The Fitness Center in the YMCA premises is located at 62 Main Street in the Retail RR zone. The applicant is requesting that the Fitness Center be allowed to change its hours from 5 am – 10:30 pm to 24 hours/daily. The Fitness Center is the former 9,100 sf gymnasium that was converted into a Fitness Center in 2015. It is located on the first floor adjacent to the front desk in the lobby. Three of the Fitness Center's walls are interior walls which border other parts of the building. The other wall faces the alley between the YMCA and the Masonic Building parking lot. The rationale for the expansion of hours is to remain competitive in the local fitness market which has seen the entry of three new fitness centers in the past year. One of them, Snap Fitness at 69 North Broadway, has 24/7 operating hours. The Fitness Center is proposed to be available during the overnight hours only to members (no guests) who are 18 years of age or older. The YMCA anticipates that the number of members during the overnight hours would be minimal with potentially 10 members throughout the evening between the hours of 10:30 pm and 5:00 am. The YMCA's target market are police, fire, hospital and ambulance workers. The YMCA provides a special discount "Heroes" membership to these groups and, therefore, has a large number of such members. The YMCA indicates that these members have expressed interest since it would better meet their shift schedules. The YMCA is currently staffed 24/7 including holidays due to their residents. The front door is never locked and front desk/main entrance is staffed 24/7 including holidays. There is always a staff person at the front desk at the main entrance. The front desk attendant is adjacent to the fitness center at all times. Security cameras in the fitness center are positioned so that the attendant can observe the cameras from the front desk. Various cleaning staff are also in and around the area and fitness center throughout the night. The type of equipment in the Fitness Center include cardiovascular and strength training equipment. The YMCA Fitness Center has no music playing in the center. The lights and HVAC in

the Fitness Center are on 24/7. There is a medical emergency plan for staff. The front door and Fitness Center doors are always open providing emergency personnel with complete access. Emergency response is no different than during current business hours as the front door /main entrance is staffed 24/7. Staff are CPR/First Aid Certified. Melissa Weaver, Senior Director, responds for all fire department related calls or when called by security staff for any resident related issues. The YMCA gained full ownership of their parking lot at the end of 2015 and is available at no cost for members. The parking lot is more than adequate to accommodate usage. The parking lot is illuminated by eight light poles in addition to LED flood lights that are along the perimeter of the building from the main entrance around to the dumpster area. The remainder of the facility (pool, lower level, child care, etc.) will continue to operate on their existing schedule.

II. General Conditions

a) The Applicant shall pay all outstanding consultant review and legal fees in connection with the Planning Board review of this Application.

Mr. Tedesco moved, seconded by Mr. Aukland, to approve this Resolution. All in favor. Motion carried.

CONCEPT DISCUSSION- NRP PROPERTIES – 200 White Plains Road

Chairman said this is a concept discussion for 248 rental apartment units at 200 White Plains Road in the mixed use zone. If it is useful and interesting, the Planning Board will move it in the proper direction.

Michael Zarin, Attorney, of Zarin and Steinmetz, is here on behalf of NRP Properties, LLC, the contract vendee for 200 White Plains Road, occupied by an 89,000 sf. office building on a 55 acre parcel known as Talleyrand in a mixed use zone. They prepared a short PowerPoint presentation, which is attached to the minutes as Exhibit E which explains the objectives of the project and the procedures to be followed in accordance with the code. Mr. Zarin introduced Jonathan Gertman, VP of Development for the NRP Group, who will open, followed by the Design Representative from KSQ Design, the project architect and the project traffic engineer for this project. They are looking for a path to move forward that is consistent with the code and intent of the Board which they hope is a site plan for the village.

Mr. Gertman addressed the Board and said that every project that they do is tailored to the community they build in. They have spent over a year and have done their due diligence and have identified areas of concern which he briefly touched upon as follows:

- They are committed to making this a Green and LEED certified project.
- Traffic concerns: They will provide ample parking for residents and shuttle service from and to train station during commuting hours.

- Affordability: They will abide by the 10% affordability requirement for this project.
- They will transform this property into a more productive use - The site has become outdated and tired and they would like to transform it to achieve its full economic potential. With regard to office sector, it has been changing over the years; the suburban market is not in free fall and has stabilized. Some buildings that are closer to transportation and have remodeled are winning, but there are some that are obsolete. While the market is stable, it does not pay to remodel. 200 White Plains Road has met its life cycle and the landlords are reacting.

With regard to amenities, this project will have shuttle service and bike storage, will provide top of the line amenities, such as outdoor pool and deck, and will reduce traffic impact by 26% and 12% (morning and evening peak).

Armand Quadrini, Managing Partner of KSQ Design, spoke about sustainable design principals – they are hoping to get to the silver level, investing in windows for reducing energy costs with smart technology. They developed a contemporary design which is distinct in terms of the character of the area and the need to fit in with the other building.

Patrick O'Leary, PE, and principal with VHB, said this plan is conceptual in nature. They have looked at utilities which have sufficient capacity, but the transmissions need to be worked out. They will also need to loop the waterline. From a sewer standpoint, there may be capacity issues for the building. They will meet and seek information regarding what types of studies need to be done. The traffic pattern is opposite since it is residential, but they are reducing overall volumes with the exception of Saturday mornings. A study will be done to see the impacts and they will be mitigated as necessary. More detailed plans will be created should we move forward with this project.

Michael Zarin returned and said this is a unique site, a 40 year old area, created in 1979 in the mixed use zone. As history has advanced, the only area is the 55 acre site. The objectives of this district when it was created were to promote open space, suitable development of large parcels in an ecological and sensitive manner, and to minimize visual impacts to adjacent properties and not overload village streets.

They have reviewed the village files to get a history of the site and found that the Talleyrand Subdivision Map 1982 was created by Robert Martin, because lenders wanted the parcel being developed subdivided from the balance of the property. He referred to the 1989 SEQRA Resolution and the approved General Development Plan – Plan D, which was approved after a SEIS. The Planning Board retained jurisdiction over the General Development Plan. He went through the plan and the Resolution dated May 20, 1988 which is the General Development Plan for the site today. The two office buildings and restaurant were then developed as Phase 1. In 2001, it was sold to Talleyrand Crescent. This was the next phase of the General Development Plan approved by Planning Board in 2001 for 240 market rate and 60 affordable units. Between 2001 and 2017 no new construction has been done and the General Development plan is still in effect. He showed a comparison of conformance with the

General Development Plan and the Zoning compliance chart and went through each item with respect to their proposed project.

Ms. Raiselis asked to have a copy of this presentation provided to the Board.

Mr. Zarin went through the applicable procedures and feels that an amendment to the site plan will be needed as long as they are in conformance with the GDP.

Mr. Tedesco thanked Mr. Zarin for the presentation and said he remembers the 1989 Robert Martin proposal, which was his first big project. Mr. Tedesco would like to have the PowerPoint presentation. He likes the current Japanese Restaurant but it is not very well attended. He would like to know how this restaurant would fit into their plan should it become available.

Mr. Aukland said this is not an evening for approval, it is for exploration. All of the procedural points will be worked through with staff, and he mentioned the wetlands setback has changed to 150 feet. He feels that it is an exciting project which falls within the character of the village. He has questions about the linkage in conjunction with the village. He would like to see what they can do to show the public how this area ties in with the village, and elaborate on the concept of neighborhood around this particular development. He would also like to see ideas about connecting development with amenities and shopping and, who gets to use these amenities, perhaps not just the buyers. He applauds the shuttle and referenced piloting an autonomous vehicle. He thinks the shuttle should also go to Main Street in addition to the train station.

Ms. Raiselis said with regard to traffic, keeping residents in Tarrytown rather than going to White Plains or other areas, will present a challenge to the applicant.

Mr. Zarin said they will come back with a more enhanced site plan and will wait from staff about procedures.

Dr. Friedlander said we have not addressed if we are moving toward all residential or mixed use. He is concerned how to preserve other office space there. He thinks a combination may be a better concept. In addition, he would like to know how NRP came up with proposing 258 units; what is the rationale of this number in terms of size and the market rate? He added that traffic and parking are major concerns and shuttle transportation will be needed.

Mr. Birgy said he is not excited about this project. There are no advantages for the village and he is concerned about the erosion of the commercial tax base. High tax rates in Westchester are a big concern and this development will only exacerbate it. Traffic, parking congestion, school district impact are all of his concerns. For tax purposes, there is no advantage for residential projects. From his perspective, this is a poor idea for the village at this point in time.

Michael Zarin said they are sensitive to the view of office space adding to the tax base, but the suburban office market has changed. The building reflects what has happened to a lot of the buildings in Westchester. We have done some school data which is much more positive since it will not generate as many students. Mr. Zarin thanked the Board for their time and said they want to create something special for Tarrytown and are listening and will work hard to be responsive.

ADJOURNMENT

Ms. Tedesco moved, seconded by Mr. Aukland, to adjourn at 9:42 pm. All in favor. Motion carried.

Liz Meszaros- Secretary

NOVEMBER 27, 2017 PLANNING BOARD MINUTES

Exhibit A

D&D
TREE & LANDSCAPING inc

November 21, 2017

Peter Bartolacci
67 Miller Avenue
Tarrytown, NY 10591

Dear Mr. Bartolacci,

After inspecting the 28-inch Mulberry on the southern border of the property. I recommend that the tree be removed. It has a large crack from the main crotch right down to the roots. The tree is large and hanging right over the house. I deem the tree a hazard and it should be removed immediately.

Please feel free to contact my office with any further questions at (845) 627-2555 or ddtreelandscaping@gmail.com.

Sincerely,

Steven DeLucia
Arborist # NY-5706A

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11/27/17

Comments re: Landscaping Report 67 Miller Avenue

We have reviewed Ms. Munz's 10/23/17 landscaping report and have the following comments:

1. As noted by our landscape architect at the October Planning Board meeting, we agree that some type of drip irrigation system be installed for the arbor vitae.
2. We have obtained an arborist report for the large tree straddling the Western property line. It was agreed that no report was needed for the cherry tree on Ms. Baldwin's property.
3. As noted by our landscape architect at the October Planning Board meeting, we object to adding any vines or other creeper style plantings that may limit our ability to observe the concrete blocks. We want to be able to inspect the blocks regularly to ensure that the structure is operating as planned. Further, vines tend to overtake shrubbery, an issue we currently have which requires at a minimum a semi-annual trim. Note that the police were dispatched to our property when we performing this cleanup work this past August.

Peter & Suzanne Bartolacci

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Tarrytown Police Department
ONE DEPOT PLAZA
TARRYTOWN, NY 10591-
(914)631-5544

Entry/CC#: TP-008279-17 Date: 08/27/2017 Time: 12:31 Tour: 2 Desk Officer: HENNE

Call Type.....: VIOLATION-VILLAGE CODE Priority..: How Received: TELEPHONE

Caller.....: BALDWIN, GERALDINE F
Bus. Name..:
Address....: 66 RIVERVIEW AV
City/St/Zip: TARRYTOWN, NY 10591- Call Back #: (914)631-2688

Location of Assignment: 67 MILLER AVE, TARRYTOWN
Cross Street.....:
Business Name.....:
Description.....: CALLER REPORTS UNPERMITTED TREE REMOVAL
Disposition.....: NOTED FOR RECORD

Post: Dispatched: Y Dispatched Date: 08/27/2017 Call Taker: HENNE

OFFICERS INVOLVED

Serial #:YEARW Rank:PO Name:IAN A YEARWOOD
Serial #:COLE Rank:SGT Name:CHRISTOPHER COLE

ASSOCIATED NUMBERS

PERSONS INVOLVED

Name.....:BARTOLACCI, PETER R DOB:06/28/1967
Address.....:67 MILLER AVE
City/State/Zip:TARRYTOWN, NY 10591-
Phone Number..:914-631-2286
Sex.....:M Race:
Person Type...:HOMEOWNER

Name.....:BALDWIN, GERALDINE F DOB:04/29/1947
Address.....:66 RIVERVIEW AV
City/State/Zip:TARRYTOWN, NY 10591-
Phone Number..:(914)631-2688
Sex.....:F Race:UNK
Person Type...:CALLER

NARRATIVE

CALLER MS BALDWIN REPORTS HER NEIGHBOR IS CUTTING AND TRIMMING THE VEGETATION IN HIS YARD WITHOUT A PERMIT. OFFICERS ON SCENE REPORT NO VIOLATIONS OBSERVED. INCIDENT NOTED FOR THE RECORD AT THIS TIME.

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Certified by J. Bartolo Dated: 9/1/17
Approved by Dated:

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February 11, 2014

Ladies and Gentlemen:

We are writing in reference to the application of James and Julia Streit to make exterior improvements to the back yard of their property at 65 Castle Heights Avenue.

We understand that you will be reviewing plans for the back wall, which is collapsing, and to consider the impact on the neighborhood. As we may be the only neighbors who can actually see the wall from our property, we thought we should give you our input.

We moved into our house at 51 Castle Heights in June 1997, and our experience here has been terrific. We especially appreciate the patience and assistance of the Building Department when we were making our own exterior improvements a few years ago.

For background, Linda is a Consultant for Westchester Community College and the Child Care Center, and I am an attorney and mediator specializing in dispute resolution.

To get to the point, we look forward to the day when the railroad tie wall is removed and replaced with something else. I don't recall that we were notified of it when it was installed; we would have said something. We think railroad ties give a substandard appearance and, as you can see in this case, they don't last very long.

We have seen the plans for the wall and pictures of the Liberty Stone material — we think this is fine. As we said, our priority is to replace the railroad ties with something more up-to-date as soon as possible.

Also, it is important to us that the work proceed - we do a lot of entertaining and would not want to see that construction idle into late spring.

We are happy to answer any questions to help you resolve any remaining concerns.

Sincerely,

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Statement of Suzanne Bartolacci to the Tarrytown Planning Board November 27, 2017

Ms. Baldwin and her attorney once again spoke at length at October's Planning Board meeting in objection to our proposal, arguing that a steep slopes waiver should not be granted. This has been a theme throughout the proceedings both before the ZBA and Planning Board. I think the Board understands very clearly Ms. Baldwin's position as you've heard her make the same arguments multiple times now. Out of respect for the other applicants and this Board, I would respectfully request that Ms. Baldwin and her attorney limit any comment this evening to new information or arguments that have not already been presented. I had asked for this same courtesy at last month's meeting, yet Ms. Baldwin persisted in repeating many of the same points she had raised previously before this board. Ms. Baldwin and her attorney also regurgitated many of the same arguments used unsuccessfully before the ZBA in their consideration of our request for a wall height variance. Even though we refuted every single one of these arguments, and the ZBA resoundingly rejected them by granting us our variance, Ms. Baldwin decided to repeat them again in front of you last month.

My husband and I deliberated long and hard about whether to ignore her comments from the last meeting and just move forward with addressing the remaining points raised by you (the Planning Board) with respect to our current plans. However, we are concerned that by not responding Ms. Baldwin may try to use this against us in some form of future litigation by saying we couldn't or wouldn't refute the quote unquote "facts" she presented. To ensure the record is fact rather than fantasy, we would therefore like to address the points Ms. Baldwin made in the last meeting and provide what we believe are the true facts pertaining to each point.

Firstly, Ms. Baldwin began her statement last month with the false and misleading claim that that Code Section 305-67, the "Steep Slopes Law", ***prohibits*** new construction in protected areas such as steep slopes, wetlands, and high ground. While it is true that the language in this law was changed from "restrict" to "prohibit" in 2005 as per 2005's Local Law 10, we were informed by Mr. Blau, the former Village Administrator, that the language reverted back to its original "restrict" in 2008 as per Local Law 18 during a comprehensive overhaul of the zoning code. It is important to note that if the steep slopes law did actually prohibit new construction in such protected areas then every recently constructed Toll Brothers house in Wilson Park was built illegally. Unlike the steep slopes section of Code Section 305-67, there is no provision for a waiver for areas of high ground, which is where the Wilson Park development is situated. As such, if new construction were actually prohibited in protected areas by 305-67, then Toll Brothers would and should never have been allowed to develop the Wilson Park properties. For steep slopes, 305-67 permits the Planning Board to grant a waiver and the Planning Board recognizes that a waiver is necessary in order to restore our back yard through the construction of a replacement retaining wall.

I'm submitting an email from Mr. Blau to my husband which explains the change in the language and I would hope that the Village Attorney has confirmed this point is true after I raised it during last month's meeting **(See Appendix A)**.

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Ms. Baldwin then moved to an analysis of the criteria for granting a steep slopes waiver, and, not surprisingly, argued that our proposal does not satisfy a single one of these criteria. Once again, this is a very familiar theme given that Ms. Baldwin presented the exact same arguments at prior Planning Board meetings. In fact, much of her latest verbal and written statement is lifted, verbatim, from prior submissions. Interestingly, Ms. Baldwin's attorney noted that the criteria for a steep slopes waiver is "strikingly similar" to the criteria for the ZBA granting a waiver. I'm guessing the attorney highlighted this similarity as she believes there is merit to her and her client's argument that the ZBA should not have granted us a wall height variance for the two-tier retaining wall design. However, by Ms. Baldwin then repeating all the arguments she used unsuccessfully before the Zoning Board but this time in front of the Planning Board, it is hard to understand why she thinks you, the members of the Planning Board, would come to a completely different conclusion in your consideration of very similar criteria for the granting of a steep slopes waiver ... one which you, Chairman Friedlander, have said on multiple occasions will be granted, not just for safety reasons but because we are replacing an existing wall.

I hope you have all read the ZBA's resolution approving our variance as I think it, together with other factors we have discussed in prior meetings, very clearly supports the granting of a steep slopes waiver and completely refutes the arguments put forward by Ms. Baldwin and her attorney during last month's meeting.

I will now provide a detailed rebuttal to each of Ms. Baldwin's arguments related to the criteria for granting a steep slopes waiver.

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

Ms. Baldwin argues that our proposal will produce an undesirable change in the character of the neighborhood. She provided photos of the gap between her house (66 Riverview) and her two neighbors houses to the north and south (64 and 80 Riverview) and stated that the current walls, slope and house on our property are "clearly visible" in these pictures.

When I looked at the photos submitted by Ms Baldwin in last month's meeting, the current retaining wall and slope was certainly not "clearly visible" **(See Appendix B)**. I also went down to Riverview Avenue to look for myself and had a very hard time making out anything in my back yard and I know what I'm looking for as I've seen the current railroad tie wall close up many times ... not only is our property line ~150 feet away from the sidewalk on Riverview Avenue but there are trees and vegetation between the houses on Riverview which obscure the view.

Ms. Baldwin also commented about how the deciduous vegetation partially blocking the present view will not be like that for most of the year and she and her next-door neighbors will have "unobstructed views of the massive walls 12 months of the year from their rear windows and backyards."

She made this statement after hearing and seeing our landscape consultant share our landscaping plan with the Planning Board last meeting which proposes the planting of 14 evergreen Green Giant Arbor Vitae along the property line we share with Ms. Baldwin, and 21 of the same species on the second tier of the retaining wall. I simply have no idea how Ms. Baldwin can say that our proposed design with such

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dense landscaping will give her and her next-door neighbors "unobstructed views of the massive walls 12 months of the year". These Green Giant Arbor Vitae are evergreens, not deciduous, and have been recommended by our landscape consultant specifically due to their ability to screen. We showed via renderings in last month's meeting how effectively the plantings will screen the retaining walls from the Riverview Avenue neighbors **(See Appendix C)**

You may also recall also in August 2013 when Chairman Friedlander asked Ms. Baldwin if she would be "happy" with screening that completely obscured the retaining walls from her view, she said she would be **(See Appendix D)**.

Ms Baldwin then directed attention to several pictures of walls taken in early 2017 from the view walking along Riverview Avenue facing the rear yards along Miller Ave. Ms. Baldwin argued that "these pictures demonstrate that, if constructed, the proposed walls will be clearly visible from the street level and Riverview Avenue."

Although the photos Ms. Baldwin submitted may have shown other retaining walls located on certain properties adjoining Miller Avenue and Riverview Avenue being visible from the street, there are differences in the distance and vegetation between each property on Riverview so it simply can't hold true that because she was able to take a photo of a retaining wall in someone else's back yard from her street, that our retaining wall will also be visible from the street.

I would respectfully refer Ms. Baldwin to the letter from Dan Pannella to the Planning Board dated October 23, 2017, which noted in point 16 "Based on the Building Inspector's interpretation, it is the Building Inspector's determination that ARB approval is not required." **(See Appendix E)** This appears to refute Ms. Baldwin's assertion that the proposed two tier retaining wall design will be visible from the street level of Riverview Avenue.

Ms Baldwin continues in her argument that our proposal would cause an undesirable change in the neighborhood by commenting that the photos she submitted "illustrate the character of the neighborhood along Riverview and Miller Avenues. Most significantly, these pictures clearly demonstrate that none of the current walls in the ***relevant*** neighborhood look like the proposed massive industrial Mesa Block walls."

There are two interesting points to highlight in Ms. Baldwin's statement.

Firstly, note that "neighborhood" has now become "relevant neighborhood", which appears to be a more restrictive interpretation of the Village Code which she appears to have invented herself in support of her argument.

Secondly, presumably this "relevant neighborhood" ends four houses south of her property? I say "presumably", because 5 houses further south of Ms. Baldwin's property (or about 270 feet away), there is a 16+ foot high retaining wall on the western property line bordering 93 Miller and 100 **Riverview (See Appendix F)**. Any honest person would surely agree that a house on the same block within 300 feet would be considered part of the neighborhood, and even the "relevant neighborhood". Ms. Baldwin's

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failure to include a photo of this property in her submission of retaining walls along Riverview Avenue is proof of what my husband and I already know, which is that Ms. Baldwin appears to like selectively presenting information to support her case, rather than presenting a fair and balanced view.

Please note that the ZBA categorically rejected the notion that our proposal would produce an undesirable change in the character of the neighborhood, noting in their Appeals Resolution that:

> "There will be no undesirable change produced in the character of the neighborhood or detriment to nearby properties as a result of the variance requested. The applicant introduced numerous examples of walls in the neighborhood and surrounding community exceeding 9.5 feet in height. Further, there was evidence produced that there had previously existed a fairly significant wall in the Applicant's yard (and there are existing portions of said wall on the Applicant's property currently). The proposed two-tiered system allows for more robust and larger sized plantings in front of each of the proposed tiered walls that will afford greater screening to the neighboring properties. " **(See Appendix G)**

The ZBA's resolution was made after we presented examples of 53 retaining walls in Tarrytown > 6 feet in height, with 19 of these retaining walls > 9.5 feet in height, as well as their respective locations which proves that the density of large retaining walls actually increases as you get closer to 67 Miller/66 Riverview **(See Appendices H & I)**. The presentations and a list of these retaining walls has already been submitted to this Board for the record.

Ms. Baldwin referred to an architect's rendering of what her view will be once our proposed retaining walls are constructed and provides feedback from a few neighbors (5 households) when they were shown the rendering **(See Appendix J)**. Note that this rendering was commissioned by Ms. Baldwin and created by an architect from Glens Falls, NY, some 3+ hours and 180+ miles away. I am guessing this architect may not be that objective or has not been provided with the most recent plans as this "rendering" bears very little semblance to what we are proposing to create. Of note, the rendering appears to display 7 narrow Emerald Green Arbor Vitae for screening of the lower tier of the retaining wall when our plans propose to plant 14 Green Giant Arbor Vitae. In addition to proposing twice as many trees for screening, our plans use Green Giant Arbor Vitae which are much fuller and rectangular shaped, providing far more volume for screening than the narrow and tall cone shaped Emerald Green Arbor Vitae. On the second tier, Ms. Baldwin's architect's rendering again appears to show 7 narrow Emerald Green Arbor Vitae when our plan proposes three times as many, a total of 21 Green Giants. In short, the rendering Ms. Baldwin used to solicit feedback from her neighbors was commissioned (and presumably paid for) by her and does not accurately reflect the species of the plantings to be used for screening and massively underrepresents the amount of screening to be provided. A far more accurate representation of the proposed retaining walls and screening was presented by our landscape consultant last month **(See Appendix C)**. It is no surprise that neighbors may have reacted the way they did to Ms. Baldwin's architect's renderings given the skewed representation of the finished project.

Ms. Baldwin once again claims that approving a steep slopes waiver for our proposal "will set a bad precedent, likely encouraging others to demand similar walls." It is important to note that there is no

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precedent being set here. Mr Tedesco, in fact agreed with us and this is confirmed within the minutes of the May 22, 2017 Planning Board meeting which state: "Mr. Tedesco does not see it setting a precedent, this is a unique application". We are restoring our property to its original condition, prior to the partial collapse of the massive retaining wall that existed on the property for years.

It is also important to highlight that every single property on our side of the street on Miller Avenue has retaining walls. So do most, if not all of the properties located on Riverview Avenue below. This includes Ms. Baldwin who has a steeply sloped front yard, a flat back yard (thanks to retaining walls) and a retaining wall on her property towards the rear property line, which would have required the disturbance of a natural steep slope to create. As already mentioned just 5 houses South or about 270 feet away from Ms. Baldwin's property is a 16+ foot high retaining wall built right on the property line. A precedent was set many years ago, and the reality is that Tarrytown is replete with large retaining walls. Many of the houses in the Village could not have been built without disturbing steep slopes and building large retaining walls. They are simply a fact of life when living in a hilly environment like Tarrytown.

Ms. Baldwin continues her argument regarding the undesirable change in the character of the neighborhood with two more categorically false statements.

Not only does she state:

> "Applicant has introduced no evidence that any wall of comparable height has been built under the current Village Code in any single family residential neighborhood."

But she also states:

> "Applicant's allegation that he has shown this Board numerous examples of similar-sized walls in the ***relevant neighborhood*** is absolutely false."

116 South Broadway, 21 Union Avenue, 104 Grove Street and 63 Miller Avenue are four such examples of large retaining walls constructed in single family residential neighborhoods under current Village Code (i.e. after 1988 when Section 305-47 Yards and Setbacks was implemented which regulates wall heights in Tarrytown). While before the ZBA, in the process of highlighting similar size walls in the neighborhood, we discovered that there are multiple examples of retaining walls > 6 feet approved and built in Tarrytown after 1988 none of which so much as required a height variance. These four examples demonstrate that Ms. Baldwin's statement is simply not true and needs to be highlighted as such for the record.

It appears that Ms. Baldwin has arbitrarily chosen to define "the relevant neighborhood" as no more than 270 feet South of her property, and no more than 200 feet to the East and North, allowing her to ignore 100 Riverview/93 Miller which contains the 16+ foot high retaining wall in their backyards, and 28, 32, 34, and 40 Miller Avenue which each contain 17+ foot high retaining walls in their backyards. In politics, this redefining of boundaries to gain a political advantage is called gerrymandering. In the case of our application, I would suggest that Ms. Baldwin has simply not been fair or honest with her

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selective presentation to the Planning Board and her failure to acknowledge the existence of other large retaining walls in close proximity to our and her property which were disclosed in the public hearings before the ZBA and submitted by us for the record to the Planning Board. **(See Appendices H, I and presentation of retaining walls > 6 feet in Tarrytown)**

Ms. Baldwin's final argument as to whether our application will produce an undesirable change in the character of the neighborhood is to state:

> ***"No concrete block walls with geogrids of any size have been shown in any residential neighborhood in the Village, much less in any single family residential neighborhood."***

Like many other statements before, this is categorically false. Even a cursory review of the plans for 21 Union Avenue, which has been provided for the record as evidence of large retaining walls in Tarrytown, shows that this is a single family residential property in an area zoned for single family homes, and that in 2005 a large 14.5 foot two tiered engineered concrete block retaining wall structure was approved and built incorporating geogrid to help with soil retention **(See Appendix K)**. Once again, Ms. Baldwin appears to either be intentionally omitting relevant examples which do not support her argument or she has failed to do her due diligence before making such a definitive statement to your board.

On to the next factor

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

Before beginning, I'd like to highlight that much of this section is lifted verbatim from Ms. Baldwin's submission from the February 27, 2017, Planning Board meeting. At the October Planning Board meeting we had asked Ms. Baldwin to avoid repetition as a courtesy to the Board, and the other applicants, but once again Ms. Baldwin appears to believe that repeating something over and over will somehow make it resonate. Further, identical arguments were presented by Ms. Baldwin to the ZBA in regards to the need for a variance, and the ZBA found that a variance was the appropriate solution.

Ms. Baldwin and her attorney appear to have determined that the benefit we are seeking is to stabilize the slope on our property. She then offers unsolicited suggestions on how we might be able to achieve this benefit without the need for a steep slopes waiver. However, the benefit our application seeks is to allow us to restore our backyard to its approximate original dimensions, prior to the partial collapse of the existing railroad tie retaining wall. This would indeed have the benefit of stabilizing our back yard by preventing further erosion of the slope created by the partial collapse of the existing retaining wall. Indeed, the ZBA Resolution explicitly confirms this:

> "The benefit to the applicant in pursuing this application is not simply to stabilize the slope but to make Applicant's backyard safer with more usable space." **(See Appendix G)**

The Planning Board has acknowledged on numerous occasions that a steep slopes waiver will be necessary, and that one would be approved. Chairman Friedlander stated at the August 26, 2013 Planning Board meeting that:

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> "We [the Planning Board] were going to approve a wall because of the safety conditions and they [the Bartolaccis] had to have a retaining wall because that needs to be replaced...No one [on the Planning Board] is saying they're against a wall. We recognize that there should be a wall for safety purposes and because it's a replacement..." (Statement begins at 19:50 and ends at 20:27 of Planning Board Meeting video recording 8/26/13)

So unless the Planning Board has changed their mind with respect to this matter, I will not spend further time discussing this.

Factor 3 – Whether the waiver is inconsistent with the Objectives of the Steep Slopes Protection

Once again, much of this section is lifted verbatim from Ms. Baldwin's submission from the February 27, 2017, Planning Board meeting. Ms. Baldwin correctly notes that one of the objectives of the steep slopes law is to minimize storm water runoff. It has been acknowledged by two Village Engineers (Mr. McGarvey and Mr. Pannella) and two professional engineers (Mr. Pettrucelli and Mr. Berte) that our proposals to restore the retaining wall will significantly improve the storm water runoff condition by providing more soil for any runoff to percolate through, and by reducing the pitch to slow the acceleration of this runoff. The April 22, 2013 Planning Board minutes state:

> "Mr. Bartolacci said at the last staff meeting we asked the Village Engineer whether this design would improve the runoff vs. what is there now. Mr. McGarvey agreed."
>
> The February 27, 2017 Planning Board Minutes State:
>
> "Paul Berte, the applicant's engineer, explained that the nature of steep slopes with regard to storm water 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 [as our proposal does], 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. Pannella agreed with Mr. Berte 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."

Ms. Baldwin talks about the steep slopes law's intent to preserve unique characteristics of the Village. I think she is stretching the intent somewhat if she is trying to suggest that a slope caused by a partially collapsed railroad tie wall should be preserved! The sloped area between our hedgerow and the top of the existing retaining wall was created entirely by erosion and in no way could be considered a natural or unique feature that needs to be preserved. Even before we shared photos of our back yard and the various statements from former and current neighbors, I was under the impression that you agreed that this was a slope which was eroding due to the partial failure of the retaining wall and needed to be fixed. The slope above the retaining wall is not something that needs to be preserved as it never would

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have existed had the retaining wall not partially failed, but rather it is something that needs to be fixed ASAP before we have a complete disaster on our hands. **(See Appendix L)**

Ms. Baldwin relies on a quote from a Planning Board meeting from 2006 relating to a different application which highlights that there is no distinction between a man made steep slope and a naturally occurring steep slope as regards the application of the steep slopes restrictions. This may indeed be the case, but it is entirely irrelevant to our application. A naturally occurring steep slope is exactly that – a slope > 25% that exists in nature and has been left undisturbed. A man made steep slope is one that was created by manually or mechanically piling up dirt for the purpose of creating a slope. The slope to be disturbed by our proposed retaining walls is neither man made nor naturally occurring. It exists entirely because of erosion caused by the failure of a retaining wall. Dirt was not piled up to create a slope, but rather to create the complete opposite - a flat backyard - which has now disappeared down the hill due to erosion.

Ms. Baldwin claims that the slope between the hedgerow and the top of the existing wall was not created by erosion – she states "This is absolutely false". I guess we will have to agree to differ on this one but if the Board has any remaining doubts, I would encourage you to voice them or ask Ms Baldwin to provide an explanation for how she came to her conclusion.

