

Zoning Board of Appeals  
Village of Tarrytown  
Regular Meeting via Zoom Video Conference  
April 12, 2021 7:30 p.m.

PRESENT: Chairwoman Lawrence, Members Weisel, Rachlin, Alternate Member #1 Jolly, Counsel Addona; Village Engineer Pennella; Secretary Meszaros

ABSENT: Members Braun and Song

\*\*\*This meeting is being conducted via Zoom video conferencing, which has been authorized by the Governor's Executive Order issued in response to the Covid-19 Pandemic. The orders have been renewed and are in effect\*\*\*\*

Ms. Lawrence opened the Zoom meeting at 7:35 pm.

#### APPROVAL OF MINUTES – March 8, 2021

Ms. Weisel moved, seconded by Ms. Rachlin, to approve the minutes of the March 8, 2021 meeting.

The secretary recorded the vote:

Member Weisel:	Yes
Member Rachlin:	Yes
Alt. Member Jolly:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried. 4-0

#### CONTINUATION OF PUBLIC HEARING – DaVita Kidney Care, 200 White Plains Road

Counsel Addona advised that she has prepared a resolution for the Board's consideration which was reviewed by the Board Members prior to the meeting and also provided to the applicant.

Ms. Lawrence and the Board Members had no further questions. Charles Gottlieb, attorney, representing the applicant, advised that he has reviewed the draft and has nothing to add.

Counsel Addona read portions of the draft resolution below into the record.

**ZONING BOARD OF APPEALS RESOLUTION**

Application of DaVita, Inc. (“Applicant”)  
200 White Plains Road, Tarrytown, New York 10591 (the “Property”)  
Sheet 1.201, Block 122, Lot 4  
MU (Mixed Use) Zoning District

WHEREAS, the Applicant, with the authorization of the owner, has appealed to the Village of Tarrytown Zoning Board of Appeals (“ZBA”) from a determination by the Building Inspector dated January 20, 2021 (“Denial Letter”) that the Applicant’s proposed alterations to convert a portion of an existing office building to a medical use (blood dialysis facility) is not a permitted principal or accessory use under Village of Tarrytown Zoning Code § 305-35 governing the Mixed Use MU zoning district, and

WHEREAS, the Applicant submitted an application to the ZBA seeking an interpretation that the proposed use is permitted as a “general office” use under Zoning Code § 305-35(A)(3), and during the course of the application process the Applicant provided additional information about the proposed use that was not available to the Building Inspector at the time he issued the Denial Letter, and

WHEREAS, a duly noticed public hearing was held at the regular meeting of the ZBA on February 8, 2021<sup>1</sup> and continued to the ZBA’s March 8, 2021 and April 12, 2021 meetings, and members of the public having the opportunity to attend and be heard, the public hearing was closed on April 12, 2021, and

WHEREAS, this Board, after having the opportunity to visit the Property and after duly considering all the proofs and evidence before it, determines as follows:

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

IT IS FURTHER RESOLVED, this Board hereby issues an interpretation that the Applicant’s proposed use of the Property is permitted as a “general office” use under Zoning Code § 305-35(A)(3) in the Mixed Use MU zoning district specifically based upon the following findings with respect to this application:

1. The Applicant is not proposing a facility providing the more standard dialysis treatment, known as In-Center Hemodialysis, which provides out-patient dialysis services where the patients regularly and consistently come to the facility for treatment three times per week, and each treatment lasts three to four hours. In these instances, the patients have no alternative to receiving dialysis at the facility and must come to the facility to receive treatment.

<sup>1</sup> Due to the COVID-19 pandemic, this public hearing was duly held via videoconferencing in accordance with the Governor’s Executive Orders 202.1 and 202.15, as subsequently extended.