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

Once again, much of this section is lifted verbatim from Ms. Baldwin's submission from the February 27, 2017, Planning Board meeting. As noted previously, Ms. Baldwin and her attorney appear to have decided for us what benefit we are trying to achieve – only this time it is not to stabilize the slope as it was previously. Now it seems we are seeking to safeguard our backyard – and they argue that our proposed two tiered design is not the minimum necessary to achieve this. While we appreciate Ms. Baldwin's suggestion of installing a code compliant fence at the top of the steep slope, and certainly plan to install a safety fence at the top of whatever retaining wall we end up building, the idea that a fence is the solution to our serious and dangerous condition of a failing railroad tie retaining wall is simply absurd.

Ms. Baldwin tries to justify her position by pointing out that installation of a geogrid membrane requires excavation back into the slope. She fails to mention that, as confirmed by two professional engineers (Mr. Pannella and Mr. Berte) installation of any kind of retaining wall will require significant excavation of a steep slope. For example, Ms. Baldwin has suggested a replacement railroad tie retaining wall. Mr Pannella explained that this would require excavation into the slope to install deadmen and tiebacks (which serve an identical purpose as the geogrid membrane). A stone wall would require less excavation into the slope but significantly more excavation at the base of the slope to install the "anchor". A poured concrete wall would similarly require significant excavation into the slope at the base and below to install the moulds and anchor. In other words, whatever solution Ms. Baldwin believes is optimal will require significant disturbance of the steep slope. (See February 27, 2017 Planning Board meeting minutes Page 2 – 3).

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For some reason, which is entirely unclear to us, Ms. Baldwin references Anello v. Zoning Board of Appeals of Dobbs Ferry as some form of justification for her argument. This case deals with a vacant parcel of land on which the owner was not permitted to build a residence because eliminating the steep slopes from the buildable area did not yield enough square footage for the plot to have a house on it as per the Code. What this has to do with our application is a mystery. As a reminder, we are trying to restore our property to its original developed condition, not build a new house on a vacant lot. Chairman Friedlander, you, in August 2013 appeared to agree with us when you said to Ms. Baldwin's brother in law in response to a statement he made:

> "the natural habitat and the environmental issues and the steep slopes is of concern to this Planning Board. It always has been and we've been very careful in how we've approached that. Since this is not new construction we have a lot more leeway than if it was new construction. I want you to be aware of that." Statement made by Chairman Friedlander at the 8/26/13 Planning Board Meeting beginning at 18:22 and ending at 19:13 of the video recording.

This concludes Ms. Baldwin's section on why we should not be granted a steep slopes waiver. There is nothing new here. We already heard most of this back in January, February and April when we were before this Board, and we heard the same arguments again in June, July and August when she spoke at great length in opposition of our application for a variance in front of the ZBA. The ZBA clearly rejected every single one of them and voted to approve our variance because Ms. Baldwin's positions were not based in fact or sound legal principles. We certainly hope and believe this Board should take the same position as regards a steep slopes waiver.

In Part II of Ms. Baldwin's October Planning Board submission, she rehashes and repackages the same arguments presented in opposition to the granting of a steep slopes waiver and which were previously categorically rejected by the ZBA in regards to the granting of our variance.

a) Applicant does not seek any reconstruction or Repair

In this section of her statement, Ms. Baldwin can't seem to get her story straight and switches back again from safeguarding our back yard to stabilizing the steep slope as the alleged benefit we are seeking, notwithstanding the fact that both allegations are entirely false. She argues that we are not seeking to reconstruct or repair the retaining wall, but rather seeking to build a much higher new retaining wall and argues that we are only doing this to increase the size of our backyard. As has been stated on multiple occasions we are seeking to restore our property to its approximate original condition prior to the partial collapse of the railroad tie retaining wall. The Planning Board and the former Village Engineer agreed with this characterization. When reviewing an earlier version of plans which denoted a single large mesa block retaining wall significantly higher that what is left of the railroad tie retaining wall currently on our property, the following exchange between Mr. Auckland and Mr. McGarvey took place:

> Board Member Auckland: "Would you agree with the characterization of this as kind of a **restoration or repair** was the word you used to existing non-conforming specs?"

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> Village Engineer McGarvey: "**Yes**, you know again originally when this wall was back by the property line it was 22 feet high, 20, 22 feet high, I don't remember what the height was, but they did come, they did amend the plans, pull the wall in, and actually I told the applicant, or actually the applicant's attorney that if it wasn't for the steep slopes they wouldn't even have to go to the Planning Board because we don't have a height wall restriction here. There was obviously walls in this back yard before, to what extent the height existed way back when I have no idea but there is definitely still the remnants of the retaining wall back there. But again I do not know to what height." April 22, 2013 Planning Board Meeting

Although Ms. Baldwin does not think that we are seeking to restore or repair our retaining wall, the Planning Board and Village Engineer certainly do.

b) Applicant Does Not Seek a Wall the same size as the original

Ms. Baldwin insists that the railroad tie retaining wall on our property was never more than 6-8 feet high, relying entirely on an incorrect interpretation of a letter Mr. McGarvey wrote to the Planning Board on September 26, 2013, where he stated:

"As a professional engineer, I do not believe that a railroad tie wall 20' high was ever constructed on the site [67 Miller Avenue]; instead, I believe there were three walls each approximately 7+/- high."

We have already discussed the inaccuracies within Mr. McGarvey's letter dated September 26, 2013. My husband and I wish to make it absolutely clear for the record that this letter cannot be relied upon as "proof" that the wall was +/- 7 ft high originally. Not only does it contradict every single independent eye witnesses recollection of the original railroad tie wall and backyard but it contains a wildly inaccurate estimate of the fill which Mr. McGarvey uses to refute the assertion that the soil behind the original retaining wall eroded away over many years leaving the slope in the condition it is in today.

Ms. Baldwin continues to state the wall height as +/- 7 feet as a confirmed fact ... She has made these statements before you multiple times, most recently in last month's meeting, but she has also made them in the ZBA meetings. As far back as the February 27 2017 Mr. Tedesco told her:

> "It is not a fact established that those walls were 7 feet. It was the opinion of a former Village Engineer that they may have been 7 feet so we can't deal with that as a fact." 2/27/17 Planning Board Meeting Video, begins at 26:42 and ends at 26:55

She appears to have completely ignored Mr. Tedesco's request to refrain from using this argument and continues to state the wall was +/- 7 feet high in each and every meeting, even when faced with such overwhelming evidence as we presented to the planning board in the April 24 2017 planning board meeting about what the wall used to be like. It's as if she is hoping that with repetition perhaps it will become a universally acknowledged truth?

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If any further proof is needed that the suggestion that the original retaining wall was only 7 feet high, please refer to the base elevation slide submitted for the record **(See Appendix M)**. This proves that there is a 7 foot elevation change between the North and South bases of the existing retaining wall. This means that if the Northwest corner of the retaining wall was 7 feet high, the Southwest corner would have been at ground level, which even today with all of the decay is clearly not the case (it is at least 5 feet high as it stands today). On the other hand, if the Southwest corner of the retaining wall was 7 feet high, that would mean that the Northwest corner would have had to be 14 feet high. Either way you look at it, it is simply physically impossible for the original retaining wall to have been +/- 7 feet high.

So unless any member of the Planning Board also believes, as Ms. Baldwin does, that the 3-sided retaining wall originally built on our property had a maximum height of +/- 7 feet, can we not put this one to bed?

c) Applicant Does Not seek to Stabilize the Steep Slope

It is unclear why Ms. Baldwin felt the need to devote another entire section of her written statement to something that she has already covered, namely that the benefit we seek to achieve through this application is not to stabilize the steep slope. As already noted, this was never the intention of our application although it will certainly be one of the significant benefits to us and our neighbors. It is, in fact, Ms. Baldwin and her attorney who has consistently pushed the narrative that all we should be trying to do is stabilize the slope and this was resoundingly rejected by the ZBA. As previously noted, the ZBA stated in its resolution:

> "The benefit to the applicant in pursuing this application is not simply to stabilize the slope but to make Applicant's backyard safer with more usable space." **(See Appendix G)**

However, raising this again does allow us to introduce several relevant court cases that contradict the oft repeated notion favored by Ms. Baldwin and her attorney that we should only be allowed to do the minimum necessary to stabilize the steep slope.

In Calogiras v Town of Southampton Board of Appeals, the applicants wished to demolish an existing dwelling, located on top of the dune crest, and to construct a new two story residence 23 feet north of the existing footprint (further away from the dune crest). This required several setback variances which were granted. The decision was challenged in an article 78 and the Supreme Court upheld the variance approvals, finding, among other things, that **"the relief sought is the minimum necessary to achieve their [applicants] stated goal..." (See Appendix N)**

In Schaller v Town of New Paltz Zoning Board, the applicant wanted to build a hotel with a pitched roof to allow for solar panel installation. This required a 6 foot height variance for the structure. The variance was granted by the Town but denied by the Supreme Court. **On appeal the variance was granted as it was deemed the "minimum necessary" to achieve the desired benefit of energy efficiency. (See Appendix O)**

In Baker v Brownlie, the applicant wanted to build a patio facing the water at a Shelter Island home. The ZBA did not grant a setback variance because it said a patio could be built in another location that would

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not require a setback variance. The Court found that **"Since the petitioner's desired benefit is to have a patio facing the water, the Board's finding that it could be located elsewhere on the petitioner's property is clearly erroneous." (See Appendix P)**

We believe all of these cases emphatically support the ZBA's granting of a variance, and the Planning Board's granting of a steep slopes waiver because what we are proposing is the minimum necessary to achieve the benefit we, the applicants, desire [to restore our property to its original condition], not the benefit that Ms. Baldwin and her attorney think we should be seeking [stabilizing the steep slope or safeguarding our backyard, depending on what section of Ms. Baldwin's memo you are reading].

d) Applicant Does Not Meet Manufacturer's Minimum Safety Requirements

In this section, Ms. Baldwin somehow believes from reading a brochure about mesa blocks and some of the technical literature intended for engineers to use to help design a wall which will meet engineering specifications, that this qualifies her to comment on plans which have been deemed to be broadly acceptable by 4 different licensed engineers who have reviewed these (or similar) plans. Our engineers (Mr. Petrucelli and Mr. Berte) recommended this material for the construction of our wall based on their many years of experience. Both the former and current Village Engineers (Mr. McGarvey and Mr. Pannella) have reviewed the plans and raised no objections. It seems to be somewhat insulting to the engineers who have been involved that someone with presumably no engineering background would do this.

Ms. Baldwin used this approach also before the ZBA and having failed there she is now trying again before you too. We will not waste everyone's time refuting this absurdity. A rebuttal is provided in a separate document which is included in the Appendices **(See Appendix Q)**.

In Part III of her statement, Ms. Baldwin attempts to discredit the evidence we have presented to support the fact that we are restoring our property to its approximate original condition prior to the partial collapse of the railroad tie retaining wall.

a) Statements re: Aerial Photographs Having No Basis in Fact

Ms. Baldwin attempts to discount the overwhelming aerial and other photographic evidence we provided which shows that our backyard used to be significantly larger. Given that the Planning Board thanked us for providing the photos and said that they were "very helpful" and that they should form part of the basis for our steep slopes waiver request, it would appear that the Planning Board was at least partially convinced by them, so we do not believe it is necessary to refute Ms. Baldwin on this item. We will simply highlight that we never intended to demonstrate the height of the retaining wall with these pictures as alleged by Ms. Baldwin, and that they were never intended to be "the smoking gun" to demonstrate this. We simply provided them as corroborating evidence, along with the statements from six current and former neighbors, people who had actually seen the retaining wall prior to its collapse and the backyard in its original state prior to the significant erosion caused by this collapse **(See Appendix L)**. We firmly believe, and it appears that the Planning Board does too, that the photos, along with the neighbor testimony provides a consistent and corroborated set of evidence proving that our backyard used to be much larger and that the only way this would be possible is by having a significantly larger retaining wall than exists now on the property.

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It is interesting to note that we showed the aerial photos to 27 people at random, and every one of them said that the back yard in the 1976 aerial photo was significantly bigger than it was in the 2013 photo **(See Appendix R)**. This perhaps provides a bit of counter balance to the opinion provided by Ms. Baldwin's allegedly independent architect that it was not possible to make this determination due to the quality of the photos. Note that as previously mentioned, this architect is based in Glens Falls New York, a full 3 hours and 180 miles away from Tarrytown. We do find it quite curious that Geraldine would chose an architect from so far away and wonder whether there might be a personal relationship involved.

b) No Basis in Fact in Childhood Recollections from 40-50 Years Ago

Ms. Baldwin alleges that one cannot rely on childhood memories as they may be inaccurate. We don't disagree, which is why we provided testimony from Brian Tompkins, Despina Katsaris, and John Burckhardt.

Mr. Tompkins lived at 63 Miller Avenue into his 20's. He spent many years climbing on the wall as a child, but more importantly his bedroom window, where he lived for these 20+ years, looked directly at the retaining wall at 67 Miller Avenue. His memories are certainly not "childhood memories". Below are the statements he provided to the Planning Board and ZBA:

> "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." Statement made at the 8/26/13 Planning Board Meeting **(See Appendix L)**

> "My name is Brian Tomkins. I was born and raised in 63 Miller Avenue, right next door [to 67 Miller Avenue]. I have to tell you that it [the retaining wall at 67 Miller Avenue] was one continuous wall. Definitely. Crystal clear in my mind. As a kid I would climb up that wall, I'd hop over the split rail fence that was at the edge of that wall, push through his boxwood bushes that he wasn't very happy with me doing, to cut across. And it was one complete wall straight up [motions with his arm a vertical surface] and it was a completely flat backyard. And I'm crystal clear about it. I mean I know that as a kid you tend to exaggerate but **I know what flat is and I know what one wall is and that's what it was**...So I just want to attest that it was one wall

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straight up, well not straight up because it was slightly pitched in, and it was a completely flat backyard."

When asked how high he estimated the retaining wall at 67 Miller Avenue to be, he responded:

"I would say a minimal 20 feet, 18, 20 feet." Testimony provided at the August 14, 2017 ZBA Meeting **(See Appendix S)**

Despina Katsaris moved into 68 Miller Avenue in 1974 when she was 37 years old and lived there until 2010. As such, Ms. Katsaris's memories of the 67 Miller Avenue property are neither from childhood nor from 40 or 50 years ago. She was very friendly with the Bartoluzzis, the previous owners of 67 Miller Avenue. As such she spent a lot of time in the backyard of 67 Miller Avenue in the 70s, 80s and 90s and testified that the backyard had been flat, was much larger than it is today, and that Mr. Bartoluzzi had to keep moving the hedgerow closer to the house because the backyard was eroding down the hillside due to the collapsed retaining wall. **(See Appendix L)**

John Burkhardt moved into 47 Miller Avenue in 1954 and lives there today. While his memories may have started some 60 years ago, they span from then to the present. He provided the following testimony at the 6/24/13 Planning Board meeting: "That wall was there then and it hasn't been touched since then. **And half of it is down on the ground." (See Appendix L)**

All of this adult memory testimony corroborates 100% with Michael McGuire's childhood memories which he testified to at the April 24, 2017 Planning Board meeting:

"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.

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

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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." **(See Appendix L)**

Ms. Baldwin alleges that the neighbor testimony we provided is based on 40 to 50 year old memories of children from when they were 8-11 years old. As has been demonstrated, this is simply not true, like most, if not all of what Ms. Baldwin alleges in her October Planning Board statement and her prior submissions. We believe it is important to deal in facts. We would respectfully request the Planning Board ask Ms. Baldwin to do the same and to challenge her when she is not as it makes a mockery of the entire process.

Like Ms. Baldwin, my husband and I have spent a lot of time and money throughout this entire process... but unlike Ms. Baldwin we believe we have stuck to the facts, been prepared to compromise and shown a willingness to work with our neighbors (at least those who would speak with us). Our application has been altered to address the concerns raised by members of the Planning Board, including tiering the retaining wall and adding landscaping which will more than adequately screen the two tiers.

I would ask you to consider the fact that unlike Ms. Baldwin who is probably happy to keep fighting this application to continuously delay us from rebuilding, we do not have a choice ... we have to get the retaining wall replaced as the backyard is continuing to erode and will present a safety risk for our family, neighbors, friends, and eventually our house. We believe we have crossed the major hurdles relating to the design of the wall and the landscaping to provide screening and have submitted a steep slopes waiver justification as requested. We acknowledge that there remain some engineering responses due to Mr. Pannella, however we do not expect this to impact the design in any significant way. If the Planning Board is comfortable with the design, perhaps it makes sense to close the public hearing, and approve the application which can surely be made subject to the remaining items being provided? This way at each meeting we won't have Ms. Baldwin trying to re-open the debate about the height of the original wall, the choice of materials and whatever other arguments she thinks up. While her arguments may not ultimately prevent our restoring our back yard, they are certainly adding to the time it is taking to obtain approval and costing us money with each additional meeting. We hope you agree that it is time to put an end to this.

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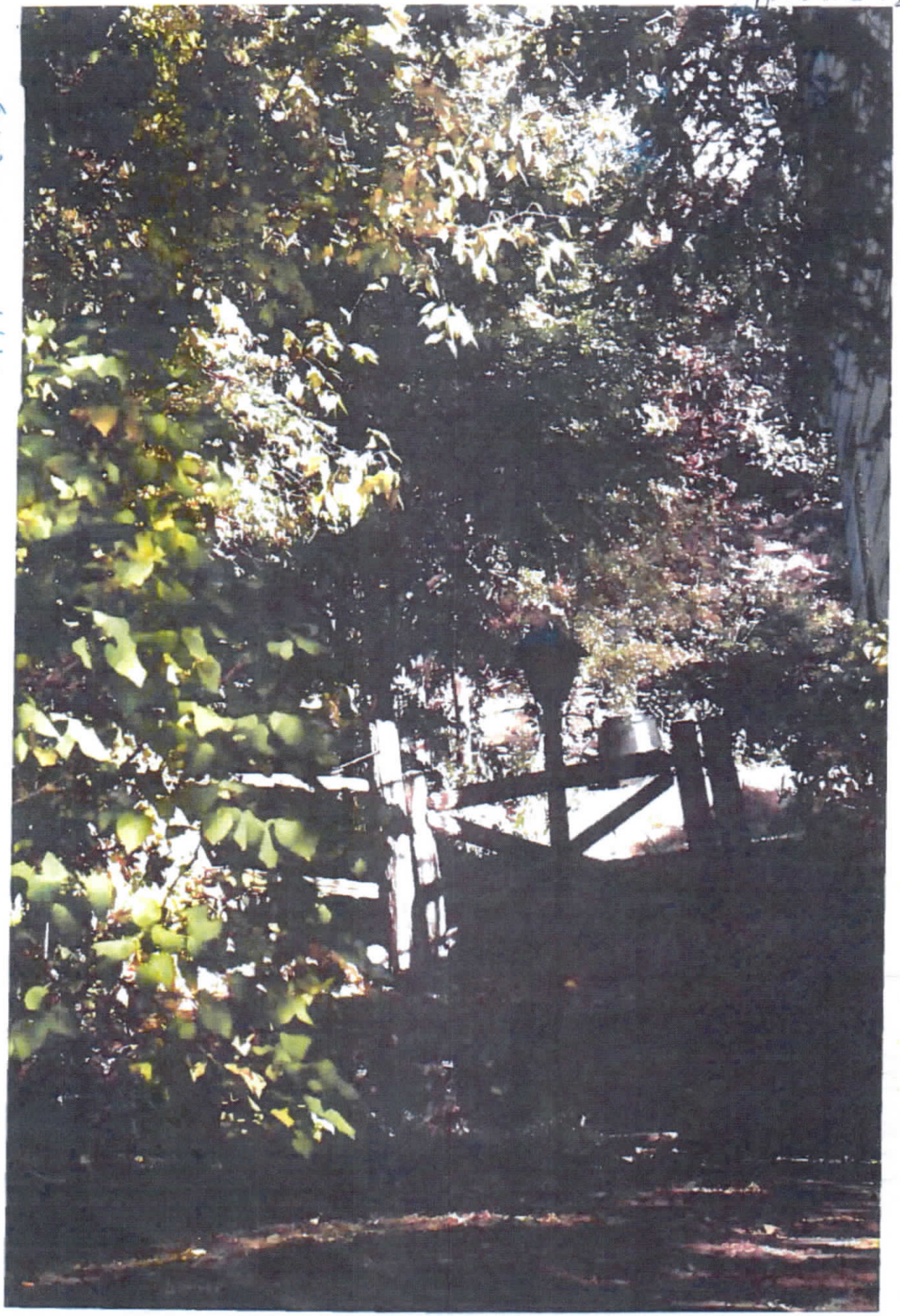
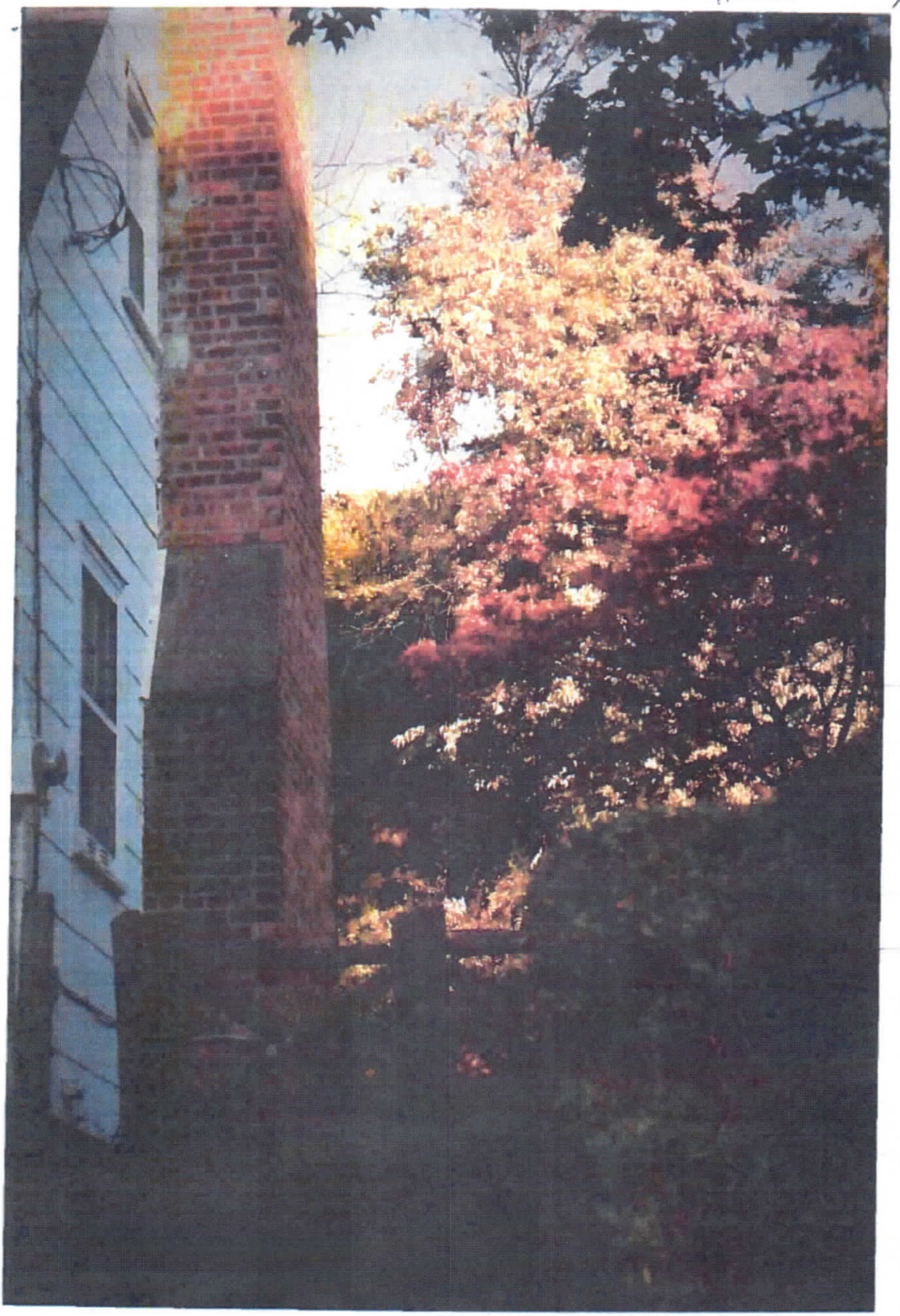
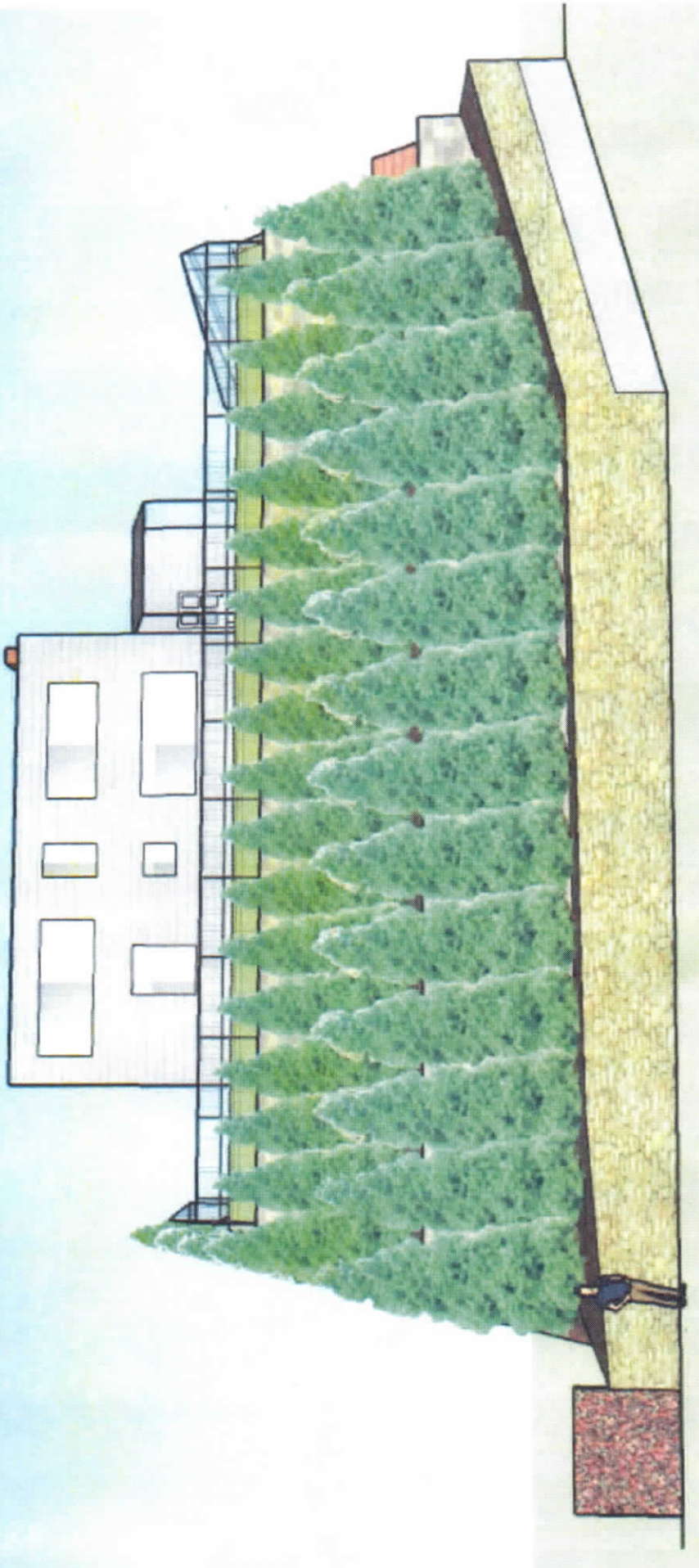
Appendix B ½

- Appendix A(1 of 2) -





Appendix C



Appendix D

Quote from Planning Board Meeting

June 24, 2013 Planning Board Meeting Video, begins at 3:08:58 and ends at 3:09:42

Chairman Friedlander: "But I'm saying, I went to your property, I looked up, and I'm saying if I'm sitting in a chair in your [Baldwin's] back yard or in your [Baldwin's] kitchen looking up, If I saw a nice row of trees blocking the wall, you wouldn't see the wall. Is that correct or am I incorrect? I don't know, I'm asking you [Baldwin]."

Geraldine Baldwin: "Yeah."

Chairman Friedlander: "Norwegian spruces, 4 or 5 or six lined up, whatever the consultant says will take and grow and you wouldn't see the wall, would you be happy? That's all I want to know. I want to make you happy. The wall's not going to fall down, the tree's not going to fall down on your house and you'll be safe and the water's been taken care of – would you be happy?"

Geraldine Baldwin: "Yeah."

Chairman Friedlander: "Ok, That's all I want to know."

Relevance: Ms. Baldwin explicitly states that as long as there is ample screening, drainage, and storm water runoff control, she would be happy with the proposed retaining wall, yet now she is vehemently objecting to any proposal we put forth.

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Appendix E

VILLAGE OF TARRYTOWN INTEROFFICE MEMORANDUM

TO: Chairman Friedlander and Members of the Planning Board

FROM: Donato R. Pennella, P.E., Village Engineer

DATE: ~~February 15, 2017~~
October 23, 2017

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RE: Construction of Retaining Wall at Rear of Property
67 Miller Avenue
Parcel ID # 1.70-40-4
Account # 1295300

Please take notice that the plans received by this office, as prepared by Fusion Engineering P.C., dated ~~January 24, 2017~~ October 10, 2017 and submitted to our office on ~~January 27, 2017~~ October 11, 2017, for the construction of two segmental retaining walls located at the rear of the property at 67 Miller Avenue, Sheet 1.70, Block 40, Lot 4, which is in the R-10 Single Family Dwelling) ***Zoning District*** in the Village of Tarrytown, requires the following review comments to be addressed prior to the issuance of site plan approval:

1. ~~Show on a separate plan the steep slopes of 25% or more where the proposed work is to be performed utilizing the base survey for this the design.~~

2. Conceptually, the segmental concrete walls as shown are acceptable for this type soil retaining system and providing a level yard, however, a full design analysis will need to be performed for; bearing failure, sliding, overturning, and grid pull out. A slope analysis must be performed for the entire wall system. Show on plans; segmental block wall type and manufacturer, details and specifications for the geo-grid reinforcement and the grid length. Based on an email from the design engineer dated October 12, 2017, attached, soil testing results are expected to be received the week of October 23, 2017 and full engineering computations will be validated and submitted for review. The slope analysis must include the impacts of the overburden soil pressure on the existing wall located on the adjacent property.

3. Show the elevation of the south wall with the stairs and fall protection. Show the impacts to the existing stone masonry wall on the adjacent property and protection during construction. Similarly, provide construction sequence detail for protecting the west and north walls. Sections through these walls should be provided to indicate load impacts and/or terminations of the existing walls.

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4. Address the stabilizing of the existing railroad tie wall to the north that was constructed on the adjacent property when it is cut and/or removed to install the proposed wall?

5. Provide temporary protection for rolling debris to the adjacent properties, perhaps a chain link fence.

6. ~~Show construction sequencing, specifically how will the lower wall be accessed for construction~~. Add to sequence additional comments provided herein.

7. ~~Show soil stockpile protection detail, and detail of anti tracking device~~. Stockpile on the north side impedes with utility access and requires the removal of a 6" Japanese Maple, consider an alternate location. Height of proposed soil stockpiles is 4.5 ft above the existing grade, show on plan. The width of traction pad narrows down to 7 feet at the garage and its length is 38 feet in comparison to the typical detail, coordinate accordingly. Indicate on plan equipment to be used to gain access and bring in materials/fill.

8. ~~Show detail for the fence used fall protection above the wall; height, openings and anchoring~~. Decorative detail on top of C.L.F shows 5" c.c. spacing maximum opening size permitted is 4" c.c., clarify. Grading behind fence is sloped towards residence minimum height of required guards above grade is 36" adjust accordingly.

9. ~~Show details for stairs, riser height and treads~~.

10. ~~Add to the cut and fill table the estimated quantity of wall base material to be imported~~.

11. Phase 1 Plan – The ramp to be excavated for access has a grade change of 18 feet in 24 feet, a slope of 1:1.3, modify ramp and slope to accommodate equipment used to transport materials. Provide a means for preventing runaway machinery and falling materials at the bottom of the ramp. Provide and show a SESC fencing backed with a temporary CLF running along the entire westerly property line. Fence shall be set back from property line at a suitable distance to protect the existing stone wall located on the adjacent property line.

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12. Provide and indicate on plans that a site inspection be performed by a professional engineer prior to and after every rain storm event greater than ½" rain.

13. Wall Typical Section – Provide shoring details for the cut into the existing slope.

14. Indicate slope of proposed grading "slope break" behind fence, maximum grade permitted for manufactured slopes is 1 on 2 per §305-135D.(2)(g), adjust accordingly.