2. Instead, the Applicant's proposed use is to provide office consultations with clients for education and training in order to facilitate the client conducting their own dialysis at home, with equipment kept in their home after being provided with the requisite education and training at the Applicant's office. Once the client is equipped with the necessary apparatus and knowledge to conduct their at-home dialysis, the client will return to the office approximately two times per month to confirm the at-home procedures are being followed.
3. Given the nature of the office operations, the Applicant will not accept walk-in clients, but only those that seek out the Applicant's services in advance to schedule an appointment and are eligible for said services.
4. The Applicant's office will be open only during normal office hours, 8:00 a.m. to 5:00 p.m. This is different from In-Center Hemodialysis where the facility is open for treatment 12 hours per day, 6 days per week.
5. The Applicant will not be performing emergency, surgical or diagnostic procedures in its office.
6. Accordingly, this Board finds that under the specific circumstances and facts of this Application and applying the relevant Zoning Code provisions to this specific Application, the Applicant's proposed use is permitted in the Mixed Use MU district as a general office use.
7. This interpretation is specific to this Application, the Applicant's proposed use and applying the relevant Zoning Code provisions to this specific Application. This determination does not set a precedent that can be applied to other properties or uses as each application's facts must be reviewed independently in conjunction with the relevant Zoning Code provisions for the district in which the Property is located.

Mr. Jolly moved, seconded by Ms. Rachlin to close the public hearing.

The secretary recorded the vote:

Member Weisel: Yes

Member Rachlin: Yes

Alt. Member Jolly: Yes

Chair Lawrence: Yes

All in favor. Motion carried. 4-0

Ms. Weisel moved to approve interpretation resolution as drafted, seconded by Ms. Rachlin.

The secretary recorded the vote:

Member Weisel: Yes

Member Rachlin: Yes

Alt. Member Jolly: Yes

Chair Lawrence: Yes

The interpretation application was approved. All in favor. Motion carried: 4-0

**NEW PUBLIC HEARING – Dimovski Architecture, PLLC – 18 Mallard Rise**

The following public hearing notice was mailed to the abutting property owners.

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing by **ZOOM video conference**, at **7:30 p.m., on Monday, April 12, 2021**, to hear and consider an application by:

Dimovski Architecture PLLC  
59 Kensico Road  
Thornwood, NY 10594

For a variance from Chapter 305 of the Village of Tarrytown (“Zoning Code”) in order to legalize an existing shed on the property.

The property is located at 18 Mallard Rise, Irvington, NY and is shown on the Village of Tarrytown tax maps as Sheet 1.270, Block 137, Lot 50 and is in the R-10 Zoning District.

**The variance sought is as follows:**

<b>Code Description</b>	<b>Required</b>	<b>Proposed (Existing)</b>	<b>Variance Required</b>
Section 305: Attachment 5 Column 11: Front Yard Setback	25 Feet	10.6	14.4 Feet

The Public Hearing will take place via Zoom Video Conferencing in accordance with the NYS Governor’s Executive Orders 202.1 and 202.79, which have been extended.

**\*Please visit <https://www.tarrytowngov.com/home/events/33326> for instructions on how to join the meeting and for updates, if any, if the meeting location information has changed.**

Public comments may be emailed to [imeszaros@tarrytowngov.com](mailto:imeszaros@tarrytowngov.com) or mailed to Village of Tarrytown, Zoning Board of Appeals, 1 Depot Plaza, Tarrytown, NY 10591, by 12 pm on April 9, 2021. Documents relating to this application will be provided by emailing the Zoning Department at [imeszaros@tarrytowngov.com](mailto:imeszaros@tarrytowngov.com) or by calling 914-631-1487.

All interested parties are invited to join the meeting and be heard.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros  
Secretary to the Zoning Board

Dated: April 2, 2021

The mailing receipts were received and the property sign was posted. Board members visited the property on Sunday, April 11, 2021.

Steve Dimovski, the project architect, appeared before the Board representing Eleanore Seibert and her husband Kevin Bynum, also present.

Mr. Dimovski explained that he is here to request a variance to allow an existing shed to remain on the property. The shed was added in 2020 and the owner was issued a violation since it was not code compliant with regard to its placement within the front yard setback. The owner has complied with the violation by submitting this application to this Board to legalize the placement of the shed.

Mr. Dimovski explained that the lot is a corner lot so the property has 2 front yards. The shed has been placed 10.5 feet off of Sunnyside Lane, where 25 feet are required. They are therefore seeking a front yard variance of 14.4 feet.

Ms. Lawrence asked Mr. Dimovski if the shed could be moved closer to the garden area or the stone wall. Mr. Dimovski said that the only alternative would be to put it closer to the house and that, after his discussion with Building Inspector Valvano, they concluded that the current location is was the best location since it was the least obtrusive with the existing screening. Ms. Seibert, the owner, added that there are many mature trees that they do not want to disturb in this area and their children also play there.