15. Provide full detail of wall and geogrid reinforcing pattern for the north-west corner.

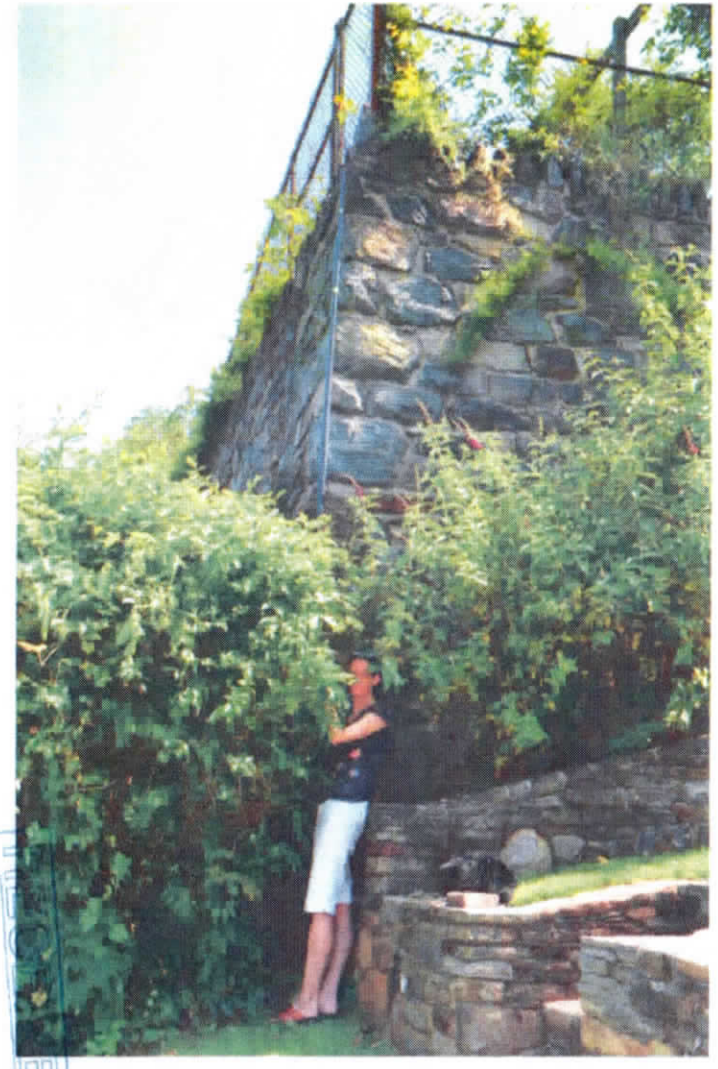
16. Based on the Building Inspector's interpretation, it is the Building Inspector's determination that ARB approval is not required.

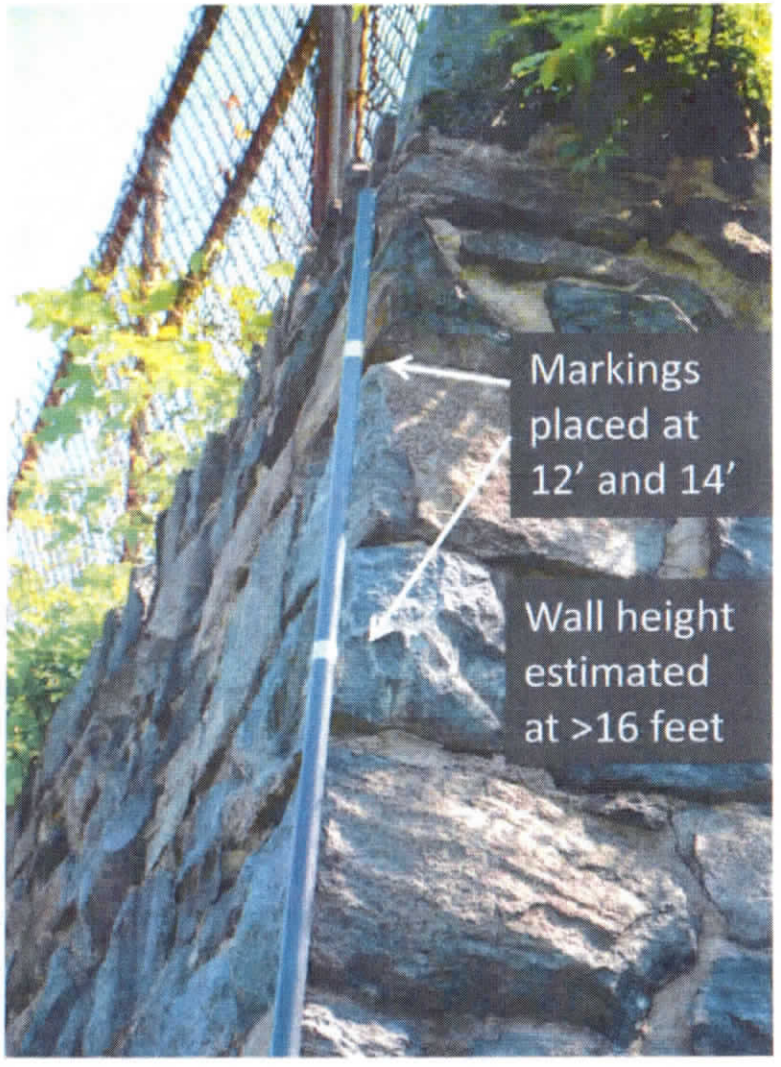
DRP

cc: Katherine Zalantis, Planning Board Attorney
Robert Galvin, Village Planner
Feliciano Valvano, Building Inspector
Paul Berte, Fusion Engineering, P.C.

93 Miller Avenue - > 16 feet High

5 Houses South of 67 Miller and retaining wall built on Property Line





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Appendix F

Appendix G

FILED 9/14/17
VILLAGE CLERKS OFFICE

ZONING BOARD OF APPEALS RESOLUTION

Application of Peter Bartolacci (the "Applicant")
67 Miller Avenue, Tarrytown, NY 10591 (the "Property")
Sheet 1.70, Block 40, Lot 4 (R-10 Zoning District)

WHEREAS, the Applicant has appealed to the Village of Tarrytown Zoning Board of Appeals ("ZBA") from a determination by the Building Inspector that the proposed retaining wall does not comply with the requirements of Chapter 305 of the Village of Tarrytown Zoning Code ("Zoning Code"), and

WHEREAS, the Applicant originally sought a variance of 14 feet to allow a proposed single wall/retaining wall of 20 feet where Zoning Code § 305-47B; 305-47B (7) only allow for a 6-foot high retaining wall, and

WHEREAS, a duly noticed public hearing was held on this application at the regular meeting of the ZBA on June 12, 2017, and

WHEREAS, at the June 12, 2017 meeting, the Applicant presented the history of the application (that originally began in 2013), including that there had been various proposals in connection with the proposed wall ranging from a single tier to multiple tiers, and

WHEREAS, the Applicant has previously appeared before the Village of Tarrytown Planning Board and presented at the April 2017 Planning Board meeting a three-tier design that did not require any variances as none of the three tiers exceeded 6 foot in height, but the Applicant advised the ZBA that the Planning Board expressed concerns in connection with the three-tiered (zoning compliant) proposal as with the three-tiered design there was limited opportunity for screening/landscaping, and

WHEREAS, after consideration of the Planning Board's concerns about the lack of landscaping/screening in the three-tiered design, the Applicant presented a one-wall design that afforded a significantly greater planting area than the three-tiered design and required the installation of substantially less fill, and

WHEREAS, after hearing input from neighbors and the public, the ZBA requested that the Applicant consider a different design with a lower wall than the proposed 20-foot wall and continued the public hearing until July 10, 2017 and then until August 14, 2017, and

WHEREAS, at the July 10, 2017 public hearing, the Applicant presented a concept plan for a two-tiered wall in which each wall did not exceed 9.5 feet and before the August 14, 2017 meeting presented a more-developed plan for said two-tiered wall design entitled "Site Plan Peter & Suzanne Bartolacci" dated January 24, 2017 and last revised July 28, 2017 (hereinafter "Approved Plan"), and

WHEREAS, members of the public having had an opportunity to speak on the application, the public hearing was closed on August 14, 2017 and the Board directed that counsel prepare a draft resolution for it to consider at its September 11, 2017 meeting, and

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WHEREAS, this Board deliberated at its September 11, 2017 meeting and after having the opportunity to visit the Property and after duly considering all the proofs and evidence before it, determines as follows:

IT IS HEREBY RESOLVED, that this is a Type II action under the State Environmental Quality Review Act, and therefore no further environmental review is required, and

IT IS HEREBY FURTHER RESOLVED, the findings of this Board are as follows:

1. There will be no undesirable change produced in the character of the neighborhood or detriment to nearby properties as a result of the variance requested. The Applicant introduced numerous examples of walls in the neighborhood and surrounding community exceeding 9.5 feet in height. Further, there was evidence produced that there had previously existed a fairly significant wall in the Applicant's yard (and there are existing portions of said wall on the Applicant's property currently). The proposed two-tiered wall system allows for more robust and larger sized plantings in front of each of the proposed tiered walls that will afford greater screening to the neighboring properties.

2. The benefit sought cannot be achieved by some method feasible for the Applicant to pursue other than seeking the area variance. Although the Applicant could erect a zoning-compliant three-tiered wall system (with each wall not exceeding 6 feet), the zoning-compliant three-tiered plan would provide very limited plantings that would not provide sufficient screening. While a variance is needed for the two-tiered design as the walls at their highest points exceed 6 feet (but not 9.5 feet), there is opportunity for significant plantings that will afford screening. The benefit to the Applicant in pursuing this application is not simply to stabilize the slope but to make Applicant's backyard safer with more usable space. Just like numerous applicants that appear before this Board seeking variances, the Applicant is attempting to improve his property and expand the usable area of his property. This Board does not agree that the only benefit that the Applicant can seek to attain is to stabilize the rear slope. Due to the existing elevations and the property's topography, the Applicant cannot provide a zoning-compliant wall system that will also allow for sufficient landscaping to provide screening. This Board recognizes that while the Applicant has the right to erect the zoning-complaint three-tiered design without any approvals from this Board, such zoning-complaint erection with its minimal plantings would not effectively screen the walls and therefore, would be more visually impactful on the neighbors. As a result, the Approved Plan that proposes substantial plantings and trees with larger roots, it more beneficial to the neighbors.

3. The variance is not substantial and in fact, during the course of the Zoning Board's review and in response to comments from this Board and the public, the Applicant substantially reduced the scope of the requested variance from 14 feet (to allow for a 20-foot wall) to 3.5 feet (to allow for two 9.5 foot walls). In addition, the proposed walls are not 9.5 feet for to the full length of the wall but rather the height ranges from six feet to 9.5 feet.

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4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. There is nothing in the record to suggest there will be any adverse impacts provided that this Board's conditions (set forth below) are adhered to. The landscaping proposed will screen the wall and provide for a more natural setting and emphasis on native plantings. The Applicant proposes to erect a wall and there was evidence presented that there had been a wall in some form on the property for many years.

5. The hardship is not self-created as the conditions of the site and the need for variances are the result of preexisting, nonconforming conditions on the site and/or topography of the site. And to the extent the hardship was self-created, this factor does not preclude the granting of the variance.

6. This Board is granting the minimum variance necessary for the Applicant to achieve his benefit and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community as only through a variance grant can there be sufficient screening. The zoning-complaint plan would require another tiered level and there would be insufficient room between the tiers to afford sufficient screening. The Applicant has substantially reduced the scope of the variance request (from a proposed 20-foot wall requiring a 14-foot variance to a 9.5 foot wall requiring a 3.5 foot variance) and this Board finds that the 3.5 foot variance is the minimum necessary to obtain the benefit of a screened wall.

AND IT IS FURTHER RESOLVED based upon the foregoing findings, the application is granted subject to the following conditions:

1. Except as otherwise set forth herein, the variances are granted solely in connection with the Approved Plan (and incorporated herein by reference). If any changes are made to the Approved Plan (other than those deemed by the Building Inspector to be minor field changes or other than changes made by the Planning Board in connection with its site plan review) this variance grant becomes void and the Applicant must make a new application to the ZBA for approval of any and all variances. Notwithstanding the foregoing, this variance shall be deemed null and void even if changes are made in connection with a plan approved by the Planning Board if such plan: (1) is not consistent with the two-tiered wall design presented the ZBA as the ZBA is not granting a variance for anything other than two-tiered walls; or (2) is not consistent with the proposed two/base of the first wall of the proposed two-tiered wall being located a <u>minimum</u> distance of 7.5 feet from the rear property line.

2. The variance is granted subject to the Property continuing to be used as a single home.

3. The variance is granted subject to the Planning Board approving a landscape plan (after input from the Village's landscape architect), which landscape plan shall not propose any less opportunity for screening than the concept landscape plan presented to the Zoning Board (as depicted on the Approved Plan) and the Zoning Board

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requests that the Planning Board require robust plantings that will provide the greatest opportunity to screen the proposed two-tiered wall.

4. This variance is granted subject to the Planning Board reviewing and approving a Construction Management Plan that will provide for staging of construction of the proposed walls and ensure the protection of adjoining and neighboring properties, including protection of existing mature trees.

5. Upon review by the Planning Board and the Village Engineer, the Applicant shall make any improvements, repairs and/or modifications to the chain link fence and/or stone wall on or near the rear property line in order to improve the health, safety and welfare of the Applicant, his family and the public, but only to the extent the Applicant is authorized to do so by law and has the legal ownership right to do so.

6. This variance is granted subject to and based upon the Applicant's representation that the proposed two-tiered wall will not be 9.5 feet high for the full length of each of the tiers, but rather, the heights will range from 6 feet to 9.5 feet over the length of each wall.

7. The granting of this application shall not be deemed to relieve the Applicant of the need to obtain approval or permit of any other board or agency or officer prescribed by law or ordinance with regard to the Approved Plan or construction or any other phase of the project. The granting of this application shall not be deemed to relieve the Applicant of the need to comply with any and all other local, state and federal requirements, including but not limited to compliance with the New York State Uniform Fire Prevention and Building Code.

8. This variance is granted subject to the accuracy of the representations made by the Applicant and its representatives to the ZBA in its written submissions and during the public hearing and if any material representation, whether or not it is included in this Resolution, is found to be inaccurate, at the discretion of the ZBA the variance grant may be deemed void, in which case the Applicant must make a new application to the ZBA for approval of any and all variances.

9. The Applicant shall procure a building permit from the Building Department within one (1) year of the date of this Resolution or one (1) year from obtaining the last required land use board approval (i.e. planning board or architectural review board), whichever is later, and all work shall be completed within one (1) year from the date of the building permit, otherwise this variance grant becomes void; and any request to extend the time within which to obtain said building permit or complete said work shall be filed no less than sixty (60) days prior to the expiration of the one (1) year period.

10. The failure to observe and perform these conditions shall render this resolution invalid.

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Dated as of September 11, 2017

Chair

In Favor:	3
Opposed:	1
Abstain:	0
Absent:	1

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Appendix H

Sorted By Height

	Property Address	Material	Post 1988?	Retaining Wall Height Inches	Retaining Wall Height Feet
1	1 River Plaza	Concrete	?	248	20.7
2	135 – 162 Wildey Street	Concrete	?	214	17.8
3	28, 32, 34, 40 Miller Avenue	Stone	?	204	17.0
4	93 Miller Avenue	Stone	?	192	16.0
5	27 Cottage Place	Cinder Block/Concrete	?	183	15.3
6	Below 65 Bridge Street	Poured Concrete	Yes	174	14.5
7	Whisper Hill	Pour Concrete	?	154	12.8
8	3 Riverview Place	Engineered Concrete Block	Yes	144	12.0
9	116 South Broadway	Poured Concrete	Yes	144	12.0
10	96 Main Street	Stone	Yes	144	12.0
11	88 Main Street	Stone	?	142	11.8
12	155 White Plains Road	Engineered Concrete Block	Yes	133	11.1
13	75 N. Broadway/ 11 Dixon Street	Poured Concrete	?	130	10.8
14	Across from 63 Miller	Stone	?	130	10.8
15	21 Wildey Street	Poured Concrete	Yes	128	10.7
16	50/54 N. Broadway	Poured Concrete	?	128	10.7
17	145 Franklin Street	Poured Concrete	?	128	10.7
18	Intersection of Cottage Place and Main Street	Stone	?	116	9.7
19	62 Grove Street	Stone/Poured Concrete	Yes - Recently Rebuilt	115	9.6
20	56 Grove Street	Stone	?	108	9.0
21	47 Church Street on Riverview Ave	Stone	?	104	8.7
22	177 White Plains Road	Stone	?	104	8.7
23	21 Union Avenue	Engineered Concrete Block	Yes	102	8.5
24	57 Cobb Lane	Poured Concrete	?	100	8.3
25	Edgemont Condominiums, 301 Martling Avenue	Stone	Yes - Recently Rebuilt	97	8.1
26	61 Franklin Street	Stone	?	97	8.1
27	104 Grove Stree	Engineered Concrete Block	Yes	96	8.0
28	120 N. Broadway	Poured Concrete	?	96	8.0
29	126 N. Broadway	Stone	?	96	8.0
30	88 Benedict (Loh Avenue Side)	Cinder Block/Concrete	?	96	8.0
31	83 Main Street	Stone	?	95	7.9
32	0 Grove Street	Stone	?	95	7.9
33	100 Grove Street	Stone	Yes - Recently Rebuilt	92	7.7
34	65 Altamont	Stone	Yes - Recently Rebuilt	92	7.7
35	63 Miller	Mafia Block	Yes	90	7.5
36	65 S. Broadway parking off of Franklin Street	Stone	?	87	7.3
37	93 Highland Avenue	Stone	?	86	7.2
38	82 Riverview Avenue	Stone	?	85	7.1
39	25 Benedict Avenue	Stone	?	85	7.1
40	69 N. Broadway/ 16 Dixon Street	Poured Concrete	?	84	7.0
41	54 Grove Street	Stone	?	84	7.0
42	50 Grove Street	Stone	?	83	6.9
43	54 Grove Street	Stone	?	83	6.9
44	35 Loh Avenue	Stone	?	83	6.9
45	123 Grove Street	Stone	Yes - Recently Rebuilt	80	6.7
46	80 Grove Street	Stone	?	80	6.7
47	50 Grove Street	Stone/Poured Concrete	Yes - Recently Rebuilt	80	6.7
48	42 Riverview Avenue	Cinder Block/Concrete	?	80	6.7
49	45-51 N. Broadway	Engineered Concrete Block	Yes	78	6.5
50	1 Grove Street	Stone	Yes - Recently Rebuilt	77	6.4
51	90 Grove Street	Stone	?	75	6.3
52	42/58 Cobb Lane	Stone	Yes - Recently Rebuilt	74	6.2
53	58 Cobb Lane	Poured Concrete	?	74	6.2

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Sorted By Date Built/Rebuilt

	Property Address	Material	Post 1988?	Retaining Wall Height Inches	Retaining Wall Height Feet
1	Below 65 Bridge Street	Poured Concrete	Yes	174	14.5
2	3 Riverview Place	Engineered Concrete Block	Yes	144	12.0
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4	96 Main Street	Stone	Yes	144	12.0
5	155 White Plains Road	Engineered Concrete Block	Yes	133	11.1
6	21 Wildey Street	Poured Concrete	Yes	128	10.7
7	62 Grove Street	Stone/Poured Concrete	Yes - Recently Rebuilt	115	9.6
8	21 Union Avenue	Engineered Concrete Block	Yes	102	8.5
9	Edgemont Condominiums, 301 Martling Avenue	Stone	Yes - Recently Rebuilt	97	8.1
10	104 Grove Stree	Engineered Concrete Block	Yes	96	8.0
11	100 Grove Street	Stone	Yes - Recently Rebuilt	92	7.7
12	65 Altamont	Stone	Yes - Recently Rebuilt	92	7.7
13	63 Miller	Mafia Block	Yes	90	7.5
14	123 Grove Street	Stone	Yes - Recently Rebuilt	80	6.7
15	50 Grove Street	Stone/Poured Concrete	Yes - Recently Rebuilt	80	6.7
16	45-51 N. Broadway	Engineered Concrete Block	Yes	78	6.5
17	1 Grove Street	Stone	Yes - Recently Rebuilt	77	6.4
18	42/58 Cobb Lane	Stone	Yes - Recently Rebuilt	74	6.2
19	1 River Plaza	Concrete	?	248	20.7
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24	Whisper Hill	Pour Concrete	?	154	12.8
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26	75 N. Broadway/ 11 Dixon Street	Poured Concrete	?	130	10.8
27	Across from 63 Miller	Stone	?	130	10.8
28	145 Franklin Street	Poured Concrete	?	128	10.7
29	50/54 N. Nroadway	Poured Concrete	?	128	10.7
30	Intersection of Cottage Place and Main Street	Stone	?	116	9.7
31	56 Grove Street	Stone	?	108	9.0
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52	90 Grove Street	Stone	?	75	6.3
53	58 Cobb Lane	Poured Concrete	?	74	6.2

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Locations of Identified Retaining Walls In Tarrytown > 6 Feet In Height*

Within 2,000 feet of 67 Miller Avenue (Purple Circle), we have found 38 properties with retaining walls > 6 feet. 16 of these properties contain retaining walls > 9 feet (42%).

Within 1,250 Feet (Red Circle) of 67 Miller Avenue, we have found 24 properties with retaining walls > 6 feet. 12 of these properties contain retaining walls > 9 feet (50%).

The Village is replete with large retaining walls.

Properties with:

- Retaining Wall > 9 Feet High
- Retaining Wall > 6 Feet High

*This slide represents only those retaining walls > 6 feet that the applicant was able to identify. There may be more that the applicant did not discover.

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Appendix I

Exhibit B

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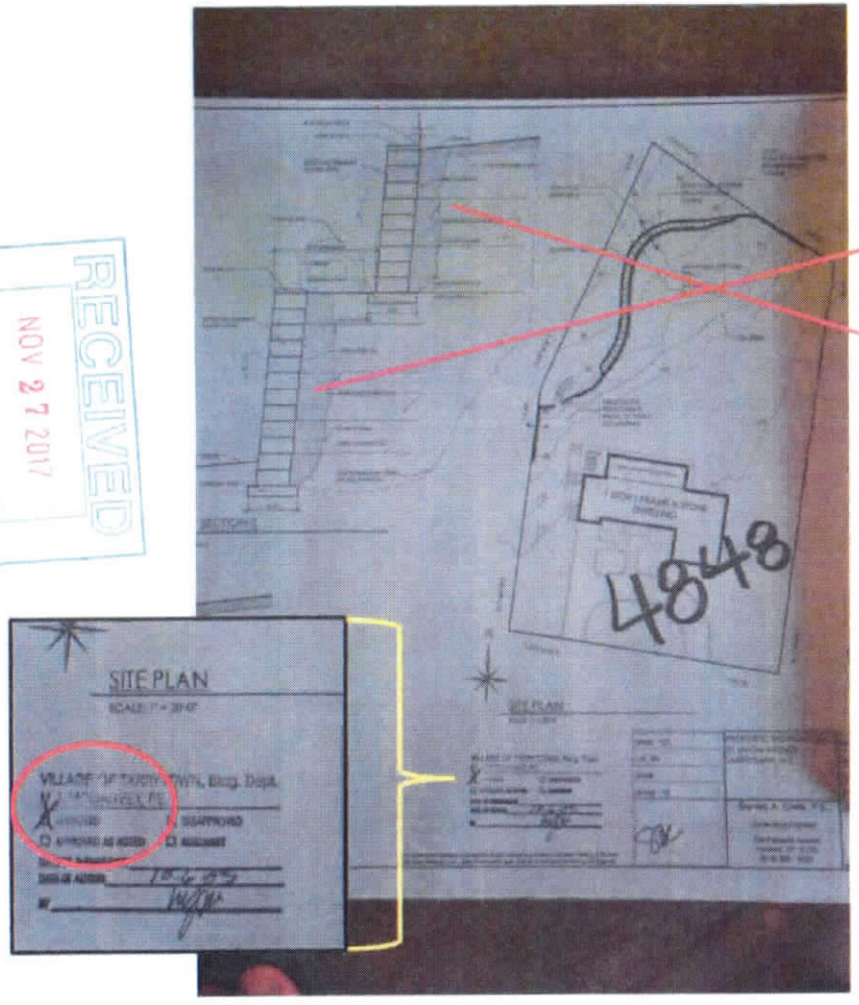
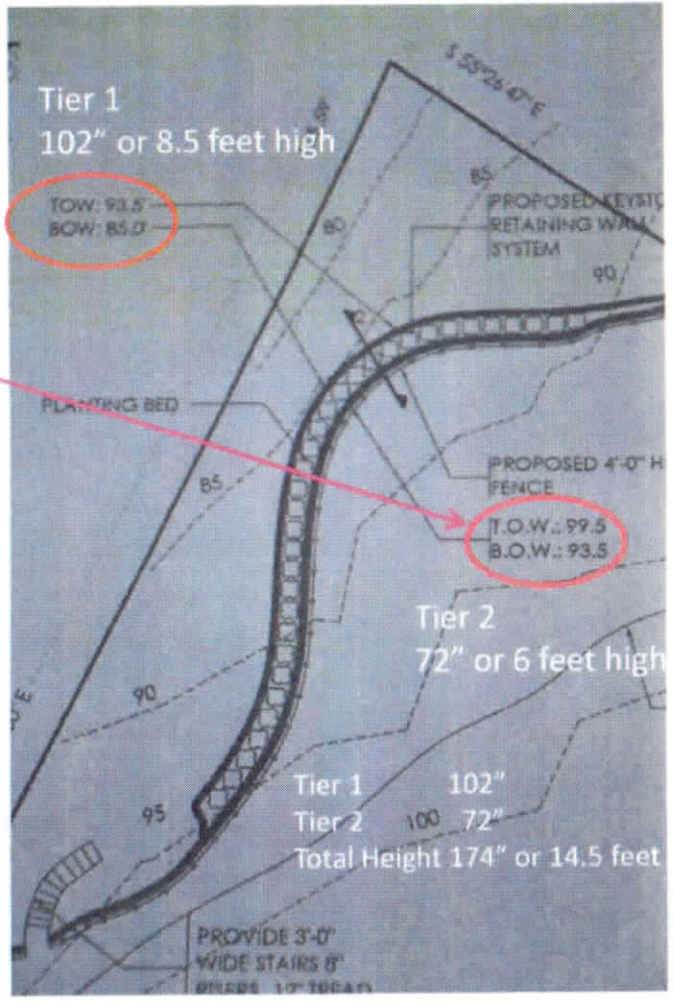
Appendix J

21 Union Avenue – 102" High

No Planning Board review despite disturbing steep slopes, being a new retaining wall, and being in high ground

No variance required despite being > 6 feet in height





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Appendix K

6/24/13 Planning Board Meeting:

John Burkhardt, of 47 Miller Avenue, Tarrytown, NY, stated: "When I got the certified letter a couple of weeks ago I stopped and asked Peter `What's going on? It doesn't look like there's anything out front.' He [Peter] said `No, we're rebuilding the wall.' I said `That's great news.' **I moved into 47 Miller Avenue in 1954. That wall was there then and it hasn't been touched since then. And *half* of it is down on the ground."**

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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)

Appendix L

8/26/13 Planning Board Meeting: (Cont'd)

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)

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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.

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.**

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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.** (Continued on next page)

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

(Continuation from previous page) 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."**

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 is in the picture."**

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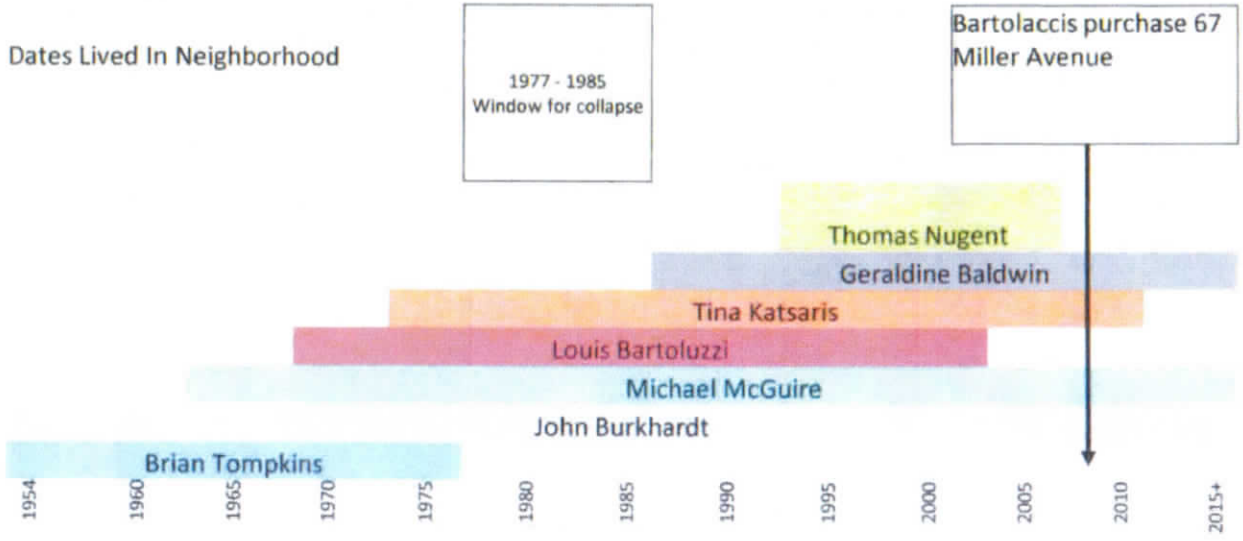

Per the timeline and testimony from neighbors, and in conjunction with Geraldine Baldwin's statement that the retaining wall has never been higher than 5-8 feet since 1986, then all of the retaining wall collapse had to occur in the 8 years between 1977 and 1985, with little to no further decay to the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

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67 Miller Avenue - 1976 and 2017 Side by Side Photo Comparison

Red lines in 1976 photo show approximate location of top of West retaining wall and North hedgerow delineating boundary of backyard.

This same red line superimposed on the 2017 photo shows a significant amount of backyard has been lost both in the North, NW corner, and Western portions of the lawn, that the hedgerow has been moved closer to the house, and that the higher layers of railroad ties on the retaining wall have disappeared, all of which is consistent with neighbor testimony.

Magenta lines are identical dimensions, showing scale between both photos is equivalent

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

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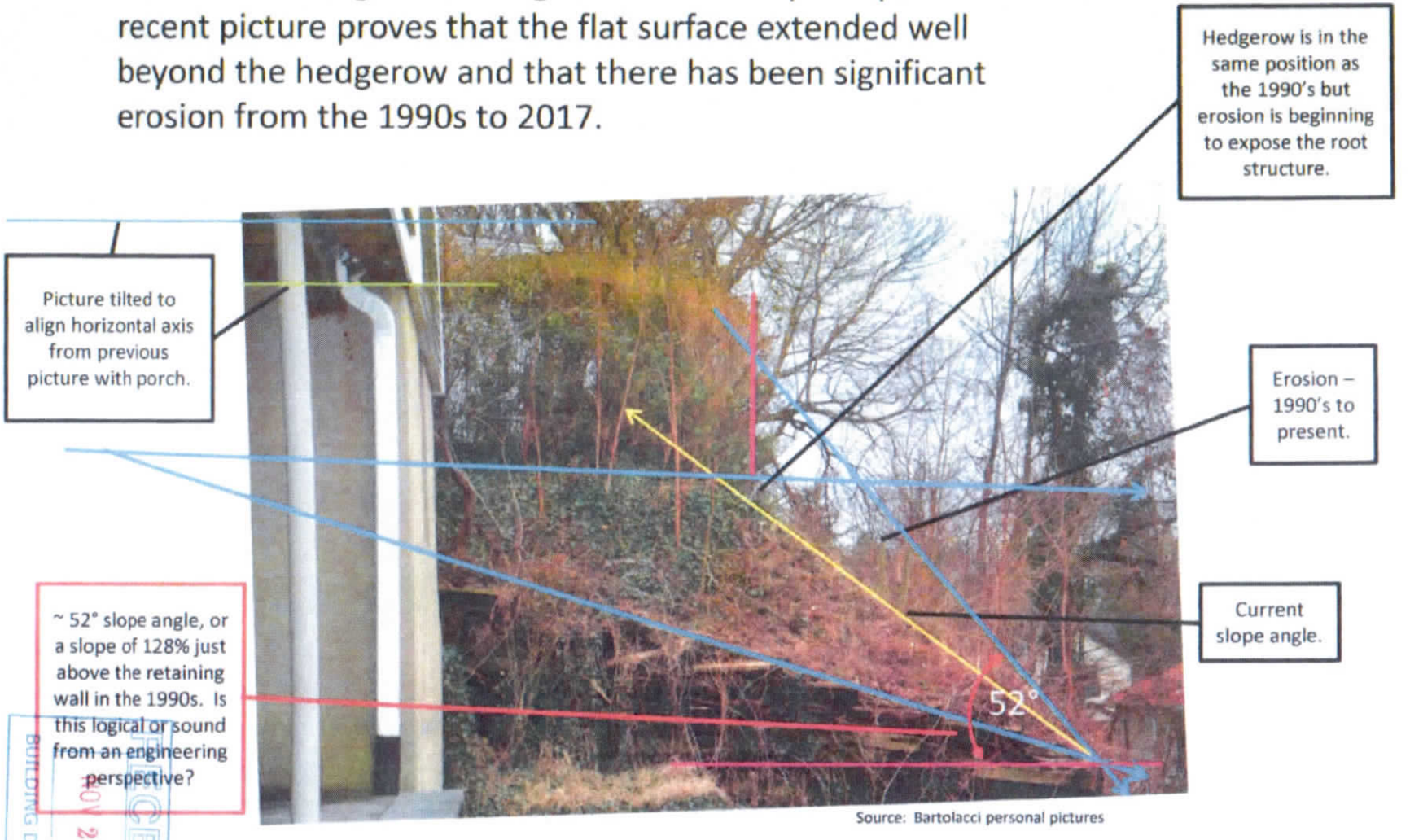
Same blue triangle and hedgerow marker superimposed on recent picture proves that the flat surface extended well beyond the hedgerow and that there has been significant erosion from the 1990s to 2017.