Ms. Lawrence asked Mr. Pennella if he had any questions or comments.

Mr. Pennella noted that this property has some challenges due to its topography. There are no flat areas that would be appropriate to place the shed. If the shed were moved closer to the garden or wall, then it would also be more visible from the street.

Ms. Lawrence added that there are several other sheds on Mallard Rise that are close to the road.

Mr. Dimovski showed a picture of the screening off of Mallard Rise which indicated that the shed could not be seen. If they were to move it closer to the corner, it would obstruct the view and line of site of the oncoming traffic. Mr. Pennella agreed.

Mr. Pennella suggested some sort of ivy on a trellis in the front to screen the shed during the winter months. Mr. Dimovski said they plan on painting the shed a Tudor brown to blend in with the color of the house. The ivy trellis would not work since there are doors in the front of the shed.

Ms. Lawrence does not think it needs to be screened but welcomed painting the shed brown to match the house and blend in more.

Ms. Weisel commented that the shed is not in anyone's view.

Ms. Lawrence asked if anyone in the public would like to comment. No one appeared.

Ms. Lawrence asked the Board Members if they had any questions.

Mr. Jolly asked if the property had a garage. Mr. Bynum said they only have a car port which is why they need the shed. Mr. Bynum said they keep tools and toys in the shed. There is very little storage area in the home; no basement, attic or garage.

Ms. Rachlin would like the shed to be painted so that it blends in with the house.

Counsel Addona advised that this is a Type II action with no further environmental review required under SEQRA.

Ms. Weisel moved, seconded by Mr. Jolly, to close the public hearing.

The secretary recorded the vote:

Member Weisel:	Yes
Member Rachlin:	Yes
Alt. Member Jolly:	Yes
Chair Lawrence:	Yes

All in favor. Motion carried. 4-0

Ms. Lawrence read through the criteria for an area variance:

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. *Ms. Lawrence stated that there does not seem to be any undesirable change that will be produced in the neighborhood since the shed is small and not obtrusive from Sunnyside and will be painted to match the color of the house so that it blends in as a condition of the resolution.*
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Ms. Lawrence said they have reviewed alternate locations and there is no other flat area to place the shed due to the topography of the property and the location of trees.*
3. That the requested area variance is not substantial. *Ms. Lawrence stated that based on the location of the store, the variance request is large but there are no other alternatives due to the topography and layout of the property.*
4. That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence stated that the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. There are other sheds in the area.*

5. That the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Ms. Lawrence stated that it is self-created but there is no other place to place the shed with no impacts.*

Ms. Rachlin moved to approve the variance with the condition that the shed be painted a color to match the house and authorize Counsel Addona to prepare a resolution with the standard general conditions based upon the general discussion this evening.

The secretary recorded the vote:

Member Weisel: Yes  
 Member Rachlin: Yes  
 Alt. Member Jolly: Yes  
 Chair Lawrence: Yes

All in favor. Motion carried. 4-0

**NEW PUBLIC HEARING - Peter Bartolacci - 67 Miller Avenue**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing by **ZOOM video conference**, at **7:30 p.m., on Monday, April 12, 2021**, to hear and consider an application by:

Peter Bartolacci  
 67 Miller Avenue  
 Tarrytown, NY 10591

For variances from Chapter 305 of the Village of Tarrytown Code (“Zoning Code”) to construct two-tiered retaining walls in the rear and side yards. The property is located at 67 Miller Avenue, Tarrytown, NY and is shown on the tax maps as Sheet 1.70, Block 40, Lot 4 and is in the R 7.5 zone.

**The variances sought are as follows:**

<b>Code Section 305-47 B. (7)</b>	<b>Permitted</b>	<b>Proposed</b>	<b>Variance Required</b>
<b>Lower Wall - North</b>	6 ft.	11.5 ft.	5.5 ft.
West	6 ft.	9.0 ft.	3.0 ft.
South	6 ft.	11.0 ft.	5.0 ft.
<b>Upper Wall - All faces</b>	6 ft.	9.5 ft.	3.5 ft.

The Public Hearing will take place via Zoom Video Conferencing in accordance with the NYS Governor’s Executive Orders 202.1 and 202.79, which have been extended.