Source: Bartolacci personal pictures

Photo from January 2017

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

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It is not possible that each of the 3 sides of the existing retaining wall were about 7 feet high, as alleged by Geraldine Baldwin and her attorney:

Elevation:

Bottom of Existing Retaining Wall SW Corner	183.0 Feet
Bottom of Existing Retaining Wall NW Corner	176.0 Feet
Elevation Change =	7.0 Feet

The difference in elevation between the SW Corner and NW corner of the existing railroad tie retaining wall is 7 feet.

To suggest, as Geraldine Baldwin and her attorney have, that the three sides of the retaining wall were all about 7 feet high is difficult to understand as this would mean that the top of the existing retaining wall at the SW corner would have to be at ground level if the NW corner was about 7 feet high.

On the other hand, if the SW corner of the existing retaining wall was about 7 feet high, that would mean that the NW Corner would have had to be about 14 feet high to account for the change in elevation from South to North.

Either way you look at it, it is simply not possible that all three sides of the existing railroad tie retaining wall were about 7 feet high as alleged by Geraldine Baldwin and her attorney.

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Appendix M

Appendix N

Calogiras v Town of Southampton Bd. of Appeals

See Pg 10 of 11

[*1] Calogiras v Town of Southampton Bd. of Appeals 2013 NY Slip Op 52287(U) Decided on December 5, 2013 Supreme Court, Suffolk County Rebolini, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on December 5, 2013
Supreme Court, Suffolk County

Peter Calogiras, Louis Calogrias Tape, LLC and Ellen Sea, LLC, Petitioners,

against

Town of Southampton Board of Appeals, Herbert E. Phillips, Chairperson, Adam Grossman, Vice-Chairperson; Ann Nowak, Member, Keith Tuthill, Member; David Reilly, Member; Brian Desesa, Member, Denise O'Brien, Member; Town of Southampton and Jon Cohen a/k/a Jon R. Cohen and Karen Kostroff a/k/a Karen Kostrof, Respondents.

07108/2013

Attorney for Petitioners:

Sinnreich Kosakoff & Messina, LLP

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Jon Cohen a/k/a Jon R. Cohen and Karen Kostroff a/k/a Karen Kostrof

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William B. Rebolini, J.

In this CPLR Article 78 proceeding, petitioners seek a judgment vacating and annulling the resolution adopted by respondent Town of Southampton Zoning Board of Appeals (ZBA) on February 7, 2013, which granted respondents, John Cohen and Karen Kostroff's ("respondents") application for the following variances, pursuant to the Southampton Town Code: 1.§330-11, to allow a front yard setback of 20.5 feet instead of the required 30 feet for a proposed dwelling;2.§330-11, dune crest setback relief of 23 feet where 125 feet are required;3.§330-76(D) and §83 (C), to allow a proposed deck to

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be located within a required side yard;4.§138-17(c)(1), to allow reconstruction of a non-conforming building within an erosion hazard.

This relief was applied for to allow the applicants, respondents John Cohen and Karen Kostroff to demolish the existing dwelling, currently located on top of the dune crest, and to construct a new two story residence 23 feet north of the existing footprint. Public hearings for the application were held on November 1, 2012 and December 6, 2012.

The property in question is identified on the Suffolk County Tax Map as #900-385—20 and 66.10. Lot 20 and is located at 71 Dune Road in the hamlet of Quogue. Testimony was presented that the area, including the two lots that make up the residence, was originally created in 1964 in an [*2]"L" Business Beach zoning district, where 20,000 square feet were required. The zoning was later changed to an R-80 zoning district which rendered the lot nonconforming. Lot 20, where the old residence was built, and where the new residence will be built, has been held in single and separate ownership since the zoning was changed. Members of the respondent ZBA also stated on the record that, to their personal knowledge, this lot and a number of others emanating from a previous owner are held in single and separate ownership. Lot 10 is a "flagpole" lot which allows access to the site. The property is 25,392 square feet and is improved with a single family residence. Under ZBA Decision No. D6990A, dated April 20, 1984, setback relief was granted for a dwelling and a deck with a 20-foot side yard setback on the west. The residence now existing on the lot was built prior to the addition of Chapter 138 of the Town Code, which governs coastal erosion hazard areas. The size of the new house to be constructed was originally planned to be 3,447. However, the respondents thereafter reduced the size of the proposed house to 2,990 square feet, which slightly reduced the requested setbacks. It is noted that a reduced front yard setback of 30 feet was granted by the Coastal Hazard Administrator by a memo dated November 15, 2012.

Testimony at the public hearings was given to the effect that, while new construction seaward of the erosion hazard area is not permitted pursuant to the Town Code, the respondents have no conforming building envelope. Specifically, the Coastal Erosion Hazard line is located almost in the "flagpole," and as such, it is impossible to locate the house entirely north of that line. Thus, relief is required from the zoning code in order to build on the lot. The respondents, therefore, proposed to demolish the existing damaged dwelling and reconstruct a new residence, 23 feet north of its current location. The new construction would exceed FEMA elevation standards and would include the replacement of the old septic system, which is partially exposed and located in the

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dunes, with a conforming system on the driveway. In addition to this, since the existing house is located on top of the dune crest, the proposed new location would allow the respondents to retreat the new proposed residence landward and restore the dune system, a benefit to respondents, the community and the environment.

Respondents' counsel also pointed out that the proposed structures conform to all other provisions of the Town Code, including height and pyramid regulations, and maintain or exceed all existing setbacks. Respondents are also seeking relief to locate the proposed deck within the required side yard pursuant to Town Code 330-76D and 330-83C, while maintaining the required setbacks. Respondents' counsel further asserted that although the petitioners' property is currently vacant, were they to build with conforming setbacks, they would have a 90-foot setback, situating the houses 116 feet apart, mitigating any alleged impact. Evidence was also introduced that the proposed house was consistent with the size of other houses in the neighborhood and, in fact, is much smaller in size than many of them.

Mr. Aram Terchunian testified on behalf of the respondents and submitted "before" and "after" Hurricane Sandy photos, showing that the dune is currently at about 12 feet (at the rear of the dune). He also presented a dune restoration plan which would be shared across the premises and with the two adjoining properties. He said that the planned restoration would possibly even improve the dune system, since the retreat of the house off the dune allows them to build a larger dune in its place. [*3]

Evidence was also placed in the record that the respondent ZBA had granted similar relief in two prior cases. In "Matter of Feshbach", Decision No. D012531, dated April 16, 2009, the applicants were allowed to demolish a residence in the coastal erosion hazard area, retreat landward and construct a new dwelling because there was no nonconforming location on the property where a new dwelling could be built north of the coastal erosion line. The approval was conditioned upon the applicant repairing, restoring, and re-vegetating the dune. In "Matter of Lawin", Decision No. 12837, dated February 3, 2011, here also, the applicant was allowed to demolish a residence in the coastal erosion hazard area, retreat landward and construct a new dwelling because there was no nonconforming location on the property where a new dwelling could be built north of the coastal erosion line. This approval was also conditioned upon the applicant repairing, restoring, and re-vegetating the dune. This property is adjacent to the subject property.

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The ZBA also received a letter from C. Theresa Masin, a Town of Southampton environmental analyst, dated December 5, 2012, noting the following: (i) the primary dune has been destroyed as a result of hurricane Sandy; (ii) the existing structure did sustain some damage from the hurricane; (iii) nearly the entire parcel lies seaward of the Coastal Erosion hazard line, and, as such, the Division recommends the new residence be constructed as far landward of the existing residence as possible; (iv) any grant of relief should be conditioned upon the submission of a dune restoration plan for approval by the Environment Division prior to the issuance of a building permit; and (v) a native re-vegetation plan for all areas disturbed by the construction must be included in the dune restoration plan.

Petitioners have an ownership interest in two (vacant) properties adjacent to the subject property. Counsel for one of the principals appeared in opposition. Petitioners' counsel asserted that the proposed house will block his clients' view; is nearly twice the size of the existing house; and, is not permitted, as new construction in the Coastal Erosion Hazard Area. It was further asserted that the applicants cannot meet the five part test for zoning relief, and that they cannot benefit from the single and separate status, as the premises have not been held in single and separate ownership in a residential district. Peter Calogrias, one of the petitioners, asserted, among other things, that the proposed "retreat" is of no consequence as there is currently no significant dune.

By decision dated February 7, 2013, the ZBA granted the requested relief from the zoning code and section 138-17C(1) of the Town Code (nonconforming building in the Coastal Erosion Hazard Area) to allow the demolition of the existing single family dwelling and the retreat and construction of a new single family dwelling south of the coastal erosion line. This approval was conditioned upon the applicants submitting a dune restoration plan for approval prior to the issuance of a building permit, which will include repairing, restoring, and re-vegetating the dune in all disturbed areas, and the addition of dune sand and beach grasses to increase the overall stability of the dune system. It was also conditioned on respondents merging lots 20 and 66.1.

The court's role in reviewing an administrative decision is not to decide whether the agency's determination was correct or to substitute its judgment for that of the agency, but to ascertain whether there was a rational basis for the determination (see Matter of Sasso v Osgood, 86 NY2d [*4]374, 633 NYS2d 239 [1995]; Matter of Chemical Specialties Mfrs. Assn. v Jorling, 85 NY2d 382, 626 NYS2d 1 [1995]; Matter of Warder v Board of Regents of Univ. of State of NY, 53 NY2d 186, 440 NYS2d 875 [1981]). It is

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fundamental that when reviewing a determination that an administrative agency alone is authorized to make, the court must judge the propriety of such determination on the grounds invoked by the agency; if the reasons relied on by the agency do not support the determination, the administrative order must be overturned (Matter of Scherbyn v Wayne-Finger Lakes Bd. of Coop. Educ. Servs., 77 NY2d 753, 758, 570 NYS2d 474 [1991]; see Matter of National Fuel Gas Distrib. Corp. v Public Serv. Commn. of the State of NY, 16 NY3d 360, 922 NYS2d 224 [2011]; Matter of Filipowski v Zoning Bd. of Appeals of Vil. of Greenwood Lake, 101 AD3d 1001, 956 NYS2d 183 [2d Dept 2012]; Matter of Alfano v Zoning Bd. of Appeals of Vil. of Farmingdale, 74 AD3d 961, 902 NYS2d 662 [2d Dept 2010]). Further, the court "may not weigh the evidence or reject the choice made by the zoning board where the evidence is conflicting and room for choice exists'" (Matter of Calvi v Zoning Bd. of Appeals of City of Yonkers, 238 AD2d 417, 418, 656 NYS2d 313 [2d Dept 1997]).

In reviewing an administrative determination, a court must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious (see Matter of Peckham v Calogero, 12 NY3d 424, 863 NYS2d 751[2009] Matter of Deerpark Farms v Agricultural and Farmland Prot. Bd., 70 AD3d 1037, 896 NYS2d 126 [2d Dept 2010]). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts (see Matter of Peckham v Calogero, supra; Matter of Deerpark Farms v Agricultural and Farmland Prot. Bd., supra; Matter of Manko v New York State Div of Housing & Community Renewal, 88 AD3d 719, 930 NYS2d 72 [2d Dept 2011]).

A local zoning board has broad discretion in considering applications for area variances and interpretations of local zoning codes (see Matter of Pecorano v Board of Appeals of Town of Hempstead, 2 NY3d 608, 781 NYS2d 234 [2004]; Matter of Cowan v Kern, 41 NY2d 591, 394 NYS2d 579 [1977]; Matter of Marino v Town of Smithtown, 61 AD3d 761, 877 NYS2d 183 [2d Dept 2009]), and its interpretation of the local zoning ordinances is entitled to great deference (see Matter of Toys "R" Us v Silva, 89 NY2d 411, 418-419, 654 NYS2d 100 [1996]; Matter of Gjerlow v Graap, 43 AD3d 1165, 842 NYS2d 580 [2d Dept 2007]; Matter of Brancato v Zoning Bd. of Appeals of City of Yonkers, NY, 30 AD3d 515, 817 NYS2d 361 [2d Dept 2006]; Matter of Ferraris v Zoning Bd. of Appeals of Vil. of Southampton, 7 AD3d 710, 776 NYS2d 820 [2d Dept 2004]). A court, however, may set aside a zoning board's determination if the record reveals that the board acted illegally or arbitrarily, or abused its discretion, or succumbed to generalized community pressure (see Matter of Pecorano v Board of Appeals of Town of Hempstead, 2 NY3d 608, 781

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NYS2d 234; Matter of Cacsire v City of White Plains Zoning Bd. of Appeals, 87 AD3d 1135, 930 NYS2d 54 [2d Dept], lv denied 18 NY3d 802, 938 NYS2d 859 [2011]). "In applying the arbitrary and capricious standard, a court inquires whether the determination under review had a rational basis . . . [A] determination will not be deemed rational if it rests entirely on subjective considerations, such as general community opposition, and lacks an objective factual basis" (Matter of Kabro Assoc., LLC v Town of Islip Zoning Bd. of Appeals, 95 AD3d 1118, 1119, 944 NYS2d 277 [2d Dept 2012]; see Matter of Ifrah v Utschig, 98 NY2d 304, 746 NYS2d 667 [2002]; Matter of [*5]Cacsire v City of White Plains Zoning Bd. of Appeals, 87 AD3d 1135, 930 NYS2d 54; Matter of Caspian Realty, Inc. v Zoning Bd. of Appeals of Town of Greenburgh, 68 AD3d 62, 886 NYS2d 442 [2d Dept 2009], lv denied 13 NY3d 716, 895 NYS2d 316 [2010]).

Pursuant to Town Law § 267-b (3) (b), a zoning board considering a request for an area variance must engage in a balancing test, weighing the benefit to the applicant if the variance is granted against the detriment to the health, safety and welfare of the surrounding neighborhood or community (see Matter of Pinnetti v Zoning Bd. of Appeals of Vil. of Mt. Kisco, 101 AD3d 1124, 956 NYS2d 565 [2d Dept 2012]; Matter of Jonas v Stackler, 95 AD3d 1325, 945 NYS2d 405 [2d Dept 2012], lv denied 20 NY3d 852, 957 NYS2d 689[2012]; see also Matter of Pecorano v Board of Appeals of Town of Hempstead, 2 NY3d 608, 781 NYS2d 234; Matter of Ifrach v Utschig, 98 NY2d 304, 746 NYS2d 667; Matter of Sasso v Osgood, 86 NY2d 374, 633 NYS2d 259). A zoning board also must consider whether the granting of an area variance will produce an undesirable change in the character of the neighborhood or a detriment to neighboring properties; whether the benefit sought by the applicant can be achieved by some other feasible method, rather than a variance; whether the requested variance is substantial; whether granting the variance will have an adverse impact on the physical or environmental conditions in the neighborhood; and whether the alleged difficulty is self-created (Town Law § 267-b(3)(b); see Matter of Pinnetti v Zoning Bd. of Appeals of Vil. of Mt. Kisco, supra; Matter of Alfano v Zoning Bd. of Appeals of Vil. of Farmingdale, 74 AD3d 961, 902 NYS2d 662; see also Matter of Danieri v Zoning Bd. of Appeals of Town of Southold, 98 AD3d 508, 949 NYS2d 180 [2d Dept], lv denied 20 NY3d 852, 2012 NY Slip Op 91377 [2012]; Matter of Schumacher v Town of E. Hampton, NY Zoning Bd. of Appeals, 46 AD3d 691, 849 NYS2d 72 [2d Dept 2007]). However, a zoning board is not required to justify its determinations with evidence as to each of the five statutory factors, as long as its determinations "balance the relevant considerations in a way that is rational" (Matter of Caspian Realty, Inc. v Zoning Bd. of Appeals of Town of

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Greenburgh, 68 AD3d 62, 73, 886 NYS2d 442; see Matter of Merlotto v Town of Patterson Zoning Bd. of Appeals, 43 AD3d 926, 841 NYS2d 650 [2d Dept 2007]).

Pursuant to §138- 26 of the Southampton Town Code the Zoning Board of Appeals is designated as the Coastal Erosion Hazard Board of Review and has the authority to: "A. Hear, approve, approve with modification or deny requests for variances or other forms of relief from the requirements of this chapter."

§138- 22 of the Southampton Town Code states: The Town recognizes that strict application of the standards and restrictions of this chapter may cause difficulty or hardship. When this can be shown, such standards and restrictions may be varied or modified provided that the following criteria are met, which criteria the Town Board has determined, in accordance with Town Law § 267-b (3), properly balance the burdens on and benefits to the property owner and the health, safety and welfare of the general community. The applicant has the burden of demonstrating the following:[*6]

A.All development other than erosion protection structures and hazard-area flood proofing:

(1)No new building or other structure may be constructed in an erosion hazard area.

(2)No reasonable, prudent, alternative site is available.

(3)All responsible means and measures to mitigate adverse impacts on natural systems and their functions and values have been incorporated into the activity's design at the property owner's expense

(4)The development will be reasonably safe from flood and erosion damage.

(5)The variance requested is the minimum necessary to overcome the practical difficulty or hardship which was the basis for the requested variance.

(6)Where public funds are utilized, the public benefits must clearly outweigh the long-term adverse effects.

(7)No natural protective feature will be polluted, functionally impaired or lost, or placed in peril thereof, and any degradation or diminution of natural protective features must be minimized to the fullest extent feasible.

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(8)The proposed work and location will have a less adverse environmental impact than any available practicable alternative.

(9)For all development other than reconstruction of a lawfully preexisting principal residence structure that has been damaged by accidental cause such as fire, flooding or erosion, alternative designs entailing smaller buildings or structures or diminished or reconfigured areas of use are determined not to be effective in preventing loss of or potential damage to designated natural features, or the only such designs are found to be infeasible or unlawful.

(10)A primary purpose of this chapter is to require over time that structures in the erosion hazard area (e.g., in the primary and secondary dunes) or in nonconforming locations in the adjacent area be relocated to conforming locations in the adjacent area. Therefore, the cumulative maximum addition to ground coverage of all additions to a lawfully preexisting nonconforming residence:

(a)In the erosion hazard area may not exceed the limit allowed pursuant to § 138-12B(1)(e) and § 138-12B(2)(c) of up to but less than 25%; and

(b)In the adjacent area may not exceed the limit allowed pursuant to § 138-14D, which limit is up to 25% or, in certain circumstances, up to 50%.

In its decision, the ZBA first reviewed the variance criteria set forth in §136- 26. The ZBA found, based on the evidence before it, that there was no buildable area north of the CEHA line, even with the 23-foot retreat from the existing house location, which resulted in a difficulty or hardship to the respondents; that no reasonable alternative existed; all means and measures to mitigate adverse impacts on natural systems have been incorporated into the design; the proposed work and location will have less environmental impact than any available alternative; and that the vast majority of houses in the area are of equal or larger size. Finally, the ZBA found that "the opportunity to retreat structures farther landward and away from the dune provides a significant environmental benefit, as [*7]does the replacement of the existing septic system landward of the dune." It is again noted that there was also ZBA precedent for variances to retreat and build in the CEHA in the "Matter of Feshbach" and "Matter of Lawin" decisions.

The ZBA then engaged in the area variance balancing test set forth in Town Law 267-b(3)(b). The ZBA found the variances will not cause an undesirable effect on the

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character of the neighborhood nor create a detriment to the surrounding property owners, finding among other things, that retreating the structures landward, with re-vegetation and dune restoration, will benefit the neighborhood and also result in FEMA compliant structures. It further found that the benefit to the applicant cannot be achieved by some method feasible for the respondents to pursue, other than area variances; that the variances are not substantial. The relief sought is the minimum necessary to achieve their stated goal, while also retreating and complying with FEMA and County regulations. Finally, it found that the hardship is not self-created. It is noted that the lot existed prior to the imposition of the coastal erosion hazard line.

In challenging the decision the petitioners first allege that the ZBA had no authority to grant the requested variances. This is plainly contradicted by the language of sections 138-26 and 138-22 of the Southampton Town Code. As already noted, pursuant to §138-26 of the Southampton Town Code the Zoning Board of Appeals, as the Coastal Erosion Hazard Board of Review, has the authority to: "Hear, approve, approve with modification or deny requests for variances or other forms of relief from the requirements of this chapter." Section 138- 26, as already noted' gives the ZBA broad variance powers if the restrictions of that chapter cause difficulty or hardship. It is further noted that Southampton Town Code § 138-17C (1) states, in relevant part: "if a building in or structure located wholly or partly in an erosion hazard area requires reconstruction, it must be relocated, redesigned and/or reengineered to meet all setbacks, structural and other requirements of this chapter." Thus, given the existing constraints facing the respondents, the 23 foot retreat landward for the proposed dwelling, which will now be FEMA compliant as to height, the relocation of the septic system to comply with Suffolk County Health Department regulations, and the restoration of the dune, both grants relief to the respondents, while maximizing the possible benefit to the neighboring properties. The decision, as noted above, is consistent with its prior precedent in the Feshbach and Lawin decisions.

With regard to the requested area variances, the Court of Appeals has noted that a zoning board has the authority to grant an area variance from any requirement in the zoning regulations (see Real Holdings Corp v Lehigh, 2NY3d 297, 788 NYS2d 438 [2004]). Thus, even if the subject lot was not held in single and separate ownership, which the petitioners have failed to establish, the ZBA would have the authority to grant the requested area variances.

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The petitioners also claim that the ZBA's action herein will reduce surrounding property values, violate FEMA and Suffolk County regulations, but have submitted no evidence to support these claims. Petitioners reference to this Court's prior decision in the matter of Petrello v Board of Trustees of the Village of Sagaponack (Index No. 11-26159) has no relevance to this matter, since it deals with areas "adjacent to" the Coastal Erosion Hazard Area, which are not at issue herein. [*8]

The decision of respondent ZBA herein is both rational and based on substantial evidence in the record, and, as such, should not be disturbed.

In light of the foregoing, the relief sought in the petition is denied and this proceeding is dismissed.

Settle judgment.

Dated:December 5, 2013

HON. WILLIAM B. REBOLINI, J.S.C.

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Matter of Schaller v Town of New Paltz Zoning Bd. of Appeals
2013 NY Slip Op 05027 [108 AD3d 821]
July 3, 2013
Appellate Division, Third Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
As corrected through Wednesday, August 21, 2013

In the Matter of Robert W. Schaller et al., Appellants, v Town of New Paltz Zoning Board of Appeals et al., Respondents.

—[*1] Teahan & Constantino, LLP, Poughkeepsie (Richard I. Cantor of counsel), for appellants.

DiStasi, Moriello & Murphy, Highland (Joseph M. Moriello of counsel), for Town of New Paltz Zoning Board of Appeals, respondent.

Jacobowitz & Gubits, LLP, Walden (George W. Lithco of counsel), for Town of New Paltz Planning Board, respondent.

Graff Law LLC, Kingston (Wayne L. Graff of counsel), for New Paltz Hospitality LLC and another, respondents.

McCarthy, J. Appeal from a judgment of the Supreme Court (Cahill, J.), entered April 3, 2012 in Ulster County, which dismissed petitioner's amended application, in a proceeding pursuant to CPLR article 78, to review, among other things, a determination of respondent Town of New Paltz Planning Board granting conditional site plan approval to respondent New Paltz Hospitality LLC.

In 2008, respondent New Paltz Hospitality LLC (hereinafter the applicant) applied to respondent Town of New Paltz Planning Board and respondent Town of New Paltz Zoning Board of Appeals (hereinafter the ZBA) for land use and zoning variance approvals required to construct a hotel on a parcel of property owned by respondent Ulster Rock, Inc., where an abandoned warehouse was located. The Planning Board declared itself lead agency for environmental review under the State Environmental Quality Review Act (*see* ECL art 8[*2]

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[hereinafter SEQRA]) and, after determining that there would be no adverse environmental impact, issued a conditional negative declaration. Thereafter, the ZBA conditionally approved the applicant's request for a six-foot height variance to provide for an aesthetically pleasing pitched roof, which would also permit the incorporation of environmentally-friendly energy conservation features.

Petitioners, who are the owners and operators of a motel on land adjacent to the proposed project site, commenced this CPLR article 78 proceeding challenging, among other things, the Planning Board's issuance of the negative declaration and the ZBA's grant of the height variance. The Planning Board subsequently granted conditional site plan approval, [FN*] and petitioners amended their petition to additionally challenge that approval. Supreme Court dismissed the amended petition and this appeal ensued.

Initially, the Planning Board satisfied its obligations under SEQRA. " 'Judicial review of an agency determination under SEQRA is limited to whether the [lead] agency identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination' " (*Matter of Shop-Rite Supermarkets, Inc. v Planning Bd. of the Town of Wawarsing*, 82 AD3d 1384, 1385 [2011], *lv denied* 17 NY3d 705 [2011], quoting *Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219, 231-232 [2007] [citations omitted]). "While judicial review must be meaningful, the courts may not substitute their judgment for that of the agency for it is not their role to 'weigh the desirability of any action or [to] choose among alternatives' " (*Akpan v Koch*, 75 NY2d 561, 570 [1990], quoting *Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 416 [1986]). The lead agency's determination will only be annulled if it is arbitrary, capricious or unsupported by the evidence (*see* CPLR 7803 [3]; *Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d at 232; *Matter of Troy Sand & Gravel Co. Inc. v Town of Nassau*, 82 AD3d 1377, 1378 [2011]).

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Here, a review of the record establishes that the Planning Board conducted a two-year coordinated SEQRA review of the application which included, among other things, consultation with traffic engineers; review of the expanded long form environmental assessment form, visual assessment form, traffic studies and related submissions; compliance with the comprehensive master plan, an architectural study, a water system and sewage report, and drainage and storm water impact studies; consideration of input from various interested agencies, as well as public comments and concerns received from public hearings and

Planning Board meetings, and submissions by interested parties. The Planning Board conditioned the negative declaration on the applicant's compliance with various mitigating measures designed to minimize potential environmental impacts, including constructing turn lanes, upgrading traffic signals, adding traffic signage, retention of certain trees for aesthetic purposes and construction of a previously approved water line loop/extension for water supply and sewer purposes. The Planning Board specifically noted the various environmental impacts it considered in reaching its determination and it took a hard look before concluding that the project would not have a significant impact on [*3]the environment. The Planning Board also provided detailed reasoning and elaboration for its determination in the negative declaration with regard to the lack of significant impacts on traffic and transportation, aesthetics resources, water and sewage resources, endangered species, historic resources, community character and services, and energy resources. Under these circumstances, the Planning Board complied with the procedural and substantive requirements of SEQRA (*see* 6 NYCRR 617.7) and, accordingly, its determination is not arbitrary or capricious (*see Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d at 232; *Matter of Basha Kill Area Assn. v Planning Bd. of Town of Mamakating*, 46 AD3d 1309, 1312 [2007], *lv denied* 10 NY3d 712 [2008]).

The ZBA's determination to grant the variance is also valid. In determining whether to grant a variance, the local zoning board must " 'engage in a balancing test, weighing the proposed benefit to [the applicant] against the possible detriment to the health, safety and welfare of the community, as well as consider the five statutory factors enumerated in Town Law § 267-b (3)' " (*Matter of Mary T. Probst Family Trust v Zoning Bd. of Appeals of Town of Horicon*, 79 AD3d 1427, 1428 [2010], *lv denied* 16 NY3d 708 [2011], quoting *Matter of Friends of the Shawangunks, Inc. v Zoning Bd. of Appeals of Town of Gardiner*, 56 AD3d 883, 886 [2008]). "Local zoning boards have broad discretion in considering applications for variances, and judicial review is limited to determinating whether the action taken by the board was illegal, arbitrary or an abuse of discretion" (*Matter of Ifrah v Utschig*, 98 NY2d 304, 308 [2002] [citation omitted]; *accord Matter of Russo v City of Albany Zoning Bd.*, 78 AD3d 1277, 1279 [2010]).

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Here, the ZBA addressed the requisite statutory factors in approving the proposed six-foot height variance after a review of various qualified recommendations, studies and public input. In balancing the benefits to the applicant against the possible detriment to the community, the ZBA specifically referred to documentation in support of its conclusions that,

among other things, the variance was not substantial when compared to the nearby buildings, would improve the physical and environmental condition and character of the neighborhood, and was the minimum variance required to promote energy efficiency for both the applicant and the community. As substantial evidence in the record supports the rationale for the ZBA's determination granting the variance, it will not be disturbed (*see Matter of Sarat v Town of Preble Zoning Bd. of Appeals*, 93 AD3d 921, 922 [2012]; *Matter of Defreestville Area Neighborhood Assn., Inc. v Planning Bd. of Town of N. Greenbush*, 16 AD3d 715, 724-725 [2005]).

With regard to the conditional site plan approval, petitioners' assertion that the proposed project constitutes an out-of-district user that is ineligible for receipt of sanitary sewer service from the Village of New Paltz is raised for the first time on appeal and, therefore, is unpreserved for our review (*see Matter of Henry v Wetzler*, 82 NY2d 859, 862 [1993], *cert denied* 511 US 1126 [1994]; *Matter of Mary T. Probst Family Trust v Zoning Bd. of Appeals of Town of Horicon*, 79 AD3d at 1427-1428).

Peters, P.J., Lahtinen and Garry, JJ., concur. Ordered that the judgment is affirmed, without costs.

Footnotes

Footnote *: The Planning Board granted site plan approval for the building design that included a six-foot height variance, as well as an alternative design eliminating the six-foot height variance in order for the applicant to proceed in the event that the ZBA approval was deemed invalid.

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 Appendix P

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LAWYER LOGIN

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MATTER OF BAKER v. BROWNLIE

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248 A.D.2d 527 (1998)

670 N.Y.S.2d 216

In the Matter of John C. Baker et al., Appellants, v. Heather Brownlie et al., Respondents

Appellate Division of the Supreme Court of the State of New York, Second Department.

March 16, 1998

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Ordered that the judgment is reversed, on the law, without costs or disbursements, the petition is granted, the determination dated March 16, 1996, is annulled, and the respondents are directed to issue to the petitioners the requested area variance and building permit, subject to any reasonable conditions deemed necessary.

[248 A.D.2d 528]

The petitioners are the owners of a single family home situated on a waterfront parcel of land in the Village of Dering Harbor on Shelter Island. The petitioners' home is bordered on the south by Dering Lane, and on the west by Shore Road. Beyond Shore Road is Dering Harbor. The petitioners sought a building permit, or an area variance if deemed necessary, to construct a concrete patio along the western portion of their home. This patio was to be equipped with removable metal posts which would support a canvas awning. The southern edge of the patio was to be aligned with the southern side of the house, flush with an enclosed sunroom that had formerly been an open porch overlooking Dering Lane.

After protracted proceedings and prior litigation (*see, Matter of Baker v Edwards*, 221 A.D.2d 436), the Zoning Board of Appeals of the Incorporated Village of Dering Harbor (hereinafter the Board) denied the petitioners' application finding that the patio was a "building", as defined by the village zoning code (*see*, Village of Dering Harbor Code § 1-106 [2] [d]), and that an area variance would thus be necessary because the patio would be set back only 12.4 feet from the southern property line on Dering Lane. The Board determined that the patio was subject to a 40-foot front-yard-setback requirement and determined that the petitioners were entitled to only a 4-foot variance as measured from the deed line on Dering Lane. The petitioners challenge this determination which effectively restricts their ability to construct the subject patio. The Supreme Court upheld this determination as having a rational basis. We now reverse and grant the petition.