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All interested parties are invited to join the meeting and be heard.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros  
Secretary to the Zoning Board

Dated: April 2, 2021

The mailing receipts were received and the sign was posted. Board Members (Ms. Lawrence, Ms. Rachlin and Ms. Weisel) visited the property on Sunday, April 11, 2021. Mr. Jolly had visited the site in an earlier application.

Peter Bartolacci, the applicant, appeared before the Board for what he considers to be a re-approval of a variance that was granted by this Board in 2017. He is here without prejudice in terms of the original variance but for their reasons they wanted to get an approval for a slightly different plan that has been developed. He advised that there is really no change in the circumstances or the conditions at the property and they don't consider the changes in the plan to be material in any way. There is a small change in the actual outline of the proposed footprint of the retaining wall where the stairs on the side connect to the eastern most portion of the south face of the wall. This results in one continuous wall on the south side as opposed to two separate walls. He does not think this is a major change. On the north and south faces they are asking for a slightly higher variance for a very small section of the retaining wall where these two walls come together. The faces will be slightly higher than what was originally granted, which was a 9.5 ft. variance. The distance from the property line remains exactly the same. Other than the slight change in the connection between two walls at the beginning of the stairs, there is no difference in the footprint of the retaining walls. He noted that letters have been provided to the Board from the neighbors, the Roberts, on the north side of his property, and Monica and Tim Shepherd, on the south side of his property. Both neighbors fully support the revised plans and are anxious to get this project moving so that Mr. Bartolacci can repair his backyard, so that it is safe for everyone. For purposes of review, it is their opinion that the conditions that are required for an area variance have not changed whatsoever to the justification that was granted back in 2017. He is happy to answer any questions or clarify anything for the Board.

Ms. Lawrence asked Mr. Bartolacci if the only change is on the north and south walls. Mr. Bartolacci said yes, and emphasized that there is no difference in the retaining wall



heights on the west face, which will be no higher than 9.5 feet. Mr. Bartolacci confirmed to Ms. Lawrence that the distance between the wall and the property line will also be the same as it was in the 2017 variance application. Ms. Lawrence asked Mr. Bartolacci why the side walls are being constructed. Mr. Bartolacci said it has to do with the design of the walls and that is what the heights ended up being.

Ms. Lawrence confirmed that the Board received the letters from the neighbors, Alec Roberts, to the north, and Monica and Tim Shepherd, to the south, and neither have any objection. She noted the pictures submitted by Mr. Roberts and the site visit by the Board members yesterday. She feels that something has to be done. There is no question to her that there has been quite a bit of erosion since the last time they were at the site but she hasn't seen anything to compare it too. Mr. Bartolacci advised that he provided some pictures also to Liz (secretary to ZBA), from 2012 and 2021 and from 2017 to 2021 which do demonstrate what Ms. Lawrence is referring to in terms of degradation in the structural integrity, as well as the erosion. Ms. Lawrence confirmed that these pictures were received for the record in addition to a letter from the downslope neighbor's attorney, Kristen Wilson, who represents Geraldine Baldwin, whom objects to the height of the retaining walls. At the site inspection, the Board Members did go to the down slope neighbor's house (Baldwin property) to look up at the property to get an idea of what they are looking at now and what they will be looking at when the walls are constructed.

Ms. Lawrence asked if anyone in the public would like to speak on this issue.

Geraldine Baldwin, 66 Riverview Avenue, would like her attorney, Kristen Wilson, to speak first and then she will add her comments after Ms. Wilson speaks.

Kristen Wilson, Attorney, representing Ms. Baldwin, addressed the Board. Ms. Wilson advised that her client, Ms. Baldwin, is the immediate downgradient neighbor, and is the most impacted resident of the village as a result of this application. She knows that some of the Board Members are familiar with the property from the prior review of a different plan, but some things have changed since the Board was last presented with a plan. This is a new application for a new type of wall, a taller wall. During the site visit yesterday, it was stated that a little over a year ago, the wall collapsed at 63 Miller Avenue. It did not collapse gradually, it happened within a couple of seconds and the concrete blocks came careening down within feet of Ms. Baldwin's neighbor, destroying fences, furniture, and the like. She is bringing this up to highlight the need for this Board to take a critical review of the engineering plans. She would like to know whether this plan works and whether this is the best plan for this type of slope, taking into consideration the need to stabilize it, but also the potential physical impacts and the environmental impacts as well as the aesthetic impacts. As some of the Board Members viewed yesterday, Ms. Baldwin will be stepping outside her house and will be looking immediately up at two fortress type walls that are supposed to be as high as 11.5 feet, a couple feet off of the property line. She said that this is a design, but it is not necessarily the most reasonable or feasible design that properly achieves and meets the balancing test that the Zoning Board is required to consider. When considering the five criteria under the balancing test, they would like the Board to ask themselves if this