It is now beyond cavil that the pertinent criteria for determining an application for an area variance are those set forth by Town Law § 267-b (3) (b) (*see, Matter of Sasso v Osgood*, 86 N.Y.2d 374). Pursuant to that statute, a zoning board of appeals must consider whether the granting of the variance would result in an undesirable change in the character of the neighborhood or a detriment to neighboring properties; whether the benefit desired can be achieved without the need for a variance; whether the requested variance is substantial; whether it will have an adverse impact upon the physical or environmental conditions in the neighborhood; and whether the alleged difficulty is self-created.

In reviewing a determination of a zoning board of appeals to deny an application for an area variance, the scope of judicial review is limited to whether the action taken is illegal,

[248 A.D.2d 529]

arbitrary, or an abuse of discretion (*see, Matter of Tarantino v Zoning Bd. of Appeals*, 228 A.D.2d 511; *Matter of Smith v Board of Appeals*, 202 A.D.2d 674). The court may not substitute its judgment for that of the Board unless its determination is arbitrary or contrary to law (*see, Matter of Brucia v Planning Bd.*, 157 A.D.2d 657). If the Board's determination is supported by substantial evidence and has a rational basis, it will not be disturbed (*see, Matter of Fuhst v Foley*, 45 N.Y.2d 441; *Matter of Tarantino v Zoning Bd. of Appeals, supra*; *Matter of Watral v Scheyer*, 223 A.D.2d 711; *Matter of Romano v Jenks*, 220 A.D.2d 432).

In this case, we find that the denial of the petitioners' application for an area variance is arbitrary, capricious, and not supported by substantial evidence and thus we annul the determination (*see, Matter of Hampshire Mgt. Co. v Nadel*, 241 A.D.2d 496; *Matter of Frank v Schayer*, 227 A.D.2d 558).

In denying the petitioners' application, the Board made negative findings on each of the five statutory factors. Its determinations, however, are not rationally based upon evidence in the record. For example, the Board found that because houses in the area are close together, the granting of the variance would result in an undesirable change in the neighborhood. Contrary to the Board's determination, there is no evidence in the record to support such a finding. Moreover, even assuming that a concrete patio with removable supports and a cloth awning constitutes a building, the proposed patio will face the water and will have no genuinely detrimental impact upon neighboring parcels, several others of which have received variances for other recreational improvements. Furthermore, since the petitioners' desired benefit is to have a patio facing the water, the Board's finding that it could be located elsewhere on the petitioners' property is clearly erroneous.

The variance requested would permit the southern side of the patio to begin 12.4 feet from the Dering Lane property line. The Board determined, in effect, that both the Dering Lane and Shore Road sides of the petitioners' corner lot were front yards, and thus it determined that a front yard setback of 40 feet was necessary. Assuming that such a setback requirement applies, the petitioners have sought a substantial variance. However, it appears that the proposed patio will be flush with the current southerly edge of the house as it already exists, i.e., the patio will extend no closer to Dering Lane than the enclosed sunroom which is itself 12.4 feet from the property line. The proposed patio, which presumably will be covered with an awning only in warm weather, will not have any appreciable

[248 A.D.2d 530]

impact on physical or environmental conditions in the area, notwithstanding that a substantial variance may be technically necessary.

Finally, the mere fact that the petitioners enclosed a formerly open porch facing south on Dering Lane does not render their plight a self-created hardship. This final factor, which is not determinative in any event, is inapplicable herein. The petitioners desire a patio overlooking the harbor on the west side of their property. The enclosure of the former south-facing porch overlooking Dering Lane is of no moment.

In short, since the Board's determination is not supported by substantial evidence, but appears to be wholly arbitrary and capricious, we vacate the determination and direct the Board to issue the requested variance and building permit, subject to any reasonable conditions it may impose, in a proper exercise of its discretion.

We have reviewed the petitioners' remaining contentions and find them to be without merit.

Comment

Your Name

Your Email

Comments

1000 Characters Remaining

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Appendix Q

A. Applicant Does Not Meet Manufacturer's Minimum Safety Requirements

There has been no study conducted to demonstrate whether any remainder of the steep slope or the subsurface will be able to withstand the additional fill and the Mesa® block walls. The Manufacturer's literature, however, clearly states that: "A qualified professional **geotechnical engineer** should evaluate the site, surface and subsurface conditions, other environmental factors and the intended use and location of the wall **in advance of final wall design and installation".** (Mesa® Retaining Wall Systems: System Overview, p. 16 (emphasis added). See attached Appendix D pp. 15-16, available at www.tensarcorp.com).

BARTOLACCI RESPONSE:

Engineering calculations have been performed by ERS (earthretention.com) to ensure the design is sound. Stability, slide, and load test calculations were performed. Any recommendations were incorporated into the retaining wall design. In addition, soil analysis is being performed to ensure that the geotechnical properties of site are adequate and appropriate for the construction.

Mesa® blocks, connectors and geogrids are shown in Applicant's Plan for the 2 9.5-foot high walls. The literature by Tensar, manufacturer of Mesa® block walls, however, indicates that more components are required. It clearly states: **"drainage composite, piping and geotextile materials may also be required".** *(Id.* p.16). Further and most significantly, the Tensar literature warns that: "Surface or subsurface water should never be allowed *tb* saturate the backfilled reinforcement zone. Adequate drainage measures ... are the responsibility of the owner or owner representatives (not Tensar)" *(Id.).*

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BARTOLACCI RESPONSE:

Ms. Baldwin appears not to have understood the literature she cites. Tensar states that certain additional components "*may be required*", not that they are required in all instances. The design does, in fact, incorporate geotextile materials (geogrid) to help with soil retention, because of the physical requirements of the design. However, professional engineers have determined that drainage composite and piping are unnecessary in this case.

At page 6, The Tensar brochure entitled Mesa® Retaining Wall Systems: Installation and Special Considerations Manual states that: **"The contractor is also responsible for... surface water drainage and control".** See attached Appendix D for pages 6-7, available at www.tensarcorp.com). The brochure further warns:" **Surface water drainage must be addressed during and after construction".** (Emphasis added) See attached Appendix D

Attention is further directed to Appendix E attached, a copy of an illustration of a concrete block wall system with geogrids manufactured by Libertystone™ Hardscape Systems. As demonstrated by this manufacturer, block retaining wall systems with geogrids **require water management**—see the illustration which states: **"perforated drain pipe surrounded by clear crushed drain rock wrapped with filter fabric"** (Corner Stone 100™ & Mira Stone™ Installation Guide from Libertystone™ Hardscape Systems, p. 24 emphasis added).

It is extremely important to note that Applicant's Plan does not address the issue of drainage or surface water. In fact, Applicant has repeatedly alleged that since the steep slope is being flattened that there is no need for control of drainage or run off from the property. Applicant's Engineer has repeatedly claimed that there will be no impact of water to the downslope properties because the flatter slope will permit water to percolate behind the wall. This is completely **contradicted** by the instructions of the Mesa® Block Manufacturer. Due to compaction of the required fill, no percolation of surface water can occur. Water management and containment on Applicant's property is critically needed. The Manufacturer's literature notes specifically that the NCMA Segmental Retaining Wall Drainage Manual, published in 2002, "should be consulted prior to final design and construction ". See attached Appendix D, Mesa® Retaining Wall Systems: System Overview, p. 16, emphasis added).

BARTOLACCI RESPONSE:

Ms. Baldwin appears not to have understood or accepted the determination by two Village Engineers (Mr. McGarvey and Mr. Pannella) that surface water drainage and control will be improved with the installation of the two tiered retaining wall system proposed, versus the current situation where water runs freely down a slope from 67 Miller's property into her back yard. The storm water runoff and drainage situation has been discussed and addressed multiple times in public hearings, and each time the conclusion by professional engineers has been the same – the proposed construction will be an improvement for runoff and drainage.

Further, Ms. Baldwin cites literature from an entirely different concrete block manufacturer (Libertystone) to support her allegation that drainage and runoff mitigation measures have not been incorporated into the proposed design. If we were using Liberty Stone, then perhaps she might have a legitimate concern. As we are not planning to use Libertystone, any reference to this manufacturer's literature is entirely irrelevant.

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Additionally, Applicant's Plan proposing two-tier walls **fails to meet the minimum requirement for space between the two walls required by the Manufacturer for stability.** With respect to tiered or terraced walls, the Manufacturer states: "For each wall to be considered an independent structure, typical design guidelines require enough 'green space' between the walls equal to or greater than two times the height of the lower wall". Thus, **for a lower wall of 9.5 feet, a space of at least 19 feet would be needed between it and the upper** wall to meet the minimum requirement of the Mesa® Block Manufacturer. There is not enough space between the proposed walls. On the current Plan there are only about 6 feet between the walls. According to the Manufacturer's requirements, there needs to be at least 19 feet. Attention is directed to Appendix F attached to this Statement. Appendix F is a copy of page 1 of Applicant's current plan, reduced 50% for convenience, with a red dotted line introduced part way up the steep slope. The red dotted line, to the best approximation possible, indicates the location on the slope where the upper wall would need to be to satisfy the Manufacturer's minimum requirement. It is obvious that constructing the location would not allow Applicant to enlarge his yard.

BARTOLACCI RESPONSE:

Ms. Baldwin appears not to have understood the manufacturer's literature she cites which is understandable given that she is not a professional engineer. The spacing requirement between the tiers of a Mesa Block retaining wall states explicitly that this is in order for the two retaining walls to be considered *independent structures*. At no point has anyone suggested that the two tiers of the retaining wall are independent structures, and the plans have not been designed in that way. Indeed, both tiers of the proposed design are intended to function together as one soil retention structure. Hence, while we appreciate Ms. Baldwin highlighting a potential design concern, we can assure her she need not worry about the distance between the tiers of our design. In fact, the cover of the Mesa Block brochure provided for the record shows a two tiered retaining wall structure with each tier being approximately 7' high. Using Ms. Baldwin's logic, this would mean that the spacing between the first and second tier would have to be a minimum of 14 feet. As is evident from the photo, there is significantly less space between the tiers of this retaining wall structure. Why would Mesa Block highlight this design in their advertising materials if it was not structurally sound?

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Applicant's Plan provides absolutely no provision for protection or security of the downslope properties should the Mesa® Block walls fail. Based on the evidence presented below and substantiated by attached Appendices G-K, **failure of a Mesa® Block wall is a very real possibility.**

BARTOLACCI RESPONSE:

It is interesting to note that Ms. Baldwin appears to be more concerned about the failure of a professionally designed and installed retaining wall built with proven technology that has and will continue to receive the utmost scrutiny from three separate professional engineers (Fusion, ERS, Village Engineer) than she is about the imminent failure of the dilapidated and collapsed railroad tie retaining wall currently sitting just uphill from her house and yard.

Although there are no Mesa® Block walls in the Village, I was informed recently about two Mesa® block walls built in other fairly close towns. One was built at the Peekskill High School and the other at the Library in Ossining. Both Mesa® Block walls have failed.

BARTOLACCI RESPONSE:

Ms. Baldwin appears to be misinformed. At least one building permit to construct a Mesa Block retaining wall has been issued by the Village of Tarrytown. This was based on a very limited review of building permits issued so there may, in fact, be more.

The experience at the Library is informative. The Mesa® block retaining wall, about 20 feet high, was erected on a slope below the new Ossining Public Library (OPL). The new OPL opened on March 25, 2007. Thus, the Mesa® block retaining wall is about 10 years old; it has been failing since it was only about 7 years old.

Attached Appendices G-J are photographs of the Mesa® block wall at the Ossining Public Library (OPL) taken in August 2017. The Mesa® block retaining wall is on a steep slope; above the wall is a Library parking lot. Appendices G and H show the wall from the downslope property. As seen in Appendix G, the Mesa® blocks on the face of the wall do not appear aligned and the wall has a "bumpy" appearance. As seen in Appendix H, obvious cracks are visible in the blocks on the face of the wall.

Appendix I shows the wall from the south side of the parking lot. Appendix I shows two images of devices mounted by the engineers to monitor movement or slippage of the blocks. The first image of Appendix I shows the monitoring devices spaced along the wall. The second image is a close up of a monitoring device—the devices are checked on a monthly basis.

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Appendix J shows 12 parking spaces above the Mesa® block retaining wall which have been cordoned off to avoid danger from the failing wall below.

The publicly available Minutes of the Meetings of the Board of Trustees of OPL demonstrate that, beginning as early as October 14, 2014; the Library has an ongoing problem with the Mesa® block retaining Wall. Appendix J contains copies of relevant pages of the Minutes of the Meetings of the Board of Trustees for the Library available at www.Ossining.Library.org

As illustrated in Appendix K, beginning in October 2014, water presented an issue for the Mesa® block wall which became "an Emergency" issue by December of that year. Throughout 2015, various engineers were consulted and by November of 2015, the OPL had spent tens of thousands of dollars monitoring the wall. As of October 25, 2016, the emergency has persisted and monitoring has continued. From Jan-July 2017, the Board has discussed the Retaining wall at most meetings, continued monitoring the Wall, had a Peer Review of the Wall, consulted a geologist, and hired at least one other Engineer for a second opinion. At a meeting on July 31, 2017, the Board approved and authorized more tens of thousands of dollars for continued monitoring the failing wall. Although the Board recognizes it need to "be shovel ready" to deal with the failing wall, no one seems to be able to come up with a solution for fixing the failing wall. (See Appendix J, Minutes of the Board of Trustees of OPL dated July 10,2017). Given the apparent inability of many engineers and other experts to find a solution to a failing Mesa® Block wall at a public institution what kind of protection would there be for the downslope properties if such walls were to be installed on a residential property with a steep slope? Approval of Applicant's two massive Mesa® Block walls on the steep slope solely to enlarge his backyard will be at the expense of the downslope properties. Should the proposed walls fail, all the excessive stone fill and concrete blocks will surely cascade down slope onto my property and that of my adjacent neighbors on the North and South.

BARTOLACCI RESPONSE:

Ms. Baldwin highlighted these two examples of failing retaining walls during her testimony before the ZBA. As noted in the ZBA transcript (submitted to the Planning Board record), our engineer stated that one can find examples of failed retaining walls of all types – RR tie, stone, poured concrete, modular concrete block, etc… He stated that retaining wall failures are likely the result of faulty construction. Once the dust settles, this will likely be identified as the culprit resulting in the failure of the two retaining walls cited by Ms. Baldwin. Note that it appears that Ms. Baldwin is more concerned about preventing us from rebuilding our retaining wall and restoring our backyard than she is about the imminent failure of the dilapidated and collapsed railroad tie retaining wall

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Appendix R

27 Respondents

Re Bartolacci 67 Miller Avenue Retaining Wall Application

I have reviewed the two aerial photographs of 67 Miller Avenue, Tarrytown NY obtained from Mapping Westchester County website and I have indicated which backyard is significantly larger by checking the appropriate column. If both backyards appear to be about the same size, I have checked the Same Size column.

Photo A	Photo B	Same Size	Name	Address	Signature	Date
✓			Nick Katsaitis	68 Miller Ave		7/9/17
✓			Joe Tuccio	55 Miller Ave		7/9/17
✓			Barbara Calderoni	86 Miller Ave		7/9/17
✓			Gil Mazzu	86 Miller Ave		7/9/17
Original			[illegible]	89 Miller Ave		7/9/17
✓			Katy Mentor	77 Miller Ave		7/9/17
✓			[illegible]	63 Miller Ave		7/9/17
✓			Barbara B Roberts	63 Miller Ave		7-9-17
✓			Kieran Crawford	35 Warren Ave		7/9/17
✓			Steve Jones	29 Park Ave		7/9/17
✓			Christie Crawford	35 Warren Ave		7/9/17
✓			Terence Murphy	20 Washington Ave		7/9/17
✓			Samantha Jones	29 Park Ave		7/9/17
✓			Sean Murphy	18 John Street		7/9/17
✓			Mistrella Murphy	18 John St		7/9/17
✓			James Fu[illegible]	548 Warren Ave		7/9/17
✓			Stephanie [illegible]	11		7/9/17
✓			Jamie Cipriano	191 Union Ave		7/9/17
✓			Ricardo Gonzalez	177 Crest Dr.		7/9/17
✓			Sue Raino	25 Croton Ave		7/9/17
✓			Madeline Raino	25 Croton Ave		7/9/17
✓			John Lough	53 Crest Dr		7/9/17
✓			Katy Lough	53 Crest Dr		7/9/17
✓			Kevin Eller	191 Union Ave		7/9/17
✓			M. L Reilly	25 Bridge Street		7-9-17
✓			F. Reilly	25 Bridge St		7/9/17
✓			[illegible] McGregor	54 Crest Dr		7/9/17

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Geographic Information Systems
Mapping Westchester County
Zoom In
Zoom Out
Pan
Full Extent
Prev
Next
Identify
Add Map Service
Print
Measure
Start Over
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PHOTO A

PHOTO B

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Appendix S

***Testimony provided by Brian Tompkins at the August, 2017, Zoning Board of Appeals Meeting**
(Mr. Tompkins lived at 63 Miller Avenue for the first 25 years of his life. He spent many years climbing on the wall as a child, but more importantly his bedroom window, where he lived for 25 years, looked directly at the retaining wall at 67 Miller Avenue.)

Brian Tompkins: My name is Brian Tomkins. I was born and raised in 63 Miller Avenue, right next door [to 67 Miller Avenue]. I have to tell you that it [the retaining wall at 67 Miller Avenue] was one continuous wall. Definitely. Crystal clear in my mind. As a kid I would climb up that wall, I'd hop over the split rail fence that was at the edge of that wall, push through his boxwood bushes that he wasn't very happy with me doing, to cut across. And it was one complete wall straight up [motions with his arm a vertical surface] and it was a completely flat backyard. And I'm crystal clear about it. I mean I know that as a kid you tend to exaggerate but I know what flat is and I know what one wall is and that's what it was.

Peter Bartolacci: How old were you, Brian, when you left the house?

Brian Tompkins: I was 25 when I left the house. So I just want to attest that it was one wall straight up, well not straight up because it was slightly pitched in, and it was a completely flat backyard.

Peter Bartolacci: How high would you estimate the wall to have been?

Brian Tompkins: I would say a minimal 20 feet, 18, 20 feet.

*Testimony transcribed from video Mr. Bartolacci recorded at the August 2017 ZBA meeting. A full transcript of this meeting is available from the Village of Tarrytown and has been submitted to the Planning Board Record.

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NOVEMBER 27, 2017 PLANNING BOARD MINUTES

Exhibit B

Statement of Geraldine F. Baldwin to the Tarrytown Planning Board November 27, 2017

My name is Geraldine F Baldwin; I live at 66 Riverview Avenue, Tarrytown, NY. Once more I will address Applicant's failure to justify a waiver of the Village Code's protection of steep slopes. I will also address Applicant's persistent proposal to create an unsafe condition for the downslope properties solely for the creation of a larger backyard. Finally, I will address the failure of Applicant's Landscape plan to comply with the requirements of the block manufacturer for integrity of the walls and with the recommendations of the Village Landscape Consultant.

I. Applicant's Failure to Justify a Waiver

The current Village Code Section 305-67 provides for preservation of certain environmental and sensitive features of the Village landscape, especially steep slopes. Significantly, the language of the Code's Steep Slope Protection uses the term "shall'—i.e., the"Planning Board shall prohibit the disturbance of and removal of vegetation from steep slopes". The term "shall" is a term of command and is mandatory. It excludes the idea of discretion and it imposes a duty or obligation when addressed to public officials. Hence, this Planning Board has a duty or obligation to protect and preserve the steep slopes of the Village.

When the Village Board of Trustees gave the Planning Board the ability to provide a waiver for disturbance of a steep slope, they made clear that very specific standards are needed to justify such waiver. As stated by the then Village Attorney, when asked to explain the legislation enabling such waiver: **this will give the Planning Board the ability to grant a waiver only if the Planning Board determines that is [more] beneficial to grant the waiver because of environmental condition than not to grant the waiver"**. (Minutes of the Village Board of Trustees 6/18/2007). As the Village Attorney stated further: "The main **thrust is that only if it is better for the environment to grant the waiver**". (Id. emphasis added.)

Incidentally, at the same meeting of the Village Board of Trustees, when someone of the public asked whether the waiver was changing the word "prohibit" in the legislation, the Village Attorney responded: "that word will still remain in the legislation". (Id.)

Most importantly, the Village Attorney explained that "the Planning Board has to only grant the minimum waiver necessary to effectuate the plan". (Id.)

Applicant's application and Applicant's Engineer's letter of October 11, 2017 utterly fail to meet the standard enacted to permit the Planning Board to grant a waiver. Grant of the requested waiver to newly construct the 2 huge Mesa® block walls with geogrids **is certainly not better for the environment.**

In order not to take up too much of the Board's time tonight I will simply say that I reiterate now and incorporate herein by reference all the reasons I raised at the October 23, 2017 meeting that the Applicant does not meet the requirements for a waiver of the steep slope protection.

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I would like, however, to point out that it is decidedly **NOT better for the environment to permit new construction of two walls with geogrids that require complete excavation and destruction of the steep slope with no consideration for the safety of the downslope properties.**

Contrary to the Mesa® block manufacturer's instructions; Applicant's plan fails to provide the necessary drainage and water management. As detailed in my Statement to this Board on October 23, 2017, failure to provide for management of water has led to failure of a Mesa® block wall at the new Library in Ossining--- a failing wall that tens of thousands of dollars for engineers and geologists do not seem able to correct. (See Appendix K attached to my Statement to this Board of October 23, 2017 which contains copies of relevant pages of the Minutes of the meetings of the Board of Trustees for the Ossining Public Library, available at www.OssiningLibrary.org).

The entire rear line of my property is directly downslope from the proposed 2 huge Mesa® block walls. About 25 feet of the rear line of my neighbor's property, to the south, is also directly downslope of the proposed walls. Failure of a simple timber, concrete or stone wall would cause the wall material(s) to cascade down onto the stone wall on the property line.[FN1] Failure of the proposed huge Mesa® block walls would cause not only the wall materials but also the huge amount of stones and compacted fill – over 41 trucks loads to cascade down on the wall and onto my property and that of my neighbor. This does not create a safe environment for the downslope properties. This surely is NOT better for the environment.

Again, contrary to the Mesa® block manufacturer's instructions; Applicant's plan fails to provide the necessary green space between the two huge walls. Very clearly in Mesa® Retaining Wall Systems: System Overview, p.15, with respect to tiered or terraced walls, the Manufacturer states: "For each wall to be considered an independent structure, typical design guidelines require enough 'green space' between the walls equal to or greater than two times the height of the lower wall". Thus, for a lower wall of 9.5 feet high, a space of at least 19 feet would be needed between it and the upper wall to meet the minimum requirement of the Mesa® Block Manufacturer. The current plan has only a mere 6 feet between the two huge walls. This surely will create an unsafe condition for the downslope properties. Creation of such a condition is surely NOT better for the environment.

There has been no study conducted to demonstrate whether any remainder of the stoop slope or the subsurface will be able to withstand the additional fill and the Mesa® block walls. The Manufacturer's literature, however, clearly states that: "A qualified professional **geotechnical engineer** should evaluate the site, surface and subsurface conditions, other environmental factors and the intended use and location of the wall in advance of final wall design and installation". (See Mesa® Retaining Wall Systems: System Overview, p. 16). pp. 15-16). Absent such study, how is the environment better?

[FN1] **Attached hereto as Exhibit 1 is a copy of a recent survey of my property at 66 Riverview Avenue, Tarrytown, NY together with an email from the Surveyor, Ward Carpenter and Co., explaining that the stone wall is on the property line between 66 Riverview Ave and 67 Miller Ave and neither property owner can touch it without the permission of the other. It is requested this Exhibit be made of record in this file.**

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II. Applicant Persists in Seeking Only to Enlarge his Backyard

Despite the fact that his Application reads that the project is to "reconstruct an existing failed railroad tie wall", throughout all the proceedings Applicant has sought not to repair or reconstruct the original wall, but rather to newly construct much higher wall(s). Applicant has persisted in a design of walls with

geogrids which require complete removal of the steep slope. The only objective is to extend and flatten the Westward portion of the rear yard. This is the sole reason for the height of the walls. Indeed, the "need" for two walls 9.5 feet high is only to satisfy Applicant's desire for a larger backyard, NOT to stabilize the steep slope.

Applicant's desire for an enlarged backyard is also the reason that the proposed two walls are spaced only 6 feet apart—well below the minimum required by the Manufacturer's instructions. Placement of the upper wall at the required minimum distance from the lower wall would not permit enlargement of the backyard. Enlargement of the back yard not stabilization of the slope is the reason for the two walls. Enlargement of the backyard while creating an unsafe condition for the downslope properties is NOT better for the environment.

III. Applicant's Landscape Plan Fails to Meet the Manufacture's Requirements

Until this time, I have refrained from remarking on Applicant's' suggested Landscape sketches. I have felt that the attempt to "screen" the proposed huge walls was purely a cosmetic attempt to camouflage the hideous wall(s). Truly I believed the landscape to be merely "lipstick on a pig". Now, however, it is clear that Applicants' landscape plan is as much a safety concern as the walls themselves.

At the April meeting of this Planning Board, Applicant's own Engineer admitted that consultation with the Mesa® block Manufacturer indicated that because of the geogrids "any large tree roots would damage the structural stability of the walls[s]". (Minutes of the Planning Board Meeting April 24, 2017.) Further Applicant's Engineer stated that any plants growing over 3 feet in height could not be planted between the walls because "evergreen roots would eventually jeopardize the integrity of the walls" (Id.). Finally, Applicant's Engineer stated: "no trees can be planted within the limits of the walls" (Id.).

Thus, it is clear that Applicant's present landscape plan ignores the Mesa® block Manufacturer's requirements and contravenes the statements of his own Engineer.

How is it now that Applicant can, in good faith, propose to plant 6 -7 feet- high trees on the geogrids between the two proposed walls contrary to the Manufacturer's requirements? The only answer is that Applicant has no consideration for the safety of the downslope properties.

The geogrids are extremely important for the stability of the Mesa® block walls. The geogrids from the lower wall must extend 10 feet back from the wall. Placing the upper wall only six feet back from the

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lower wall, demands that the upper wall stands on the geogrids of the lower wall. Any plant roots growing between the two walls will surely jeopardize the stability of the walls. Once the geogrids of the lower wall are compromised, what will be left to support the upper wall and how much of the newly added load will be forced onto the shared stone wall and how much extra load bearing will be forced onto the lower wall and the stone wall on the property line below?

Applicant's landscape plan proposes to plant 14 6 to 7-foot-high Green Giant Arborvitae trees in the six-foot -wide area between the two walls on top of the geogrids and compacted fill. These trees can grow to 40 to 60 feet-high and 10-20 feet wide. But they cannot grow on compacted soil. Moreover, these trees need organic matter in order to grow. The compacted fill on top of the geogrids does not and should not have organic matter.

Even planting the trees poses safety concerns. In order to plant 6-7-foot-high trees, one must dig deep enough for the fibrous root ball--- i.e., at least two thirds the spread of the branches or at least 12 inches deep for every 1 inch of diameter of the trunk. (See Root System of Green Giant Arborvitae, by Julie Christensen, in Garden Guides.com Sept 2017). Digging to such depth will inevitably compromise the geogrids of the lower wall.

In addition to contravening the recommendations of the Mesa® block manufacturer, planting such trees on the geogrids breaks all the recommendations of arborists and horticulturalists. One often heard rule: plant the right plant in the right place—plan for 30 or more years from now (See Recommended Street Tree Planting Standards by George Profus, Senior Forester NY Dept. of Environmental Conservation at Geroge.Profous@dec.gov). The Green Giant Arborvitae are fast growing trees and if able to grow at all on the geogrids will shortly destroy the geogrids holding up lower wall. Additionally, the trees between the stone wall and the lower wall will shortly overwhelm the narrow space between the wall s and compromise the shared stone wall on the property line. (See FN1 above herein).

IV. Applicant's Landscape Ignores the Consultant's Recommendations

In accord with best practices, throughout the process the Village Landscape Consultant has recommended the use of native plants, with a less commercial look and scale and more diverse palette. The use of native plants is especially important.

As explained by Dr. Douglas Tallamy, a noted ecologist and wildlife biologist, the difference between a native tree and a non-native tree can be illustrated by the following: on a native cherry tree in his yard, in ½ hour, Dr. Tallamy counted a large number of caterpillars of 14 different species; whereas in a similar ½ hour, on a non-native Bradford pear tree, he counted only one-inch worm. The different species of caterpillars could develop into butterflies which are important pollinators of plants or could provide food for lots of bird nestlings. For example, chickadees require 6000 to 9000 caterpillars for feed one clutch of baby birds. The lone inchworm would not provide much of anything for any other organism.

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Contrary to the Village Consultant's recommendations, however, Applicant's actual Landscape plan provides only a single plant type, i.e. a monoculture. Although some Thuja are native to the United States, the single plant type of Applicant's plan is a hybrid cross of a native Thuja and a Japanese Thuja (i.e. *Thuja plicata* crossed with *Thuja standishii*). Thus, this is NOT a NATIVE plant. (See USDA-NRCS National Plant Materials Center, Beltsville, MD. Technical Note No. 1 March 2007, Table 1.).

Moreover, despite the repeated requests of neighbors along Riverview Avenue not to use Arborvitae, Applicant's landscape plan provides only Arborvitae --- not even a NATIVE Arborvitae. This clearly demonstrates Applicant's lack of any consideration for the natural environment and persistence in his seeking only his own convenience.

V. Summary and Conclusion

For all the reasons stated above and for the reasons set forth in my Statement to this Board on October 23, 2017, it is submitted that this Board cannot, in good faith, approve a waiver of the steep slope protection for Applicant's 2 huge walls.

Grant of such waiver would result in a significant undesirable change to the neighborhood. No concrete block walls with geogrids of any size have been built in any residential neighborhood of the Village, much less in any single family residential neighborhood. Granting a waiver to build such walls will surely encourage others to demand similar walls on steep slopes. This will set a very bad precedent for the Village.

Replacement of the railroad tie wall with a single block wall without geogrids, a single concrete wall with stone facing or a single timber wall at the original height and the original location of the railroad tie wall would provide the benefit sought by Applicant's Application to restore or replace the railroad tie wall without the need for a waiver.

Grant of a waiver sought by Applicant will result in the complete obliteration of the steep slope and removal of the remaining vegetation on the slope. Elimination of one of the protected characteristic features of the Village landscape is completely contrary to and in no way consistent with the Objectives of the Village Code.

Applicant has established no hardship, much less an extraordinary hardship. Based on the current plan, it is obvious that there are at least 20 feet of backyard between Applicant's house and the hedge at the top of the steep slope. Applicant purchased the property with the hedge in its current location and was aware of the steep slope. He cannot now complain the steep slope creates an extraordinary hardship for him.

Finally, since one of the Objectives of the steep slope protection is preservation of such features of the Village landscape, it cannot be said that complete obliteration of the steep slope as required by Applicant's plan would be better for the Village environment. The Board cannot approve and must deny Applicant's plan.

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Survey of Property prepared for **Geraldine Baldwin** in the Village of **Tarrytown**

Town of Greenburgh
Westchester County, N.Y.
Scale 1"=20 March 6, 2017

The premises being Lot 124 and 125 as shown on a map entitled "Benedict Park Subdivided & Developed by Miller Brothers" dated Sept.2, 1924 and filed Sept. 6, 1924 as County Clerk Map No. 2660.

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Lot Area = 5,000 sq. ft.

Subsurface structures and their encroachments, if any exist, are not shown hereon.

"Unauthorized alterations or additions to a survey map is a violation of section 7209, sub-division 2, of the New York State Education Law."

"Only copies of the original survey marked with the land surveyor's inked or embossed seal shall be considered a true and valid copy."

"Certifications indicated hereon signify that this survey was prepared in accordance with the existing code of practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors. Said certifications shall run to the person for whom the survey is prepared only, and on his behalf to the Title Company, governmental agency and lending institution listed hereon, and to the assignees of the lending institution. CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS."