is the right plan to stabilize the slope. If there are other plans for different types of walls or if a railroad tie wall actually works since one had been there many years ago. She asked if the applicant could come back and give the Zoning Board and neighbors some options on what could possibly be used to stabilize that slope. She said the variance is substantial; the applicant is asking for essentially a doubling of the height of a variance. She would respectfully submit to this Board that granting a height variance of this nature is substantially different than, for instance, looking at a variance for a side yard setback or a rear yard setback. This height variance is creating almost a fortress like view for Ms. Baldwin and it will be overshadowing her house. The impact of allowing these walls to be double the size that is permitted can't be anything but substantial. To summarize, they believe that there are other feasible methods to consider. They are asking the Board to take a close critical view of the engineering of the walls to see if this is the best plan for this type of slope, taking into consideration what happened immediately adjacent on the same type of slope, and perhaps have the village retain their own engineering expert if necessary to review the plans.

Geraldine Baldwin, 66 Riverview Avenue, would like to make 3 points. The first is that the Village code requires the ZBA to only grant the minimum variance. The requested variances are well beyond the minimum needed. In fact, if granted, the walls will entirely destroy a steep slope, which the Village code protects as a desirable landscape feature, and requires minimization of such destruction. As stated by the Village Engineer, Dan Pennella, when he rejected the building permit, the requested walls will have, "a maximum combined height of 18.5 along the western property line." That is the line that she will see looking out of her door. The original retaining wall, about midway up that steep slope is the single wall, determined in 2013, by the prior Village Engineer, to be +/- 7 feet high. That was also confirmed by the judge in the Article 78 proceeding, affirming that the applicants will need to go to the Planning Board for site plan approval. Thus, the minimum variance that should be granted for this kind of a wall should be a single wall on the western slope, no higher than seven or eight feet high, maximum. Secondly, the applicant has previously admitted that mesa block walls of a similar or even lesser height could not be built on the property. At the Planning Board meeting of April 30, 2018 (minutes on website) the applicants engineer asserted that the retaining walls provided by the earlier granted variances of 9.5 feet high could not be placed on the slope along the westerly side of the property because the required 17 or 18 feet of geogrids would extend too close to the house at the foundation of the house and would undermine it. She asked how can walls be built now on at the same proposed height in the same spot with geogrids by mesa block when they couldn't be built in 2018. Additionally, the technical information supplied by Tensar, the manufacturer of mesa blocks, indicates that if two walls are to be built on a single slope, in order for them to be safe and independent, the upper wall needs to be separated uphill from the lower wall at least twice the height of the lower wall. If the lower wall is 9.5 feet, then the upper wall should be 19 feet away from it, not the six feet that is proposed on this plan. Ms. Baldwin asked why this sorely incomplete application is even on tonight's agenda. The application lacked an environmental clearance form which is critical for consideration of the removal of a steep slope or current survey of the property. There was no copy of any survey of the property. The plans were not signed sealed and certified.

Additionally, the zoning compliance form indicates a sole owner of the property. In earlier documents at least one additional owner of the property has been alleged. She wanted to know how this application can be on the agenda when there is another possible alleged owner whose rights in the property may be affected by any decision of this Board.

Ms. Lawrence asked Mr. Bartolacci why the north and south walls have to be so high (11 feet and 11.5 feet)?

Mr. Bartolacci said it is just the way the design works out. You are dealing with two walls coming together when they are 9.5 feet high, so it is basically a math equation. He pointed out that while it sounds like a very high wall, it is important to put it in perspective. He has provided the Board with a lot of information relating to retaining walls that exist in Tarrytown and there are many, many retaining walls that are 12.5 feet high and even higher. He is not suggesting it's not a reasonably high or substantial wall, but when they bought the property, the lower northwest corner of the property was about 11 feet high. Since then, several railroad ties have fallen off of it. He thinks it is important to put things in perspective and noted that there are a lot of retaining walls in Tarrytown that are more than 12.5 feet high.