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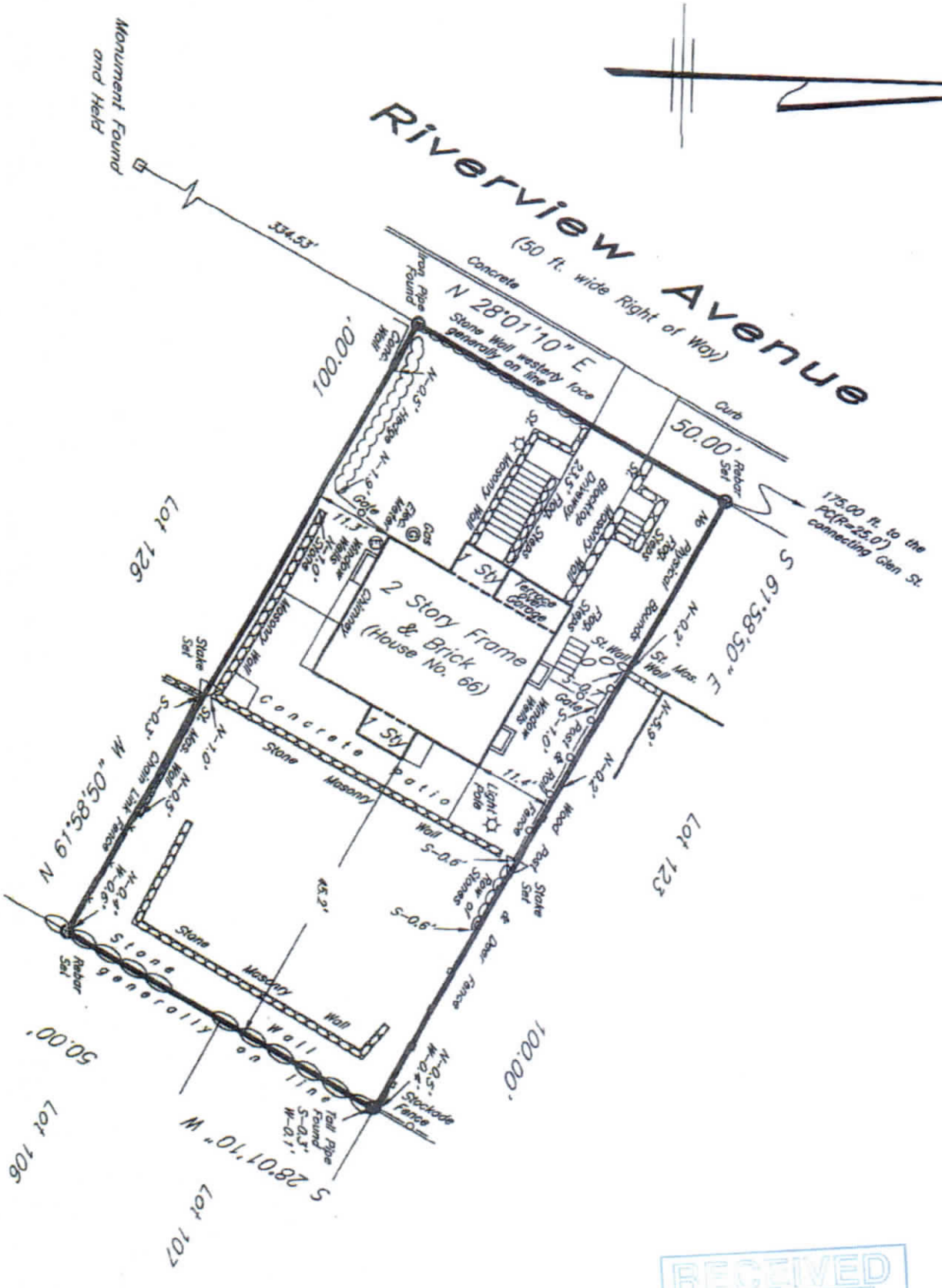
Ward Carpenter Engineers Inc.
76 Mamaroneck Avenue
White Plains, N.Y. 10601

Job # 52685 LDD 52685\dwg\52685.dwg



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From: Elizabeth Moriarty <lizm@wardcarpenter.com>
To: gfbesq <gfbesq@aol.com>
Subject: RE: Question re Recent Survey of 66 Riverview Ave Tarrytown, NY 10591
Date: Mon, Apr 24, 2017 8:48 am

I consulted with the surveyor (Steve Willard). Here is his response.

Your property corners are marked with a metal pin on the south side and a tall metal pipe found on the north side. Do not look at the wood makers set on your side of the wall, they merely show you where to look for the metal pin/pipe. If you run a string between the pipe and the pin, that is your line. From the wall locations we find the entire wall to be on the line. Not always along the centerline, but within the wall. Neither party can remove the wall without the permission of the other.

Elizabeth Moriarty
Ward Carpenter Engineers, Inc.
76 Mamaroneck Ave. White Plains, NY 10601
Office: 914-949-6000
Fax: 914-949-1655
Email: Lizm@wardcarpenter.com
WEB: www.wardcarpenter.com

From: gfbesq@aol.com [mailto:gfbesq@aol.com]
Sent: Monday, April 24, 2017 7:02 AM
To: lizm@wardcarpenter.com
Subject: Question re Recent Survey of 66 Riverview Ave Tarrytown, NY 10591

Re Survey Job # 52685 LDD 52685\dwg\52685.dwg

Ms Moriarty

I have a question regarding the recent Survey performed by Ward Carpenter Engineers Inc. :

There is a dry stone wall across the rear of my property where it adjoins Lots 107 and 106--- on the Survey the property line runs through the middle of this wall. However, the stakes appear to be slightly West of the wall

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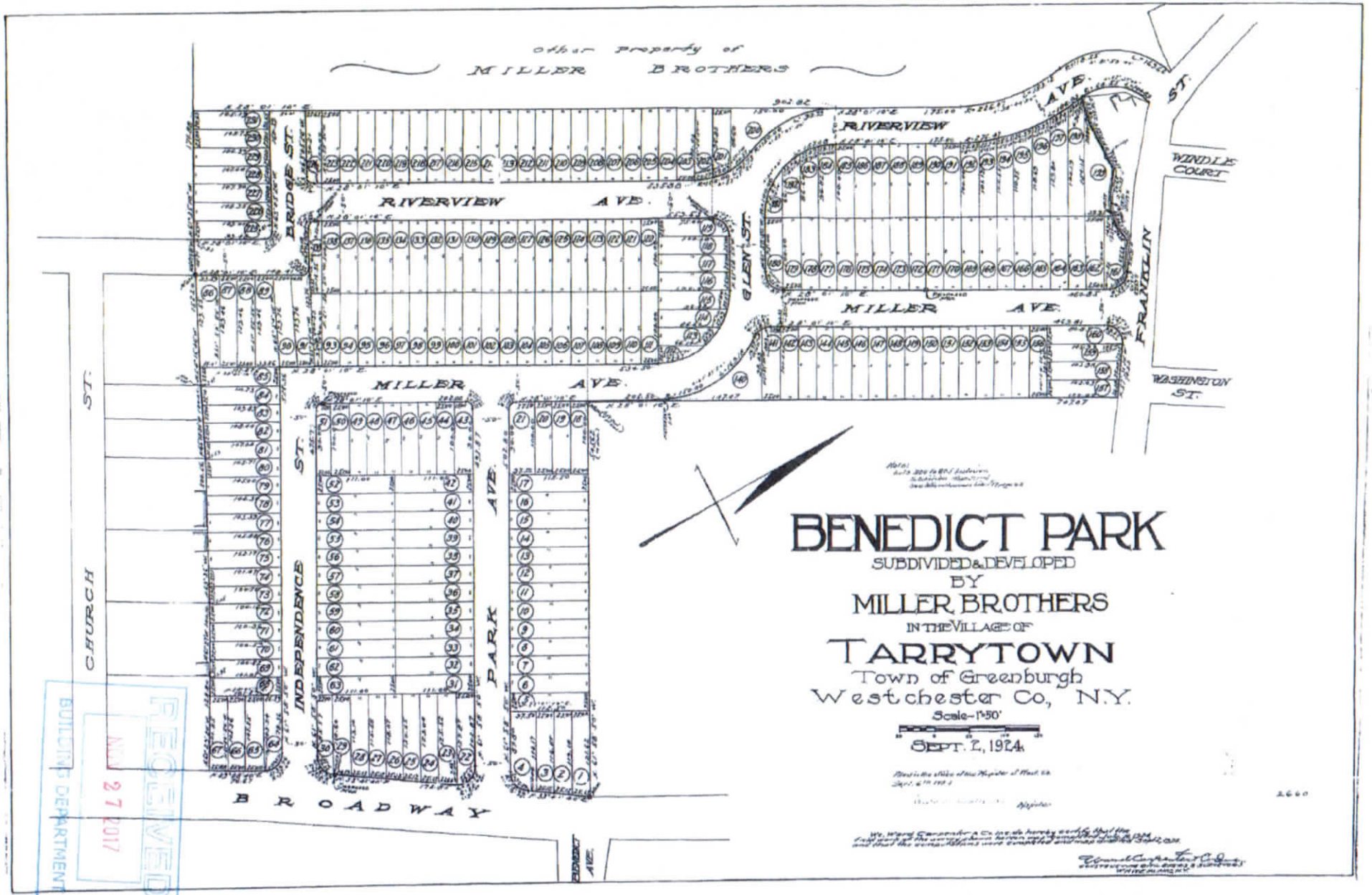

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Statement of Geraldine F. Baldwin to the Tarrytown Planning Board Nov 27, 2017

Part II: Protection of Tree on Adjacent Property; Correction of Oct 11, 2017 Plan of 67 Miller Avenue

The Village Landscape Consultant has also consistently recommended that proper protection be afforded for trees on adjacent properties. Applicant's landscape plan provides no such protection. As understood by the Village Landscape Consultant, at the very least, the large Cherry Tree on my property needs protection during construction of the proposed walls. The Cherry Tree's roots extend at least to the drip line, well over the stone wall on the property line. These are the roots the Village Landscape Consultant knows need protection. Applicant's landscape plan makes no provision for such protection.

In her Reports to the Planning Board, the Village Landscape Consultant has consistently located the Cherry Tree on my property as between the stone wall on the property line and adjacent to the short masonry stone wall on my property. In contrast, Applicant's plan(s) have either omitted depicting the tree or, as in the current plan, incorrectly indicate(s) that the Cherry Tree is on the grass west of the short masonry wall on my property. This needs to be corrected. See Appendix 1 Of Part II, attached hereto.

In addition, the Village Consultant has consistently recommended that Applicant have an Arborist evaluate the trees on the adjacent properties. To the best of my knowledge, Applicant has not followed this recommendation. Tonight Applicant has made certain statements regarding the health of the Cherry tree on my property.

I request, on the record, Applicant be required to provide a copy of a certified Arborist's findings to substantiate Applicant's allegations.

On the other hand, I did contact Patrick Mc Vey, a Certified Arborist with Almstead Tree & Shrub Co, Hawthorne New York and had him evaluate the Cherry Tree on my property on June 21, 2017. After looking the entire tree over carefully, Mr. Mc Vey stated that the tree was very healthy. He noted only one tiny branch, about the size of a finger thick that was dead. He was amazed at the size and health of the tree.

When I asked about the fact that some of the leaves were falling from the tree, Mr. Mc Vey stated that there was some weather stress. He indicated that there was too much water this year. He stated there was a drought and now there was too much water. Despite the weather stress, he stated that the tree was exceptional in size and health. The size was amazing given its location between the two walls.

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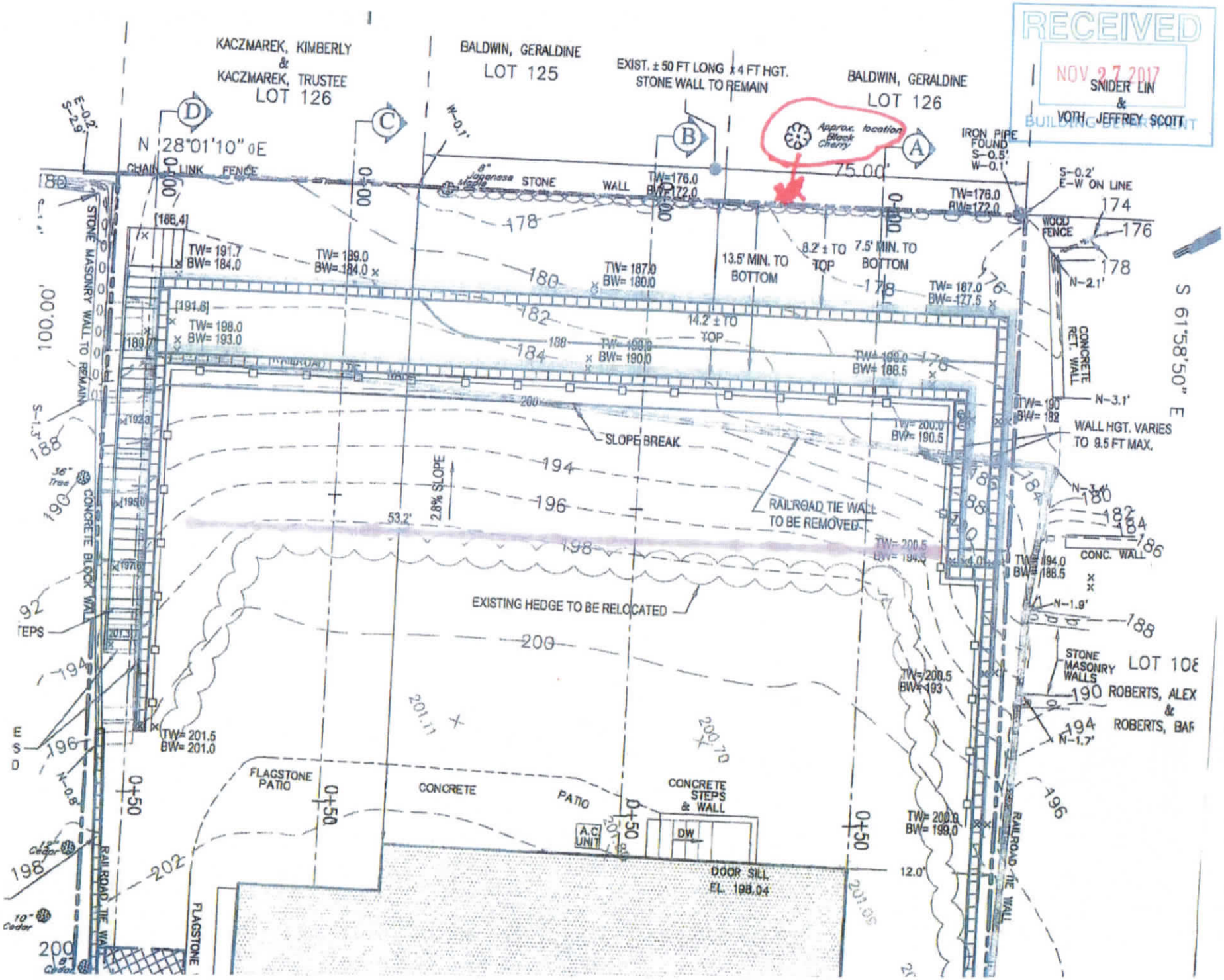
- Appendix I of Part II -



NOVEMBER 27, 2017 PLANNING BOARD MINUTES

Exhibit C

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November 27, 2017

Via Hand Delivery

Honorable Chairman Stanley Friedlander and Members of the Planning Board
Village of Tarrytown
One Depot Plaza
Tarrytown, NY 10591

Re: 67 Miller Avenue
Parcel ID # 1.70-40-4

Dear Honorable Members of the Tarrytown Planning Board:

As you are aware, I represent Ms. Geraldine Baldwin, the resident who is the most directly impacted by the Bartolacci's application to eradicate the steep slope in their backyard and construct a two-tiered 20' tall retaining wall system. As part of this submission, I would also like to include my submissions to the Zoning Board of Appeals dated June 12, 2017, July 10, 2017 and August 14, 2017 (copies attached).

I. APPLICANT HAS FAILED TO MEET ANY OF THE NECESSARY CRITERIA FOR A STEEP SLOPE WAIVER TO CONSTRUCT ITS TWO-TIERED 20 FOOT TALL RETAINING WALL STRUCTURE

Under Tarrytown Village Code § 305-67, the mandate to the Planning Board is clear. It states that the "Planning Board **shall** restrict new construction and/or vegetation removal in such designated areas." One of the designated areas is steep slopes with a grade of 25% or more.

In determining whether a waiver should be granted under Village Code § 305-67(F)(1)(b), the Planning Board is obligated to consider whether granting the waiver is more beneficial to a single homeowner as compared to the harm to the environment and the downgradient neighbors. Again, the Planning Board must weigh the benefit to the Bartolacci's against: 1) the undesireable change to the character of the neighborhood; 2) whether there is another feasible method for the applicant to pursue; 3) whether there will be a change that will be materially detrimental or injurious to other properties in the area…or result in substantial impariment of a slope area; and 4) whether the waiver will be inconsistent with the purposes, objectives or the general spirit and intent of this chapter.

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With respect to the first, third and fourth crtieria, this Board should take important note of the petition previously submitted by 10 (ten) nearby residents objecting to the proposed retaining wall (the "Petition"). The Petition sets forth why the proposed two tiered Mesa® Block structure directly impacts these residents, that it would be visible from the street on Riverview Avenue, that the natural landscapes and habitat in the area would be destroyed, highlights that there are numerous properties in the area that are steeply sloped, and that granting this Application could open the flood gates to several other requests. The Petition also emphasizes not just the proposed height of the two walls but also the proposed total length (approx. 157 feet) and the hundreds of yards of fill that would be required to be trucked in and dumped in their neighborhood. Each one of these residents signed his or her name to the Petition expressing not only the direct impact on their property but but also how it falls very short of the required objective criteria in the Code.

With respect to whether there is another feasible method the Applicant can pursue – the answer is a resounding **"yes"**. The Applicant can easily consider a much shorter single wall to replace what previously existed. The Applicants have made it clear that the main purpose for their Application is to create a significantly larger backyard on a severly sloped parcel of property. The primary goal of the Application is not to stablize the slope but, rather, to allow for hundreds of cubic yards of fill to be dumped to create a larger backyard. This Board's role and authority is limited to applying the criteria in the Village Code to this Application and when it does, it is clear that this type of major cut and fill construction job was not the type of limited reasons for which a steep slope waiver was ever intended to be granted.

Again, as mentioned during last month's hearing, the Bartolacci's purchased their property with the Steep Slope regulations and restrictions in place. Any hardship that they claim now is self imposed.

II. APPLICANT FAILS TO MEET THE ADDITIONAL FINDINGS REQUIRED BY THE PLANNING BOARD UNDER §305-67(F)(2)

In reviewing this Application, the Planning Board may approve it **only if** it specifically finds that:

(a) The proposed development will not be materially detrimental or injurious to other properties or improvements…or result in substantial impairment of the slope area;
(b) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this chapter; **and**
(c) The waiver is the minimum relief necessary to relieve the extraordinary hardship established by the applicant.

Similar to the situation regarding Village Code §305-67(F)(1)(b), the Planning Board is not able to make any of the necessary "additional findings" set forth in § 305-67(F)(2). First, based on the documents submitted as part of the Planning Board's record, it is clear that constructing two 9.5-foot-tall Mesa® Block walls and trucking in hundreds of yards of fill completely removes the existing slope. I think it is incumbent upon this Board to find that the complete removal of a slope

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certainly meets the standard of "substantial impairment" outlined in Section (a) above. Second, the waiver is 100% inconsistent with the purpose of this Chapter. The Applicant is proposing the elimination of a steep slope – not a minor alteration to it. Finally, the Application is not the minimum relief necessary to relieve the extraordinary hardship. Not only has the Applicant not shown any "extraordinary hardship" for which two 9.5-foot tall fortress like structures are necessary, any need to stabilize the slope can be achieved with a single significantly shorter wall.

III. LANDSCAPING PLAN, ARBORIST STUDY, and CONSTRUCTION AND MAINTENANCE PLAN

As of earlier today, the Applicant had not submitted any new or additional information to the Planning Board that addresses the Munz Associates' most recent comment letter. This report recommends that a certified arborist provide a report identifying and assessing the trees on neighboring properties. Considering the comments raised by Ms. Baldwin regarding her Cherry Tree, such arborist report is a necessary pre-condition to any Board approval.

Equally important is confirmation from a certified geotechnical engineer that the proposed location of the two 9.5 foot tall structures with less than the minimum separation distance is recommended or advised. The answers to these two questions are critical to whether this Board should even continue to consider the Application at this time.

I. CONCLUSION

The length of time that the Village's discretionary boards have spent trying to approve some type of plan that eliminates a protected environmental feature in the Village is very telling as to whether this two tiered structure to allow the placement of hundreds of cubic yards of fill should even be approved. The simple answer is no. This Board has the authority to say "no" and such position is well supported by the record before you. Not only has the Applicant failed to meet the required criteria in §305-67, as Ms. Baldwin reminded this Board, the Applicant cannot even design the walls in accordance with the manufacturer's standards. These failures should resonate with a vote to deny the Application.

Based on the Village's own laws, the court decisions provided to this Board finding that municipal decisions to deny such applications are routinely upheld, the concerns raised by the neighbors most immediately impacted, and the Applicant's clear failure to comply with the requirements of the wall manufacturer guidelines, we respectfully request that this Board deny the requested waiver. A waiver from requirements should not result in the total evisceration of the environmental feature that such regulations are intended to preserve.

Respectfully submitted,

Kristen K Wilson

Kristen K. Wilson

cc: Geraldine Baldwin

MARK W. BLANCHARD
PARTNER

KRISTEN K. WILSON
PARTNER
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June 12, 2017

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BUILDING DEPARTMENT

Honorable Chairperson Lawrence and Members of the Zoning Board of Appeals
Village of Tarrytown
One Depot Plaza
Tarrytown, NY 10591

Re: 67 Miller Avenue
Parcel ID # 1.70-40-4

Dear Honorable Members of the Tarrytown Zoning Board of Appeals,

My firm represents Geraldine Baldwin as it relates to the above referenced application sbumitted by Peter Bartolacci (the "Application"). As you may be aware from prior proceedings concerning the property, my client's property abuts the rear of the property located at 67 Miller Avenue. It is our understanding based on the May 26, 2017 denial letter from the Building Inspector, that the Applicant needs a fourteen foot height variance (or an approximately 230% variance) to permit the proposed retaining wall. As this Board is well aware, the Applicant must meet the standards for an area variance set out in New York State Village Law and the Village of Tarrytown Village Code § 305-118.

It appears from the Applicant's submission that they are putting forth an argument that the requested variance should be granted because the size of the structure is a pre-existing non-conforming use. However, such argument fails as such "non-conformity" has been extinguished for much more than the statutory period of time. Furthermore, as set forth below, the Applicant's proposal fails to meet any of the standards required by state law.

I. The Applicant fails to establish that the 20' retaining wall is a pre-existing non-conforming structure

The Applicant argues that the prior existence of a tall retaining wall decades ago lends support to granting the requested variance now. This Application is not the equivalent of repairing or replacing an existing structure. Under Tarrytown Village Code § 305-62 "Nonconforming buildings, lots and uses," it is clear that the intention of the Village is to slowly remove and extinguish nonconformities within the Village. In fact, § 305-62(A)(5) "Effect of discontinuance" states "Any such nonconforming uses, the physical operation or use of which has ceased for six months or longer, shall be deemed to be abandoned, and such nonconforoming use shall not be resumed." [Emphasis added].

Here, the nonconformity ceased decades ago. Although the Applicant has provided some historical material establishing that a retaining wall previously existed, this Board's obligation is to consider the application and its impacts as if no prior retaining wall was there. To argue that the proposed wall simply "restores the neighborhood to its original appearance 25+ years" ago is asking this Board to ignore the laws that have been in place and by which everyone else in Tarrytown must abide. See Letter dated May 24, 2017, pg. 2 from Fusion Engineering P.C.

II. The Applicant fails to meet the area variance criteria outlined in the Village Law

a. Whether an undesireable change will be produced in the character of the neighborhood.

There will be a significant change to the character of the neighborhood. Here, the Applicant is not proposing a minor modification to the property. Rather, the proposal is to create a fortress-like wall in the rear of his property to allow for a larger back yard. Submitted herewith are several pictures of other existing walls in the neighborhood. These pictures, taken along River View Road and Miller Avenue, clearly depict fences and walls that are significantly shorter. Contrasting what exists in the neighborhood with the proposed 20 foot tall structure exhibits the magnitude of change.

Equally important to the undesireable change that will result if this specific variance is granted is the unwanted precedent that this Board would be setting. There are numerous properties that have steep slopes and it would be deleritious to grant such a significant variances and open the doors to having similar applications requesting the same type of relief. The residential feeling of the open and spacious neighborhoods would be lost in exchange for a confined prison-like feeling.

b. Whether the benefit sought can be achieved by some other feasible method

The Applicant could easily explore alternatives that do not require a variance, or, at least options that do not require such a significant variance. A structure that complies with the height requirements may easily stabilize the slope. The Applicant does not have a "right" to a larger back yard and if the Applicant's goal is to stablize the existing slope from deteriorating any further, it should be required to explore alternatives that require the least height variance that may be necessary.

c. Whether the requested variance is substantial

Here, the variance is substantial both in terms of percent of variance needed (230%) and in terms of impact. The Applicant should be required to consider less intrusive alternatives that allow for the stablization of the slope. The visual and aesthetic impact of a twenty foot structure outside your back windows is significant and is not an impact that one reasonably expects to incur in a residential neighborhood when the Zoning Code has much more restrictive height requirements. Submitted herewith is a picture of what a 20' high retaining wall would look like. It is clear that the view of a vegetated slope as compared to a prison wall is substantial.

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d. Whether the variance will have an adverse effect or impact on the physical or environmental conditions

The variance will have a significant adverse impact on both the physical and environmental conditions. Not only has the Applicant already removed a substantial number of trees, but the primary purpose of this wall is to allow for sufficient stablization to substantially increase the size of their backyard. One of the aspects of this Application that the Zoning Board must consider is the amount of fill - 262 cubic yards – that that Applicant will be bringing in. There will be approximately 26 truckloads of fill that will have to be placed in the rear of this yard, on top of a slope that is also in need of stablization.

In addition to the adverse impact in the immediate area, the precedential impact of permitting numerous truckloads of fill to be brought into residential areas simply to create a larger backyard would be detrimental to any steeply sloped community.

e. Whether the need for the variance is self created

Here, the Applicant's need is entirely self-created. The Applicant purchased the property with the knowledge that there was a steeply sloped area in the back yard and with the existing zoning code requirments (and fence heights) in place. Indeed, the slope needs to be stablized to prevent any further erosion issues but there is no "need" to create a bigger/flatter back yard. Finally, there is no "right" to recreate a structure that is now not permitted.

III. Conclusion

Based on the above analysis, the Applicant's failure to establish that a 230% variance is the minimum variance that is necessary, the incredible precedent that this Board would be setting and the detrimental impact to those property owners immediately abutting 67 Miller Avenue, we respectfully request the ZBA deny the requested variance as the Applicant has failed to meet the necessary criteria. In the alternative, we respectfully request that the ZBA hold open the public hearing and ask the Applicant to consider alternatives that are compliant with the Village Code.

Respectfully submitted,

Kristen K. Wilson

Kristen K. Wilson

cc: Geraldine Baldwin

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July 10, 2017

Via Hand Delivery

Honorable Chairperson Lawrence and Members of the Zoning Board of Appeals
Village of Tarrytown
One Depot Plaza
Tarrytown, NY 10591

Re: 67 Miller Avenue
Parcel ID # 1.70-40-4

Dear Honorable Members of the Tarrytown Zoning Board of Appeals,

As you are aware, my firm represents Geraldine Baldwin as it relates to the above referenced application submitted by Peter Bartolacci (the "Application"). Although the Zoning Board of Appeals ("ZBA") has not heard this Application for a great length of time, this matter has been heard and considered by the Planning Board and Building Department for many months as the Planning Board has tried to grapple with the proposed retaining wall and the Applicant's need for a steep slope permit. This letter is supplementing the letter I submitted during the June ZBA meeting and addresses additional issues and arguments presented during that meeting. The ultimate question for the ZBA is what is the minimum variance necessary, if any, to construct a wall that would sufficiently address any erosion/sediment control issues on this slope?

I. APPLICANT DOES NOT HAVE VESTED RIGHTS IN A LARGER BACK YARD

First, as a point of clarity, there is no pre-existing nonconforming use for which the Applicant has a right to replace or repair. During the June ZBA meeting and in the written submissions from the neighbors and the Applicant, the Applicant argued that she has the right to the size of the backyard that was present decades ago and that in order to expand the backyard, a certain amount of fill is needed and, therefore, a large retaining is necessary. However, this issue over whether the construction of a new retaining wall is in fact a replacement of a pre-existing non-conforming use or if it is an entirely new wall has been addressed and decided.

The Appellate Division, Second Department confirmed that the construction of the proposed wall does not "consitute a repair of the pre-existing wall." See In the Matter of Peter Bartolocci v. Village of Tarrytown, Zoning Board of Appeals, Index. No. 1326-14 (West. Co.June 5, 2014), aff'd, 41 N.Y.S.3d 116 (2016). Importantly, Judge Warhit specifically stated that "[t]here is ample indication that Petitioner intends to wholly replace what is left on of the existing structure

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with a three-sided retaining wall consturcted of Mesa concrete blcoks....[i]ndeed, the proposed wall is not even intended to be constructed in the footprint of the prior wall (explaining the location as 'substantially the same...**except that it will be parallel to the rear property line and be installed 16.5 feet south east of the property line'**" (emphasis added in Decision and Order). Copies of both Judge Warhit and the Second Department's Decision and Order are attached hereto.

Second, in addition to two different courts finding that the proposed retaining wall is a new structure, the Applicant has also failed to establish that there is a pre-existing nonconforming structure to which she is entitled to repair or replace. See Sterngass v. Town Board of Town of Clarkstown, 10 A.D.3d 402 (2d Dep't 2004) (finding that all structures on lot that were discontinued for a continuous period of one year lost any previous non-conforming use status); See also Sand Land Corporation, et al. v. Zoning Baord of Appeals of Town of Southampton, 137 A.D.3d 1289 (2016).

Therefore, the ZBA should consider the proposed 20' tall retaining wall a new structure and not as a "replacement" or a "repair". Moreover, the Applicant's argument that she is somehow entitled to the same size of a yard that existing decades ago, prior to the current laws and regulations governing steep slopes is simply unavailing and inconsequential to this Board's consideration as to whether the Applicant has met her burden of proof regarding the need for this 230% area variance.

II. IMPACT SPECIFIC TO MS. BALDWIN AND OTHER PROPERTIES DOWNGRADIENT FROM PROPERTY

The potential impact of building a 20' retaining wall to allow for a larger backyard at 67 Miller Avenue (the "Property") to Ms. Baldwin is uncompromising as Ms. Baldwin is the resident that is most severly impacted by such a wall. The potential visual impact to the immediate neighbors to the east and west of 67 Miller Avenue is much less acute as compared to the impact my client must endure as Ms. Baldwin has a direct view from the bottom of the retaining wall and the impact is unyielding.

During the June meeting, the Applicant continuously referenced letters and comments from neighbors who were in favor of the wall. However, if the Board reviews the letters, it is clear that the letters and testimony are focused on permitting the Applicant to have a larger backyard because that it what pictures may depict and what memories may recall. However, such testimoy is, respectfully, irrelevant to the application before the ZBA. Rather, the ZBA should primarily concern itself with the impact resulting directly from the proposed height variance – not the next door neighbors.

III. EXISTING WALLS IN TARRYTOWN

During the June Zoning Board meeting, you heard testimony and received photographs depicting numerous walls in the Village the exceed the height limitation of 6 feet. Although there are other walls that exceed 6 feet in height, these walls are either pre-existing non-conforming uses, abut commercial areas or parking lots, and/or adjacent to roadways. Certainly, there is not a

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single photo in the record that shows a recently constructed retaining wall that is "in" the backyard of the downgradient residential neighbor. The applicant has failed to provide any evidence that the ZBA has granted any other variance of even close porportion to the variance requested here. Moreover, none of the pictured walls are Mesa block walls requiring extensive geogrids that would eliminate the steep slopes on the Property, 10 out of 17 walls are old stone and pre-date the current Village Code requirements regarding the height limitations, and of the 7 remaining walls, none of them exist in single family residential neighborhoods.

As almost every single photographs depicts, the "impacted" areas immediately adjacent to the wall structure are roadways, parking lots, walkways or other public areas – not residential backyards in single family neighborhoods.

Furthermore, the only "evidence" the Applicant has proferred is testimony from other residents that the wall that did exist was "massive" and that the prior backyard was flat. Again, not only is this "prior wall" testimony irrelevant, the Town's own engineer, Mike McGarvey, estimated the wall to be +/- 7 feet tall and that there was one wall along the rear of the property and one along the North and one along the South. See Letter from McGarvey dated September 2013. A seven foot tall wall is significantly less intrusive than a 20' fortess.

IV. IMPACT FROM TRUCKLOADS CARRYING 262 CUBIC YARDS OF FILL

A significant issue that the ZBA should consider is the impact related to trucking in 262 cubic yards of fill throughout this residential neighborhood. As this Board is well aware, the roads are narrow and cars often line the sides creating nearly impassable conditions. How does the Applicant propose to truck in any truckloads of topsoil, let alone 26 truckloads? What kind of impact does this heavy truck traffic create? What happens if numerous property owners now want to create larger back yards on steeply sloped property? What route will the trucks take? How will the trucks actually safely unload the topsoil?