Ms. Weisel said with regard to the wall submissions, what is not indicated is how many of those walls needed repair. They had not crumbled and they were not being built from a memory of what had been there, because they probably were already there. They were pre-existing. She wanted to point out that it is hard to take some of those walls into perspective and consideration when the situation concerning any reparations that were done within the last, she doesn't know, how many years. She does not think it factors in with this wall, which is a very different situation. She is very appreciative of how thorough the applicant has been in finding the walls and taking the pictures. It was very impressive in that regard but not all those situations can be applied to match what is going on here.

Ms. Lawrence said the submission was very comprehensive. The Board saw this in 2017 as well. She does not know whether they have added more, but they did have a chance to look at them. She thinks some walls were in commercial areas, but most of them, she thought were in residential areas.

Mr. Bartolacci said the purpose in showing the walls is just to kind of set the stage that there are a lot of retaining walls in Tarrytown. This is not unusual. One of the criteria for a variance that the Board considers is if it will change the neighborhood, and walls are very common since Tarrytown is on a hill. He also pointed out that those are the retaining walls that they were kind of able to see from the road. They don't know how many other ones there are buried in people's backyards, etc.

Mr. Pennella commented that the last time the Board saw this, it was a similar style wall, a uni-block wall, and then the application went back to the Planning Board. The last land use board approval was actually a concrete wall, with a slightly different design

approach. He shared his screen to explain some of the comments he has requested from the applicant and to clarify some of the distances and how it changes with the height of the wall. In the prior approval, there was 7.5 feet from the property line to the bottom of the wall. He showed the 9 ft. height at the bottom where it was a straight wall in the last approval. In actuality, the walls are set back further than what was approved at Planning, so they pick up a few more inches. For example, on the plans, they show 6 feet from the face of the wall to the face of the wall. He would like the engineer to clarify on the plans that it is actually 6 feet, 10 inches. These walls also do not go straight up, they actually batter back. He would like it correctly represented. For example, on the western wall, there is a 15 ft. setback from the property line, it is not 13 feet which has been suggested. The other comment he has relates to the geogrid that they are using. He would like the design engineer, who is present, to comment about the design capacity. It goes back 15 feet from the first course of block at the bottom of the earth, then 15 feet from the bottom plus 7.5 feet. This will require them to have to excavate 20 to 22 plus feet in order to be able to lay out this geogrid. He would also like the engineer to explain how much soil is being removed, imported in, in comparison to the prior design. Mr. Bartolacci asked Mr. Pennella for clarification. Mr. Pennella showed the plan again. This wall has a greater setback than the last wall that what was submitted. He said he would send the plan to him and explain it. He is sure that the engineer knows what he is referring to. The point is that the wall with the batter sits back further than the prior concrete wall that was approved at Planning.

Ms. Lawrence asked if Mr. Pennella forwarded his comment letter to the applicant.

Mr. Pennella said he has shared his comments with the applicant and his engineers. At this point, he was just asking for an explanation from the design engineers with some questions about the safety of the wall and address the matter about the geogrid and excavating 22 feet back. He is hoping to get a sense of what the magnitude of material being brought in will be since it is not shown on the plans anywhere. He would like the design engineer to comment on this.

Ms. Lawrence asked Mr. Pennella to comment about the possibility of re-noticing the application. Mr. Pennella said it is a coordination effort on the plans so that if some of the numbers don't match, then it would have to be re-noticed. He does not think there should be a problem, but just wanted everyone to be aware.

Mr. Bartolacci advised Mr. Pennella that he thinks he addressed points 1 through 5 in his comment memo. They are addressing the rest of them in terms of the sections of the walls and the coordination between the engineers to get the heights and measurements accurately consistent. They will submit them as soon as they can.

Paul Berté, PE, the project engineer, wanted to clarify the elevations and said that the 11.5 feet was put down as a maximum variance. They are going to reduce the height of the upper wall from 200.7 feet to 200 feet, which would make it 11.5 feet. The existing grade is the existing grade at that point. The top of the wall for the lower wall was the same. He is coordinating with the structural engineer to lower one course so that they max at 11.5 feet.