V. CONCLUSION

Based on the above analysis and the written and oral testimony provided previously, the Applicant has failed to establish she is entitled to the 230% variance. As a result, we respectfully request that this Board deny the requested variance. There is nothing in the record showing that a 20' structure, or a structure substantially similar in size, is necessary to address any identified erosion/steep slope issues.

Respectfully submitted,

Kristen K. Wilson

Kristen K. Wilson

cc: Geraldine Baldwin

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MARK W. BLANCHARD
PARTNER

KRISTEN K. WILSON
PARTNER
*Also admitted in CT

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OF COUNSEL

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August 14, 2017

Via Hand Delivery

Honorable Chairperson Lawrence and Members of the Zoning Board of Appeals
Village of Tarrytown
One Depot Plaza
Tarrytown, NY 10591

Re: 67 Miller Avenue
Parcel ID # 1.70-40-4

Dear Honorable Members of the Tarrytown Zoning Board of Appeals,

I am in front of your Board again this evening representing Ms. Geraldine Baldwin as it relates to the direct impacts she will have to endure should this Board approve the current application submitted by Peter Bartolacci for significant height variance(s) for the construction of two retaining walls (the "Application"). Although the Planning Board and this Board have heard from the Mr. and Mrs. Bartolacci (the "Applicants") over the course of numerous meetings and several months, it is clear that the Application must be denied. As this Board is aware, the Applicants are in front of the Planning Board for a waiver of the steep slope regulations pursuant to Village Code § 305-67(F). The Planning Board has grappled with the Application for months and raised numerous concerns over the impact to the Village, the impact to Ms. Baldwin, and whether the Application meets the strict criteria outlined under the Village Code.

Now, in front of your Board, the Applicants have made it clear that their main purpose is to create a significantly larger backyard on a severly sloped parcel of property. However, there is no "permit" or even approval process set forth in the Village Code that allows for the creation of a back yard on a steeply sloped parcel. Indeed, what this Board must remember is that your role is to grant the minimum variance necessary to stabilize the existing slope – NOT the "humongous" variance necessary to allow the Applicants to create a larger back yard. Although you have heard hours of testimony that the backyard used to be larger decades ago, this Board's authority and jurisdiction is limited to evaluating whether this approximately 20' tall structure is what is actually necessary to stablize the existing slope. Based on the record before you, the answer must be no.

The Applicants have had ample opportunity to submit a plan that addresses the criteria outlined in both the Village Code and under New York State law. However, the Applicants continually fail to do so and are pleading with your Board to allow them to construct a structure

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that is not permitted in the Village. This letter supplements the letters I submitted during the June and July ZBA meetings and addresses additional issues and arguments.

I. APPLICANTS' PROPOSAL MUST BE DENIED AS IT FAILS TO SATISFY ANY OF THE CRITERIA IN THE VILLAGE LAW FOR AREA VARIANCES

The basic inquiry for zoning boards at all times is whether the strict application of the ordinance in a given case will serve a valid public purpose which outweighs the injury to the property owner. *See Grace v. Palmero, 182 A.D.2d 820, 582 N.Y.S.2d 284* (2d Dep't 1992). In *Palmero*, the property owner was seeking substanial side yard variances and a height variance for an existing garage. The Court found that the property owner conceded his ability to situate the garage on his property in such a way as to conform to the setback requirements and, ultimately, the zoning board denied the variances. The Court also noted that the financial hardship incurred to the property owner to remove the existing garage did not give rise to any entitlement to the area variances.

Here, for hours, this Board has considered testimony regarding the size of the backyard that may have existed decades ago. This argument is a red herring. First, the Applicants are in front of the Planning Board for a waiver of the prohibition of building on steep slopes – not a permit to bring in truckloads and hundreds of cubic yards of dirt to create a larger backyard. However, not only are the Applicants seeking a complete waiver of the regulations under Chapter 305-67, they are asking for a mind-boggling variance. How can this Board consider the application and properly apply the balancing test when the proposal is so disproportionate to the actual need? Morover, as the Second Department found in *Palmero*, if the Applicants can construct a wall that meets the zoning criteria, then it must deny the application.

By way of example, someone buys property in a single family zoning district and wishes to construct a single family home. The homes in the neighborhood range from 2,500 to 3,000 square feet. The initial proposal is for a 10,000 square foot home that vastly exceeds the permitted FAR, requires side yard and rear yard variances and needs a lot coverage variance. The abutting neighbors are directly impacted by the size of the proposed home and the proximity to their existing homes and they raise their concerns with this Board. This Board's role is to review the proposal and see if the requests are the minimum necessary, if the proposal adversely impacts the neighborhood, etc. In this example, the need for such extreme variances is entirely self-created, creates an undesireable change in the character of the neighborhood, and the homeowner can certainly reduce the proposed square footage of the home. Moving the home closer to the east side of the lot does not address the overall impacts created by such a disporportionately sized home. Similarly, here, by asking for two walls that, individually, do not require as much of a height variance (but still significant), does not address any of the impacts and still fails to meet the criteria necessary for an area variance. On paper, a variance that is less of a percentage may look better in writing but in reality the impacts are just as great (if not greater) because there are two walls. As a result, the Application must be denied.

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In my June letter, I outlined how the single 20' retaining wall failed to meet any of the area variance criteria. Outlined below are more reasons why the current Application continues to fall well short of the criteria this Board must apply. As a result, the Application must be denied.

a. Whether an undesireable change will be produced in the character of the neighborhood.

As evidenced by the petition previously submitted by numerous neighbors, there would be a significant and undesireable change to the neighborhood if this Board granted variances for either the 20' wall plan or for the two wall plan. This Board has numerous pictures of what the impact would be to my client and the downhill properties. Constructing two walls that amount to the same height as the original 20' proposal has not mitigated the undesireable change. Moroever, despite seeing numerous walls located in other areas of the Village, the vast majority of those walls are not in a similar location to the one proposed here (i.e., in a residential backyard). This type and size of structure is not meant to be placed in residential backyards – indeed, the Village Code does not permit it. As a result, this Board must deny the Application. *See Fowlkes v. Board of Zoning Appeals of the Town of North Hempstead*, 52 A.D.3d 711 (2d Dep't 2008) where the zoning board denied an area variance for an existing two family home where the certificate of occupany was for a single family home. The board based its decision on the detrimental effect to the neighborhood that primarily consisted of single family homes. The Town of North Hempstead zoning board found that the overal detriment to the surrounding properties outweighed the benefit to the property owner. *See also Kraut v. Board of Appeals of the Village of Scarsdale*, 841 N.Y.S.2d 369 (2d Dep't 2007) where an area variance for a front yard setback was denied because of the detrimental effect on the neighborhood.

b. Whether the benefit sought can be achieved by some other feasible method

The answer to this question is simply "yes" – the need to stablize the slope can be achieved by other feasible methods. Similar to *Palmero*, *supra*, there are other much less intrusive and code-complaint options that could possibly stablize the slope. In *Merlotto v. Town of Patterson Zoning Board of Appeals*, 43 A.D.3d 926, 841 N.Y.S.2d 650 (2d Dep't 2007), the applicant was seeking a variance for more than 3 times the permitted size to legalize the existing construction of their home. The Second Department found that the Patterson Zoning Board of Appeals acted rationally when it found, among other reasons, that the applicant could have easily constructed a smaller home in compliance with the code, it was not the minimum variance necessary, and that this need for a variance was entirely self created.

The facts in front of this Board are remarkably similar. The Applicants are seeking a variance to allow a structure (or a combination thereof) significantly greater than what is permitted when they can easily construct a much smaller wall. As a result, this Board must deny the application.

c. Whether the requested variance is substantial

The Applicant's attempts to lessen the "size" of the height variance by proposing two slighly shorter walls is unavailing. As mentioned above, the overall impact to Ms. Baldwin is just

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as significant and has not been mitigated at all. Constructing two walls that meet or exceed the height of the single wall in terms of visual impact does not negate the substantial request that the Applicants are requesting. Whether you have two walls that equal the same height as a taller single wall does not address the concerns raised by Ms. Baldwin. As set forth in *Merlotto*, *supra*, the Second Department found that the Patterson Zoning Board of Appeals properly relied upon the significant size of the request when it denied the area variance for a single family home. Here, there is no question that the requested variance is substantial.

d. Whether the variance will have an adverse effect or impact on the physical or environmental conditions

In *DeCillis v. Grannis*, 69 A.D.3d 851 (2d Dep't 2010), the petitioner owned property in the Nissequogue Recreation River Corridor and wanted to subdivide. The property did not meet the minimum lot size to subdivide and the New York State Department of Environmental Conservation Commissioner denied the requested area variance stating that such a variance would result in adverse impacts to the area. The Second Department upheld this determination and found that reliance on the potential impact to the environmental conditions of the areas was supported by the record.

As stated previoulsy in other letters, the variance will have a significant adverse impact on both the physical and environmental conditions. Not only will the fortess-like wall allow for truckloads of fill to be brought in potentially creating a greater erosion issue, the aesthetic impacts alone are so significant that the Application must be denied. It is also unclear whether the proposed planting plan is even feasible and there is no maintenance plan submitted. Furthermore, a wall that simply stablizes the slope would be much less intrusive to the environmental conditions of the slope and would result is a much less overall impact to the neighborhood. Again, the Applicants are seeking this staggering variance in addition to a waiver of the steep slope regulations from the Planning Board. This application must be denied.

e. Whether the need for the variance is self created

The Applicant has never substatially addressed this point and, as a result, this Board cannot adequately weigh this factor in its decision and the variances must be denied. The only testimony proferred by the Applicants regarding the "self created" standard is this "need" for a larger and flatter back yard. The Applicants' need is entirely self-created. *See Merlotto*, *supra*. The Applicants fail to meet this criteria and the variance must be denied.

II. TYPE OF MATERIAL, WALL SPECIFICATIONS AND MAINTENANCE PLAN

A significant issue that the ZBA should consider is the type of material that the Applicants are proposing to use for any retaining wall. Ms. Baldwin just referred to a very serious failure of a Mesa Block® wall in Ossining and the issues experienced there should be addressed as part of this Board's review of the retaining wall. The partial plans submitted by the Applicants do not show what the lengths of the geo-grids are and how the wall will be constructed. More importantly,

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there is not enough space between the walls for wall stablization in accordance with the manufacturer's specifications. The landscaping plan is also a red herring. It will take years for the trees and other plantings to grow to ten feet in height. Again, if this Board is reviewing the proposed screening as a condition or mitigation of the impacts, it has the obligation to ensure that the plan will actually work.

Equally important to the type of material used and the wall specificiations is the proposed maintenance plan. It is unclear where any sewers or catch basins are proposed to address any drainage issues. With Mesa Block® walls, some form of drainage system must be in place. Moreover, what is the proposed maintenance plan for the trees and shrubbery? A maintenace plan for any size wall must be in place and a condition of any variance.

III. CONCLUSION

This Board, along with the Planning Board, and the Village staff have committed hours to addressing the Bartolocci's application but it is clear that the proposal is simply too extrordinary, has signficant adverse and direct impacts to the downhill neighbors, and sets a dangerous precedent for the Village. Moreover, the Bartolocci's have failed to meet *any* of the criteria to support the granting of this (these) variance(s) and this Board must deny the Application. Any discussion or consideration of the possible size of the backyard that may have existed decades ago is irrelevant and outside the scope of this Board's authority in granting a variance. Furthermore, there were several other pertinent questions that this Board should resolve before any variance is granted (i.e., material of wall, maintenance plan, confirmation that there is sufficient distance between the two walls for wall stablization).

As a result, we respectfully request that this Board deny the requested variance. Simply stated, despite the hours of testimony, there is nothing in the record showing that a 20 to 21' structure (or combination of structures), is necessary to address any identified erosion/steep slope issues.

Respectfully submitted,

Kristen K. Wilson

Kristen K. Wilson

cc: Geraldine Baldwin

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To: The Tarrytown Building Dept.
Planning Board and
Zoning and Board of Appeals

Re: Application of 67 Miller Ave to construct two Mesa Block Walls on the Steep Slope at the Rear of the Property based on a Plan to replace a retaining wall dated February 23, 2017

I have been informed and understand that the Plan requires two Mesa Block walls, one 10 feet in height and one 8 feet in height, extending 75 feet in length across the entire rear of the property and extending on the North and South sides of the property—for a total length of 157 feet.

I understand further that construction of the planned walls will require excavation of the entire steep slope and 332 cubic yards or 33 truckloads of fill in order to stabilize the walls.

I have been informed that the Tarrytown Village Code seeks to protect our natural habitats and landscapes including the hills and steep slopes of our neighborhoods.

I have seen a picture of the current slope as viewed from the rear of the property and an artist's rendition of the planned walls (both attached). I am informed that the planned walls will be visible from the street on Riverview Avenue.

Based on my understanding, it is my conclusion and opinion that:

1. The proposed walls will result in a significant undesirable change in the neighborhood. None of the walls visible from Riverview Avenue appear as massive as the planned walls which are more suited to industrial or commercial property--- not our residential neighborhood.

2. Permitting construction of the planned walls will not be consistent with the Village's objectives to preserve and protect our natural habitats and landscapes.

3. The neighborhood is hilly and many yards are not level. Construction of the planned walls will set a bad precedent and may well encourage others to demand similar walls.

4. Filling in a slope with 33 truckloads of soil to erect the planned walls is not the minimum necessary to replace a 7 foot high retaining wall.

Name: [illegible] Address: 64 Riverview

Name: [illegible] Address: 64 Riverview Ave.

Name: _____ Address: _____

Name: _____ Address: _____

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To: The Tarrytown Building Dept.
Planning Board and
Zoning and Board of Appeals

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Name: Arul Majidi Address: 62 RIVERVIEW AVE TARRYTOWN NY 10591
Name: Bryna Majidi Address: 62 Riverview Ave Tarrytown NY 10591
Name: Cavin Majidi Address: 62 Riverview Ave Tarrytown NY 10591
Name: Address:

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To: The Tarrytown Building Dept.
Planning Board and
Zoning and Board of Appeals

Re: Application of 67 Miller Ave to construct two Mesa Block Walls on the Steep Slope at the Rear of the Property based on a Plan to replace a retaining wall dated February 23, 2017

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Name: Geraldine F Bach Address: 66 Riverview Ave. Tarrytown NY
Name: Trian Tayter Address: 73 Riverview Ave. Tarrytown N.Y.
Name: Jim Kaufmann Address: 80 Riverview Ave Tarrytown NY
Name: Bruce In Fullmer Address: 67 Riverview Ave, Tarrytown NY

3/24/2017

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To: The Tarrytown Building Dept.
Planning Board and
Zoning and Board of Appeals

Name: Dian Petrocelli Address: 67 Riverview Ave Tarrytown NY

Name: _____ Address: _____

Name: _____ Address: _____

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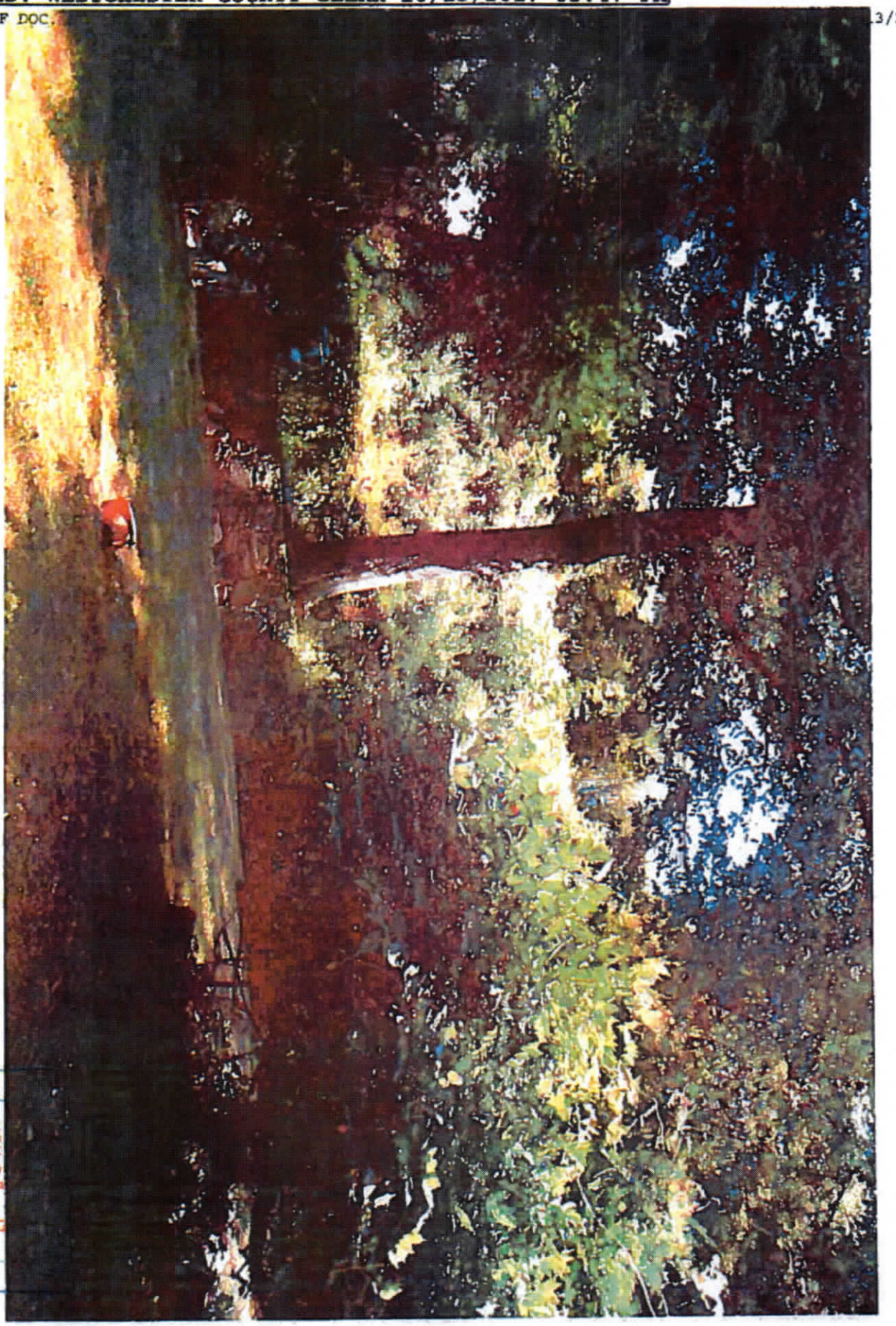

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Google Maps 67 Miller Ave

67 Miller Ave
Tarrytown, NY 10591

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NOVEMBER 27, 2017 PLANNING BOARD MINUTES

Exhibit D

Agency Use Only [If applicable]

Project: Tarrytown Self Storage

Date: 11/19/17

FILED 12/4/17

VILLAGE CLERKS OFFICE

Short Environmental Assessment Form
Part 3 Determination of Significance

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

The proposed action is a redevelopment project in the Industrial District zone ("ID"). The application has been amended to include only Lot 38 located at 29 South Depot Plaza just south of the Tarrytown Station and municipal parking lot and east of the Metro North tracks. The applicant is the contract vendee for the subject property. Lot 37 has been eliminated from the application. A subdivision is required for the sale of Lot 38 to the applicant. Therefore, the property owner has submitted a subdivision application relocating the lot line between the existing Lots 38 and 39. The proposed new Lot 38 includes the old Lot 38 plus the driveway area of lot 39. A turnaround easement has been provided for the benefit of Lot 38 and is shown on applicant's site plan submission. The new Lot 38 requires no variances. The new lot 38 is 51,452 sf.

Description of Action - The proposed action is the conversion of an existing 25,758 sf indoor sports facility to a self-storage facility. This building would be converted and increased to a 47,875 sf space including a 500 sf retail space and adjacent bike racks. The building height would be increased from 21' to 24'. The 36 parking spaces provided on Lot 38 will be along the east and north side of the self-storage facility. There are two existing and two new proposed loading docks provided. The site plan has been revised to include the turning radius for the loading areas on Lot 38.

Parking - Except for the parking requirement, the application is zoning compliant. The Applicant is required per Code to provide 57 spaces and has appeared before the ZBA for a parking variance of 19 spaces plus 2 off street loading spaces (where 6 are required and 4 are being provided). The ZBA has previously provided a parking variance for Applicant's similar facility on Wildey Street. The Village Consulting Planner's memo (6/27/17) notes that self-storage facilities have a low impact on parking demand and trip generation. Many customers use these facilities at off hours and by appointment only. Based on APA, Parking Standards, PAS Report (2002) and the Self-Storage Assoc. Parking Analysis of facilities in lower Westchester (2008), parking can range from 1 space per 40 - 45 storage units or 0.25 spaces per 1,000 sf. Together with the retail parking requirement, this results in a potential of 15 - 20 parking spaces, well under the 36 spaces being provided by the applicant.

(See Attached for Continuation of EAF Part 3)

☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

☑ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Village of Tarrytown Planning Board	11/28/17
Name of Lead Agency	Date
Ron Tedesco	Acting Chair
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
Ron Tedesco	Robert James Galvin, AICP - Village Consulting Planner
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

PRINT FORM

Environmental Assessment Form
Part 3 – Continued

GML Review - The Westchester County Planning Department referral letter (8/16/17) indicated that the proposed use was inconsistent for a transit-oriented center that would be more appropriately used for mixed use, transit-oriented development. However, the County did recognize that the proposed self-storage facility is a permitted use within the ID zone and is zoning compliant. The County did take note of the small 500 sf retail space and bicycle parking near the train station. The Village's Comprehensive Plan is currently in the process of being updated.

Environmental Impacts/Historic Resources - The project site is not located within a wetland and is not near any recognized environmental or historic resource. The site is also not located in a floodplain. There have been no spills or other hazardous materials identified on the site.

Lighting – The lighting on the self-storage facility will consist of wall-mounted lighting fixtures. All light fixtures are proposed to be LED, shine downward to avoid any glare and are dark sky compliant, avoiding sky glow.

Stormwater - The site is almost completely impervious and does not now contain any stormwater management. The Applicant will be required to provide proper drainage including catch basins and/or inlet structures, resulting in no net runoff. The Applicant will comply with the Village Engineer's site plan and stormwater comments in his review dated 8/28/17. Applicant's stormwater management will be reviewed and approved by the Village Engineer.

Site Conditions - The Applicant has committed to improve the pavement conditions of the access driveway leading from Depot Plaza to improve the safety and visual appearance of this entrance to the site. Applicant has revised the appearance of the self-storage facility to provide more attractive architectural features including translucent glass panels, glass enclosed lobby, color metal roof, fascia and new siding.

SEQRA Determination of Significance - Based on the Board's review of Pt. 2 of the EAF, applicant's plans and additional information provided during public hearings, the proposed action is not expected to result in any significant adverse environmental impacts that would rise to the level of significance required for a Positive Declaration.

Agency Use Only [If applicable]

Project:	Tarrytown Self Storage @ Depot Plaza
Date:	11/19/17

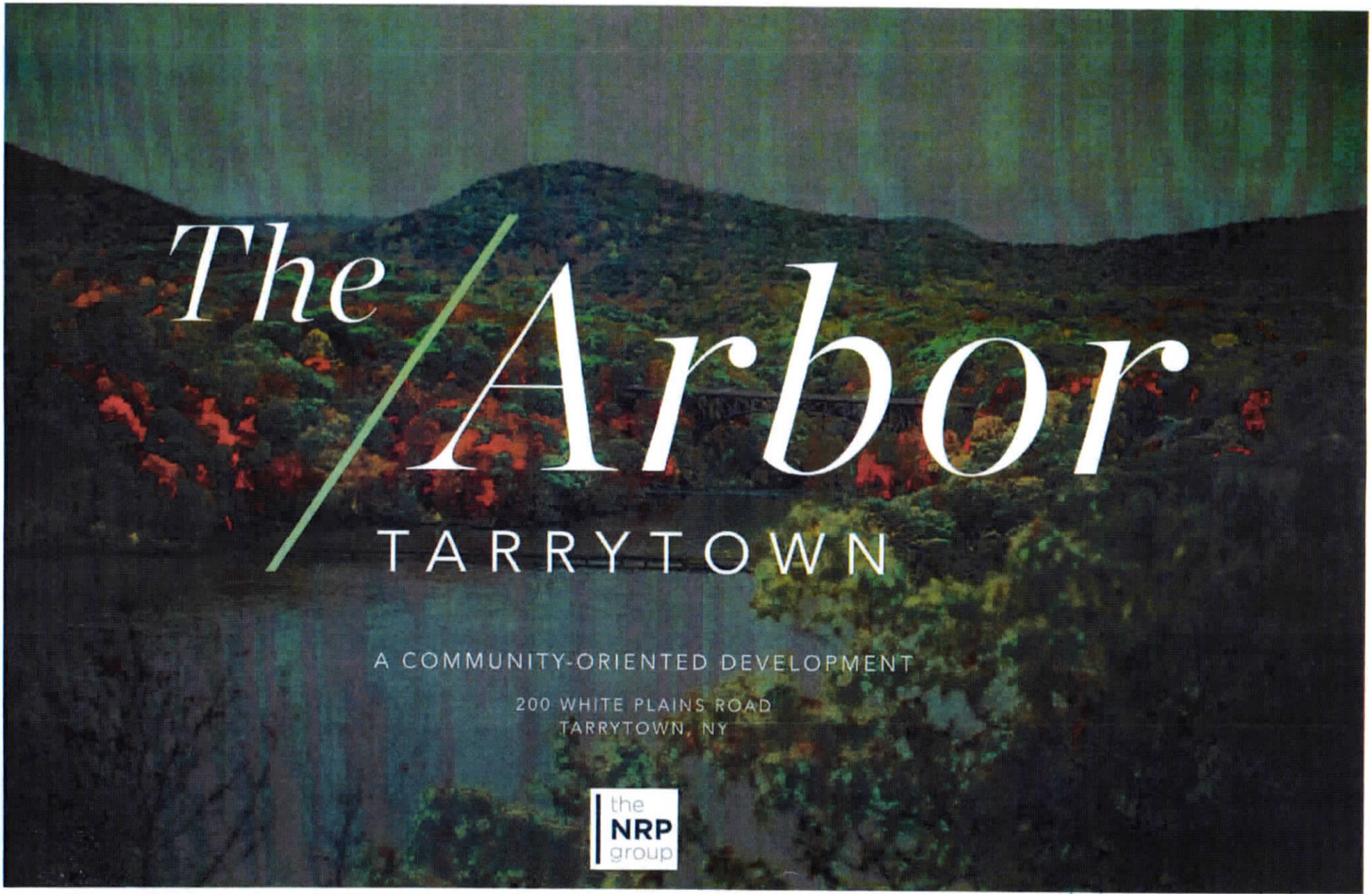
Short Environmental Assessment Form
Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.
Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? (CMP Update in progress)	✓	
2. Will the proposed action result in a change in the use or intensity of use of land?	✓	
3. Will the proposed action impair the character or quality of the existing community?	✓	
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	✓	
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	✓	
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	✓	
7. Will the proposed action impact existing: a. public / private water supplies?	✓	
b. public / private wastewater treatment utilities?	✓	
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	✓	
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	✓	
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	✓	
11. Will the proposed action create a hazard to environmental resources or human health?	✓	

NOVEMBER 27, 2017 PLANNING BOARD MINUTES

Exhibit E



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NRP: Who We Are

The NRP Group is a best-in-class developer, builder, and manager of multifamily housing.

We have built projects in **local communities** throughout the United States.

Our goal is to design communities **that improve the lives of residents, and enhance the neighborhoods** in which they are located.

Our success is founded in **building partnerships with communities.**

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Case Study: The Edison

306 HOMES | 9.3 ACRES

The Situation:

The project site was in a critical part of Cleveland's urban community, but the site was a community blight with vacant industrial buildings that caused vehicle and pedestrian congestion.

Engagement Process:

NRP engaged with the local Councilman and community groups to develop a project that was in line with the needs of the neighborhood.

Final Product:

NRP removed over 250,000 square feet of vacant industrial building space. The new development provided a walkable, pedestrian-friendly community that was an extension of the existing street grid with free flow into and through the development—linking both cars and pedestrians into the fabric of the community.

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Case Study: Big Tex

336 HOMES | 7.5 ACRES

The Situation:

Developing a community-oriented project on a vacant Brownfield site in an important historic district.

Engagement Process:

NRP engaged neighboring communities, community groups and local legislators and found that the "Big Tex" project was the "missing link" to connecting local residents to miles of park land and hiking trails.

Final Product:

A development that fit the needs of the Big Tex community—connecting residents to 15 miles of hike and bike trails, 6-foot bridges, picnic tables, overlooks and river edge landings.

The project successfully leveraged $271 million in public investment to create private development.

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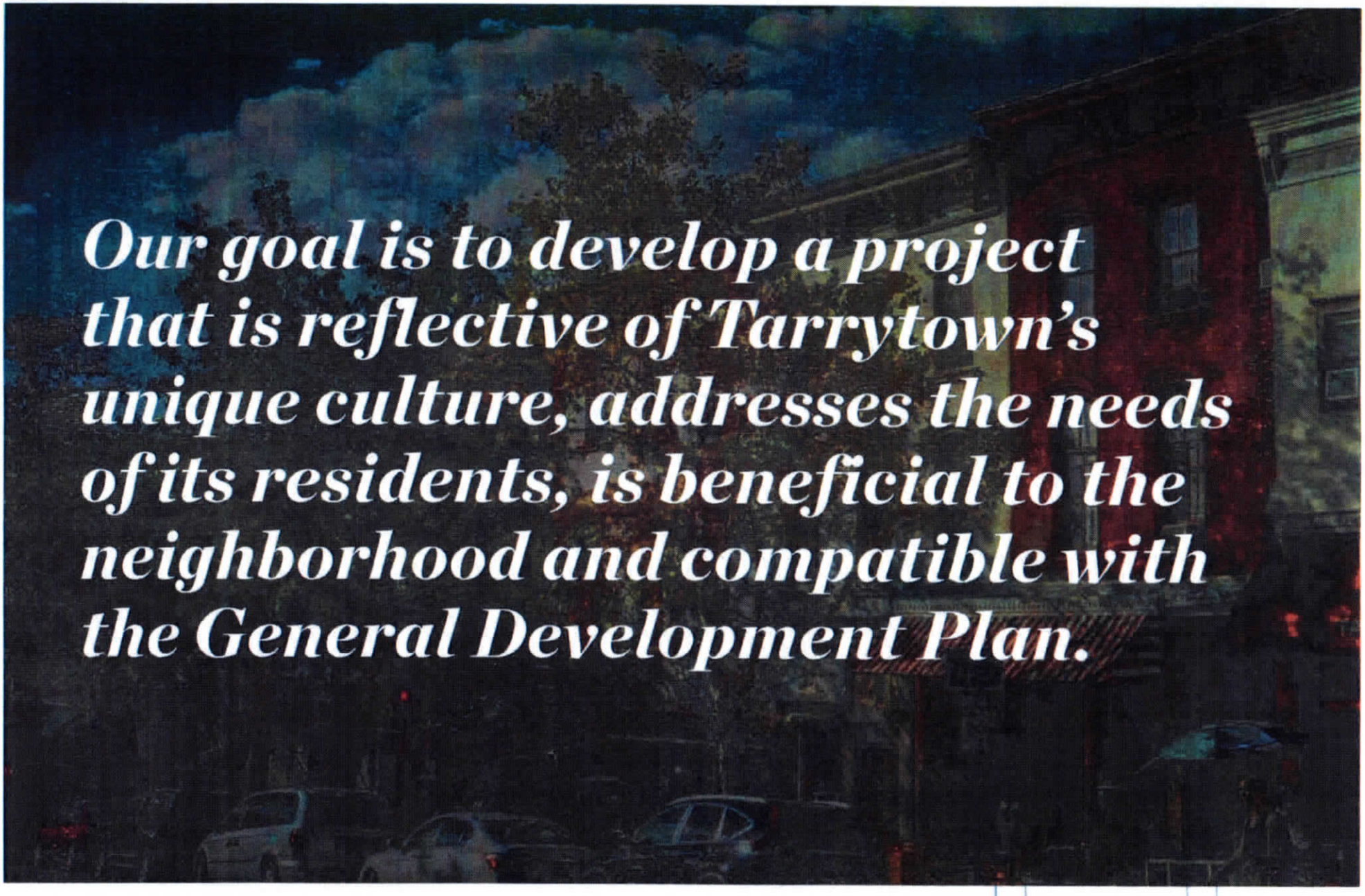

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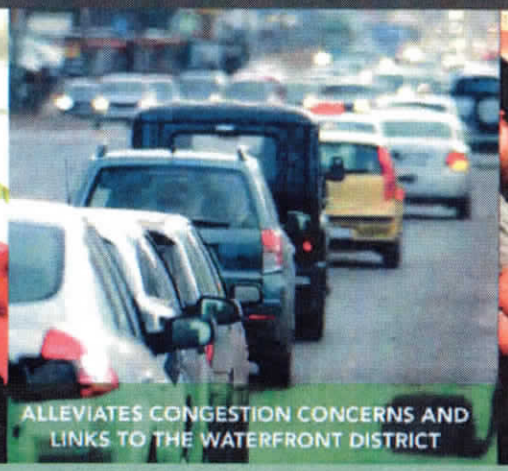
Getting to Know Tarrytown

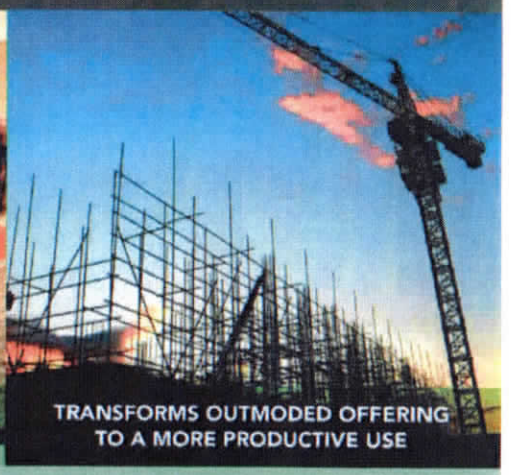
Tarrytown's approach to development is unique. The amount of time and resources this Planning Board and the Trustees put into developing a roadmap for potential developments was a valuable resource for our team to consider while building out the potential plans for our project. We want to build a project that is:

GREEN AND SUSTAINABLE



ALLEVIATES CONGESTION CONCERNS AND LINKS TO THE WATERFRONT DISTRICT

AFFORDABLE FOR CURRENT RESIDENTS



TRANSFORMS OUTMODED OFFERING TO A MORE PRODUCTIVE USE

Our marketing plan is focused on the current residents of Tarrytown: middle-class families who want to stay here, but are not ready to purchase a house. Disrupting Tarrytown's unique culture would only work against that plan.

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The Arbor

With the concerns of Tarrytown in mind, NRP planned a project that coincides with the goals of residents and the mixed use zone the development is planned for.

If approved, the Arbor will create 248 units for the current residents of Tarrytown, but also:

- Repurpose obsolete suburban office to quality homes that residents can afford
- Develop links to the downtown area—offering shuttles to transportation hubs and bike storage for residents
- Include important amenities such as an outdoor pool and deck
- Reduction in peak AM/PM traffic by 26/12% respectively
- Incorporate sustainable design principles and technology

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ksq design—Making Homes

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Sustainable Design Principles

- Smart Home Technology
- Energy Efficient Fixtures/Appliances
- Submetering
- LEED Certified
- Super Building Envelope
- Large Double Pane Windows For More Daylight
- Bicycle Storage

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Tarrytown Neighborhoods

New Waterfront District

Village Center

Hill-Side/
Hill Top Neighbors

Tappanzee / i287
Mixed-Use Corridor

We studied the distinct character of each of Tarrytown's main neighborhoods in creating our potential project plan.

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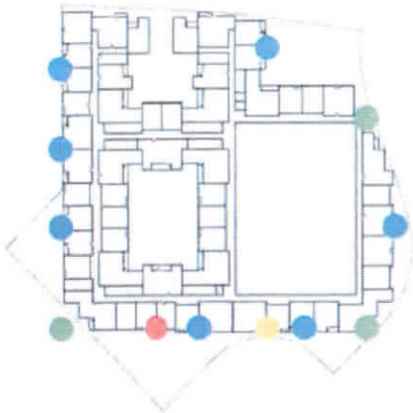
South Elevation

The Entry

LANTERN GRAND ENTRY FRAME GARAGE ENTRY



Entry—Details

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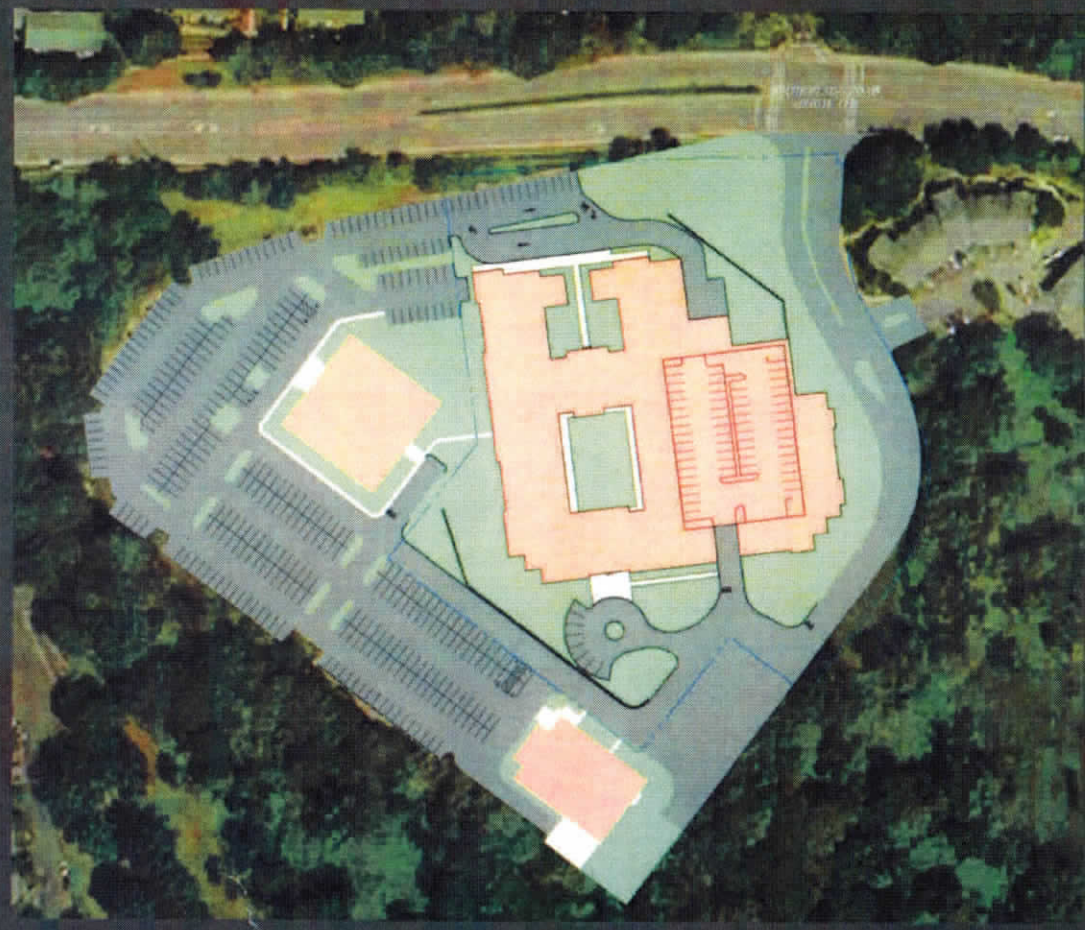
The Details: Engineeer



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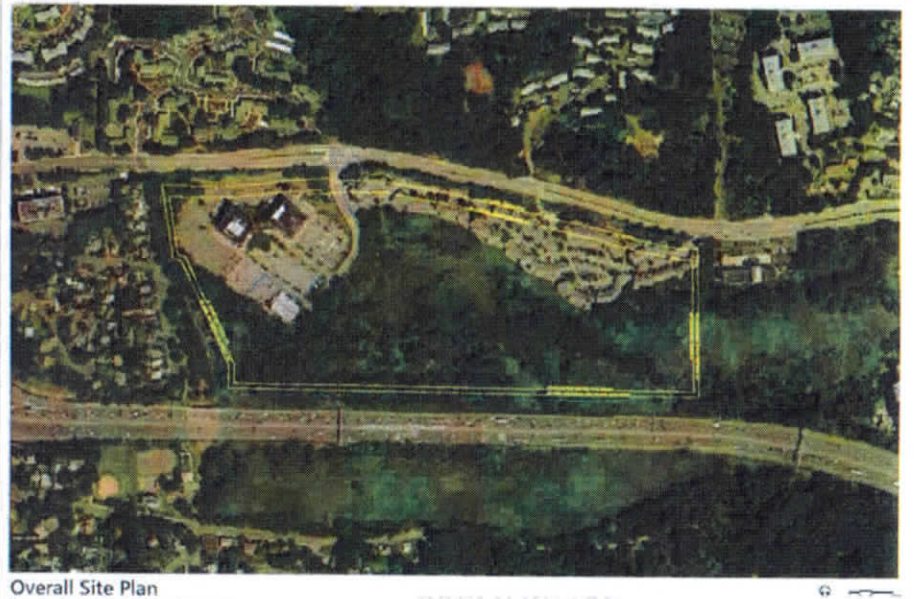
Creation of Mixed Use Zone (1979)

305-129 Mixed-use development

Declaration of policy. The MU District, allowing mixed-use-type development on qualifying parcels of land in the OB Zone, furthers the following Village goals and objectives:

- To encourage such forms of land development which will promote **conservation of remaining open space** in the Village and will preserve and enhance natural beauty and resources.
- To permit **suitable development of large parcels** of land that may not be topographically or ecologically suitable for development under current zoning.
- To **minimize visual impact on properties adjacent** to OB Zones, especially single-family residential zones.
- To promote sound developments that will **not overload Village streets or services** and will also broaden the tax base in the Village.



Overall Site Plan
Proposed Residential Development
200 White Plains Road, Tarrytown, New York

PRELIMINARY

vhb

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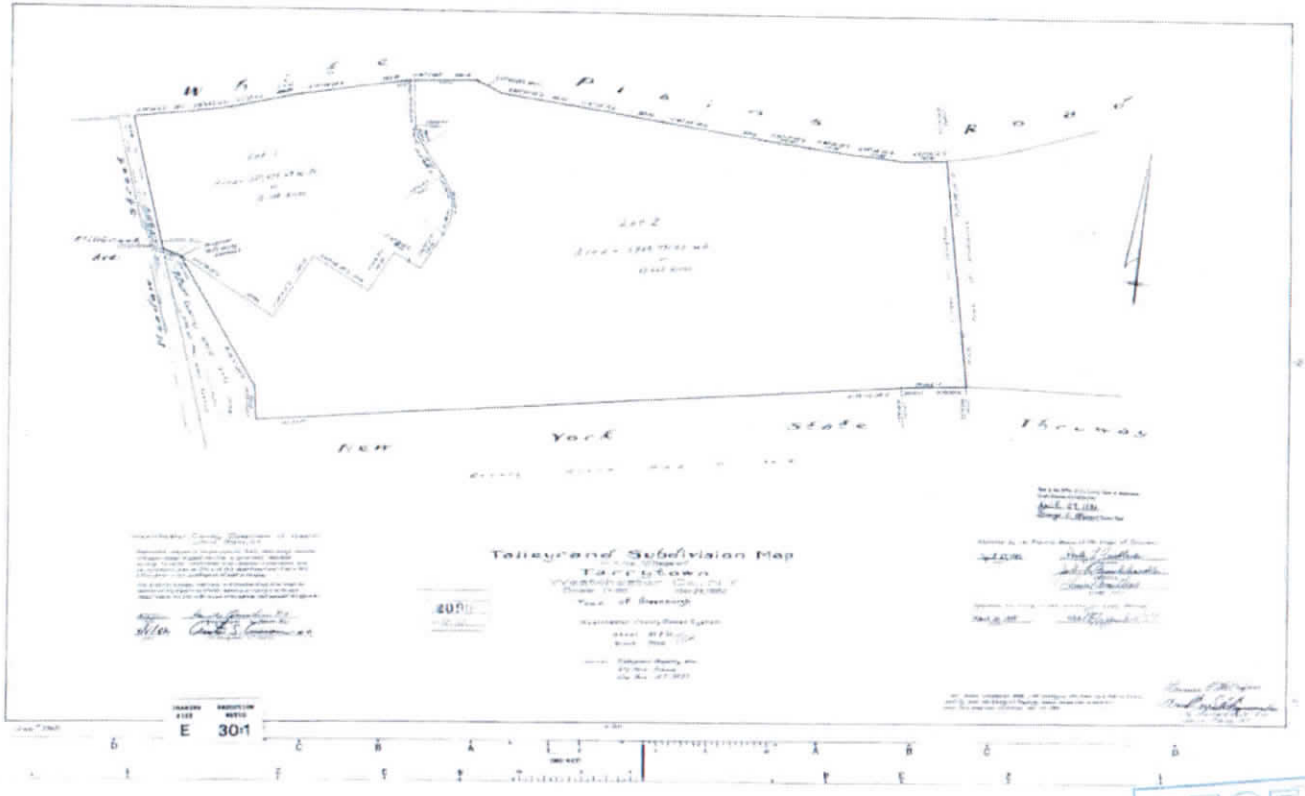
Talleyrand Subdivision Map(1982)

Lender Required to Facilitate Phase I



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Robert Martin Talleyrand Approval General Development Plan
(1989 Planning Board Resolution)

Existing Development	
Building A	90,000 sq.ft office
Building B	90,000 sq.ft office
Building C	10,000 sq.ft restaurant
Parking	650 on-grade spaces

Proposed Development	
Building 1	130,000 sq.ft office
Building 2	185 D.U.
Building 3	161 D.U.
Building 4	180,000 sq.ft office
Building 5	154 D.U.
Parking	• 1125 structured spaces • 290 on-grade spaces

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Approved General Development Plan (1989 Planning Board Resolution)

January 5, 1989

RESOLUTION OF
VILLAGE OF TARRYTOWN, NEW YORK
PLANNING BOARD
ADOPTING

STATEMENT OF SEQRA LEAD AGENCY FINDINGS

FOR
PROPOSED GENERAL DEVELOPMENT PLAN FOR TALLEYRAND
BY ROBERT MARTIN COMPANY

WHEREAS, the Planning Board of the Village of Tarrytown, New York, acting as Lead Agency pursuant to provisions of the New York State Environmental Quality Review Act (SEQRA), and 6 NYCRR Part 617, has given due consideration to the record compiled in the above matter, including the DEIS, SEIS and the FSEIS; and

WHEREAS, on September 24, 1984, a Draft Environmental Impact Statement dated June 1984 together with an application for approval of a General Development Plan and September 1984 Supplement was accepted as complete, and a Public Hearing was opened on October 22, 1984 and closed on June 24, 1985; and

WHEREAS, on June 9, 1988, a Supplemental Environmental Impact Statement was accepted as complete and a Public Hearing was held on June 24, 1988; and

WHEREAS, in response to comments received, a Final Environmental Impact Statement was prepared and accepted on October 28, 1988, and

WHEREAS, having afforded involved agencies and the public the opportunity to consider the Final Environmental Impact Statement; and

WHEREAS, the Proposed Action is described in the following paragraphs:

The Talleyrand property is a 54.67 acre site on Route 119 (the "site"), extending from Meadow Street on the west to the Village line on the east. It is bounded by the New York State Thruway on the south. The applicant's property extends for approximately 19 acres to the east of the Village line, in the Town of Greenburgh.

The Greenburgh portion of the property is zoned OB, which permits office buildings of 6 stories or 75 feet in height.

The site is zoned MU, and is currently developed with two 90,000 square foot 6 story office buildings and a 10,000 square foot restaurant which were constructed prior to 1984 under the then existing OB zone.

0730-05-6604 -1-

- 180,000 sq.ft of existing **office**
- 10,000 sq.ft of existing **restaurant**
- up to 310,000 sq.ft of **additional office**
- up to 500,000 sq.ft of **residential space**

  (no more than 500 dwelling units and an additional 50 units of affordable housing)

SOURCED FROM PAGE 13 OF THE 1989 SEQRA LEAD AGENCY FINDINGS

RESOLVED that pursuant to the criteria elicited through the environmental review process, the Planning Board does hereby approve the General Development Plan for the Talleyrand site dated May 20, 1988, generally noted as Plan D in the Supplemental Environmental Impact Statement, but modified herein to consist of a total of 180,000 SF of existing office, 10,000 SF of existing restaurant, up to 310,000 SF of additional office, up to 500,000 SF of residential space (no more than 500 dwelling units and an additional 50 units of affordable housing), and up to 10,000 square feet of new internal convenience retail use (the retail use will require a modification in the text of the MU Zone); and be it further

RESOLVED that consistent with social, economic and other essential considerations from among the reasonable alternatives thereto, the action to be approved is one which minimizes or avoids adverse environmental effects to the

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Approved General Development Plan
(1989 Planning Board Resolution)

	(Overall Plan-Includes Existing Buildings) Provided	Required or Permitted
Coverage	33.3%	45% permitted
Coverage of Impervious Surfaces (except buildings)	24.9%	33%
Building Coverage	8.4%	12-17%
Height	6 stories	6 stories
Max. gross floor area	1,000,000	2,424,788
SETBACKS		
Thruway	195'	50'
Route 119	100'	100'
Other Property Lines	75'	75'
Setback between Buildings	75'	50'
Wetland Setbacks	100'	75'

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Phase I Construction GDP-Office and Restaurant

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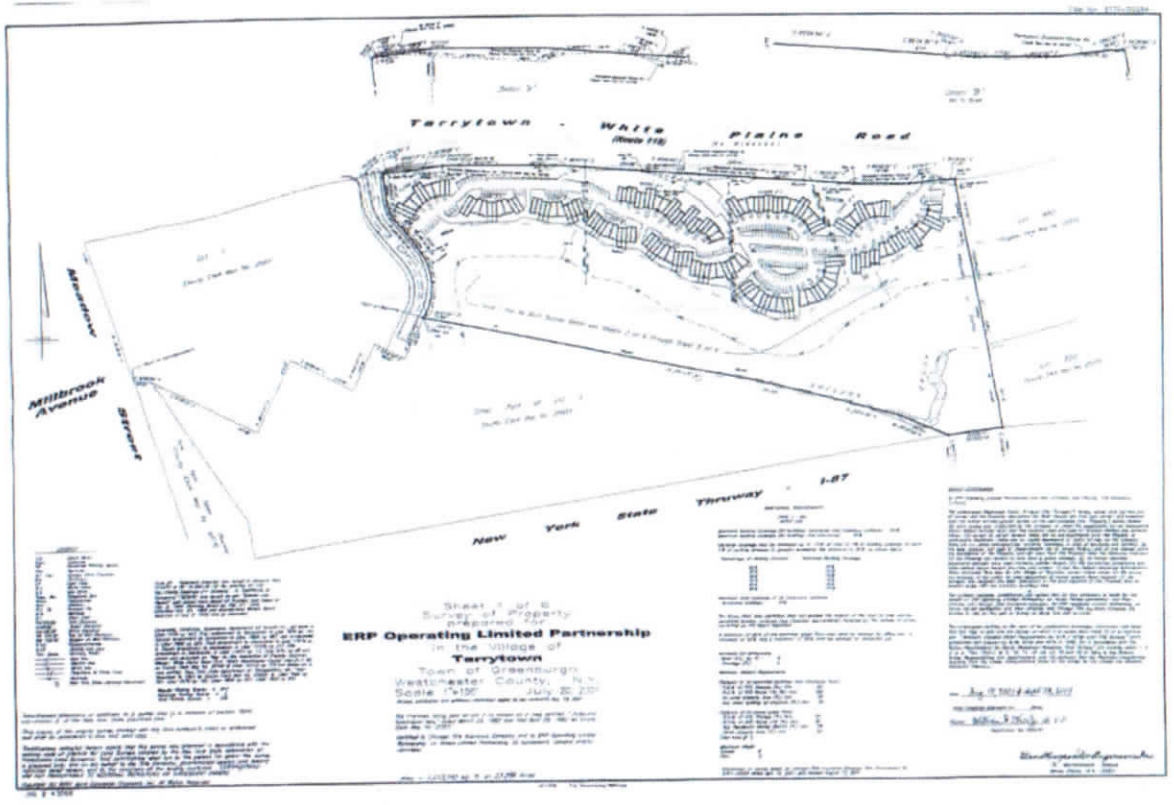
ERP Residential Talleyrand Crescent Apartments (2001)

240 Market Apartments/60 Affordable



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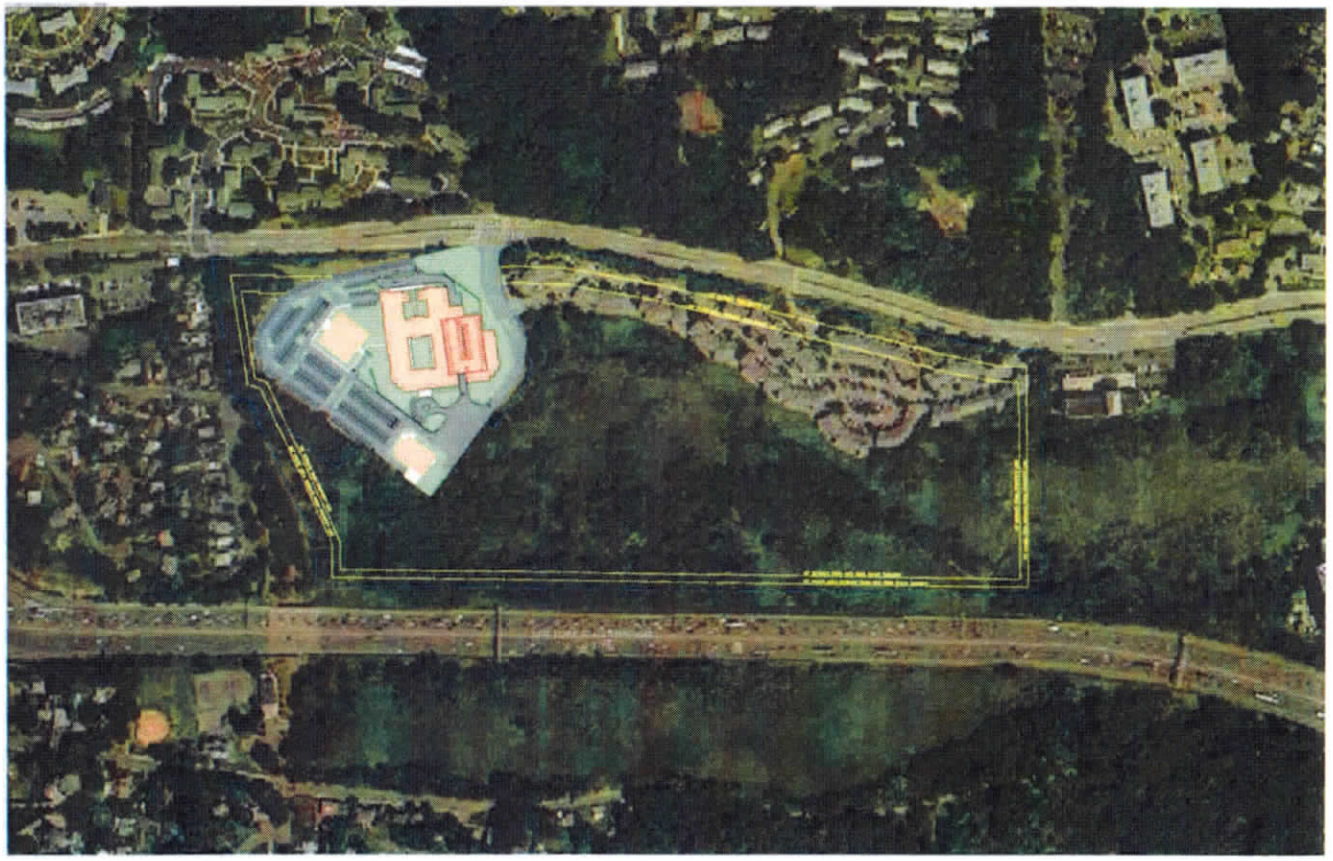
NRP Residential Proposal



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NRP Proposal:Conformance with GDP

Development Program Chart			
Approved GDP (5/20/88)	Existing Development	NRP Proposed Development	Total Proposed Development
490,000 Sq.ft Office	168,000 Sq.ft	Eliminate 84,000 Sq.ft Office	84,000 Sq.ft +Bld 1 130,000 Sq.ft (future) Total: 214,000 Sq.ft
500 Dwelling Units Plus 50 Affordable Units (Up to 500,000 sq. ft "residential space")	240 Market Units 60 Affordable Units (240,000 sq. ft)	248 Market Units 10% Affordable (318,800 sq. ft)	463 Market Units 85 Affordable Units Total: 548 Units
10,000 Sq.ft Restaurant	10,000 sq. ft Restaurant	0	10,000 sq. ft Restaurant
1125 Structured Spaces	0	325-375 Spaces	325-375 Spaces

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Zoning Compliance

General Development Plan				
Zoning Regulation Requirements	Required/ Permitted Under MU Zoning	Site Plan D	Existing Development	Total Proposed Development with NRP Project
Minimum Lot Area	50 Acres	± 55 Acres	± 55 Acres	± 55 Acres
Frontage Along Route 119	20%	± 39%	± 39%	± 39%
Perimeter Along NYS Thruway	20%	± 33.5%	± 33.5%	± 33.5%
Front Yard Setback from Route 119	100 feet	± 100 Feet	± 38 Feet	± 38 Feet
Side Yard Setback, All other property lines	75 feet	± 75 Feet	± 60 Feet	± 60 Feet
Rear Yard setback, from NYS Thruway	50 feet	± 195 Feet	± 195 Feet	± 195 Feet
Wetland Setback	75 feet	± 100 Feet	± 100 Feet	± 100 Feet
Maximum Floor Area	2,424,788 Sq. Ft	± 1,000,000 Sq.Ft	± 529,000 Sq.Ft	± 782,000 Sq.Ft
Maximum Building Height	6 Stories	6 Stories	6 Stories	6 Stories
Maximum Building Coverage	12-17%	± 8.4%	± 6.7%	± 9.8%
Maximum Impervious	33%	± 24.9%	± 19.5%	± 23.5%
Total Impervious Coverage	45%	± 33.3%	± 26.2%	± 33.3%
Max/Min Residental Floor Area Based on 1,000,000 sq per GDP*	40-55%	–	± 22%	± 57%

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Zoning Compliance- Total MU Zone

Coverage Requirement

"maximum permitted coverage...overall development site"
(§ 305-129(C)(4))

Floor Area

"permitted total gross floor area... of the entire lot"
minimum of 40% and max. of 55% of "allowable floor area"
(§ 305-129(C)(6)(a)).

Village of Tarrytown

Zoning Schedule
MU District

5		6	7	8-10	11-17	18	19	
Zone	**Use**	**Minimum Lot Size (square feet)**	**Width at Front of Building (feet)**	**Coverage Requirements**	**Setback Requirements**	**Maximum Height (stories)**	**Maximum Height (feet)**	**Maximum Gross Floor Area**
MU	All permitted uses	0	0	Maximum total coverage of all buildings, structures and impervious surfaces: 45% of the total lot area. Maximum total coverage of all buildings and structures: 12% of the total lot area. Building coverage may be increased up to 17%, at a ratio of an additional 5% of parking enclosed in garages exceeding the minimum of 20% as shown below: **Percentage of Parking Enclosed** / **Permitted Building Coverage** 20% / 12% 25% / 13% 30% / 14% 35% / 15% 40% / 16% 45% / 17% Maximum total coverage of all impervious surfaces (excluding buildings): 33%.	Minimum setback of all permitted buildings and structures from the right-of-way of the New York State Thruway: 50 feet Minimum setback of all permitted buildings and structures from the right-of-way of New York State Route 119: 100 feet Minimum setback of all permitted buildings and structures from all other property lines: 75 feet Minimum setback of any permitted building or structure from any other permitted building or structure: 50 feet Minimum setback of all paved areas from the right-of-way of the New York State Thruway: 25 feet Minimum setback of all paved areas from the right-of-way of New York State Route 119: 50 feet Minimum setback of all paved areas from any residential zoning district: 75 feet Minimum setback of all paved areas from other property lines: 50 feet Minimum setback of all permitted buildings, structures and impervious materials from all wetlands: 75 feet	4.0	0	The gross floor area permitted shall not exceed the product of the total lot area and the permitted building coverage (see coverage requirements) multiplied by the number of stories permitted by the height regulations. A minimum of 40% of the permitted gross floor area shall be retained for office use. A maximum of 40% and a maximum of 55% shall be retained for residential use.

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Applicable Procedures

305-129(D)(1)

General development plan. The applicant shall submit and the Planning Board shall consider a general development plan (GDP) for the site. The GDP shall set forth the following in map or report form, as appropriate.

305-129(D)(4)

Amendments to a GDP. The applicant may, from time to time, submit amendments to the approved general development plan to the Planning Board, which shall process them in the same manner as the original general development plan submission by the applicant.

305-129(E)

As an alternative, the applicant may submit a site plan or amended site plan simultaneously with the GDP or amended GDP, and in such event the Planning Board shall process both according to the time schedule provided for the GDP.

(2) The Planning Board shall not approve any site plan unless and until it determines that the site plan is in conformity with the approved general development plan.

(3) The procedures applicable and the rights and duties of the Planning Board in the consideration of the site plan shall be those set forth in Article XVI of this chapter.

305-129(F)

Division of property. All or portions of an area designated as mixed use may be divided for the purposes of sale, lease or mortgage with the approval of the Planning Board. Unless, in the reasonable opinion of the Planning Board, approval of such sale, lease or mortgage requires to the contrary, the submission of a new site plan or general development plan shall not be a condition precedent to such approval. However, no development of the area may take place except in accordance with the general development plan and site plan approved by the Planning Board.

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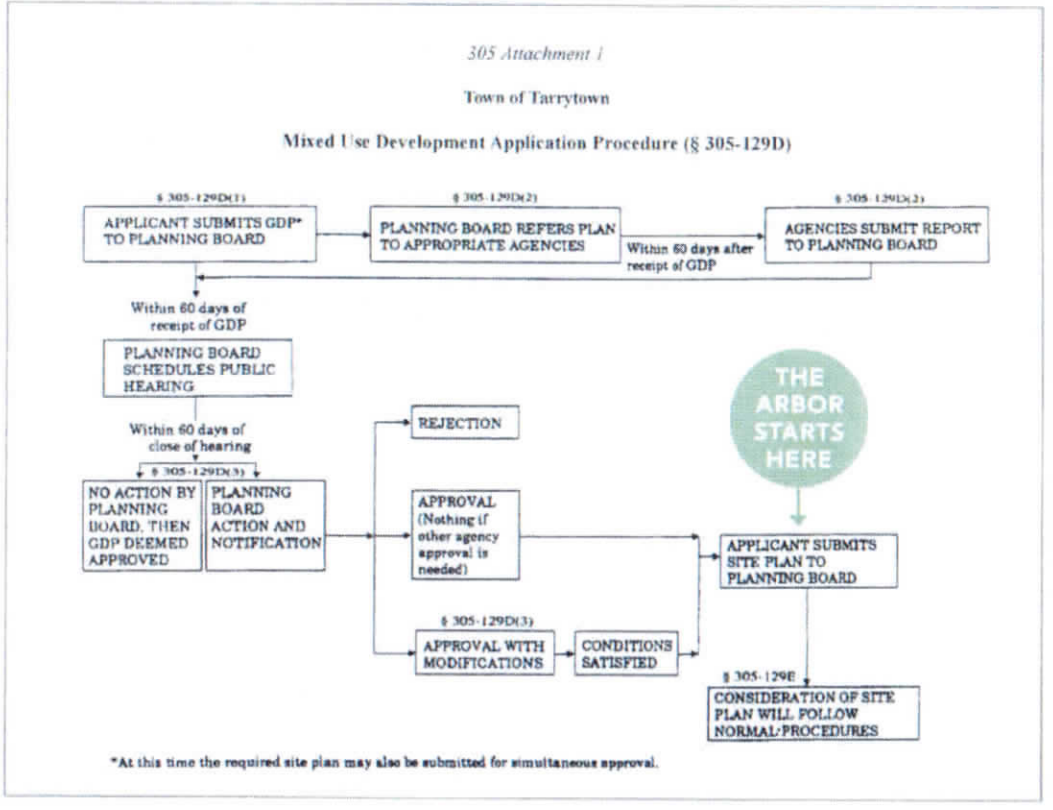
Illustrative Procedure

Compatible Use Permit only for specific "uses" associated with GDP Plan not individual Site Plan applications.
See Article XV (Compatible Use Permits)

Compatible Use Permit not mentioned under Section 305-129(E) MU "Site Plan Approval"

Contemplated multiple MU Sites and GDPs

Not contemplate seeking Trustee approval for every Site Plan Application



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