Mr. Pennella advised that the design engineer for this project, Randall Bragdon, PE is available to speak now. He would like him to address the safety of the wall design as well as the slope stability.

Randall Bragdon, PE, the Design Engineer, advised that he has been taking notes and listening to the discussion. With regard to the slope stability, there is an analysis called a global stability analysis which is run for slopes and also run for what they are proposing, which is a tiered wall system. He noted that the comment earlier about the Tensar website data saying that the wall has to be two times as far back is not correct. That applies to a gravity wall, meaning a wall with no geogrid. When he runs a global stability analysis, they put both of those walls in the analysis and what usually happens is the bottom geogrid needs to be longer to counteract that failure. The global stability is the foundation soil and it takes a slope into consideration. If the foundation soil is weak, the entire wall will rotate, which is a global stability failure. His job is to put geogrid long enough back beyond where the knuckles are so that that rotation will not occur. He referred to sheet 3 of the plan, indicating that the lower wall has 14.7 or 15 feet of geogrid. They ran their global stability analysis to result in a 1.3 factor of safety, which is standard for what is called a non-critical wall. They had to extend the geogrid lengths in order to get to that 1.3 factor of safety.

With regard to the bottom geogrid being excavated, it is true that there is 15 feet on the bottom, and 7 or 8 feet on the top. Usually that bottom, if you go straight up, runs into the back of the upper geogrid, so there will need to be excavation. Starting at the face of the wall, it needs to go back about 15 feet to that lower geogrid and then they backfill everything up. The section that Mr. Pennella showed would be accurate for a standard batter mesa wall. The mesa wall is designed to allow two things to happen. You either have a standard batter at an angle, which is what Mr. Pennella showed, or you can be almost vertical. He referred to sheet 1 of the design plans, in the upper left corner, it indicates the design is called a near vertical wall. So that setback is not 10 to 12 inches anymore, it is 2 or 3 inches. He doesn't know what all the setbacks the property lines will measure out to, but he wanted to point out that he designed this to be a near vertical wall face as opposed to a standard batter. Mr. Bragdon also said that the plans that they submitted are stamped and signed in response to an earlier comment that they were not.

Mr. Pennella confirmed with Mr. Bragdon that the wall does not have a 1 on 12 batter. Mr. Bragdon said it does not; they made it more near vertical to align more with what the original design had. A 1 on 12 batter has a 7.1-degree or 8-degree wall face. This design has a +/- 2-degree batter which allows for that flexibility between the pins and the holes in the block during the manufacturing process. They call it near vertical and that allows for upwards of 1 to 2-degrees of wall faced batter.

Mr. Pennella asked Mr. Bragdon to label it on the plans since the walls pitch back, it is misleading. Mr. Bragdon noted that on sheet 1 of the plans, in the upper left corner, it says near vertical setback.



Mark Fry, lived on Independence Street from 2003 to 2005, a couple of houses down from the Bartolacci residence. He got involved in in this long ago and was invited to do two site visits, one on Miller and the other on Riverview. He agrees with the Chairperson that it obviously has to be repaired. This has been an extremely long approval process. He pointed out that he is not only familiar with the site, but he is a land use professional. He noted that there is a misconception about steep slopes. Sometimes, the best way to protect a steep slope is to build retaining walls. There is a limit to how steep a slope, depending upon the soils and the composition, that you can have without it eroding. It is obvious that the slope behind all of the houses on Miller Avenue needs to be protected. He has no doubt that between the Village's professionals, especially Mr. Pennella, and the applicant's professionals, that this will be a safely engineered wall. Later in the process, there are aesthetic considerations, landscaping, and all of that will be taken care of when this is finalized at the Planning Board. In terms of the variances required and looking at that balancing test with the five elements, he believes that there will be no undesirable change in the neighborhood character, no undesirable change to the nearby properties. While this request is substantial, it is the minimum required in order to get this slope stabilized and to let Mr. and Mrs. Bartolacci and their family enjoy their backyard. He also thinks that this is obviously not a self-created difficulty to something that existed when that house was built. Like many houses in Tarrytown, the property has existing retaining walls, many of which are pretty dicey. He is happy to support the application and thinks that the variances are very well justified and this application needs to be approved. They need to move forward. Ms. Baldwin is certainly a very nice lady and he understands her concerns, but it is far better to get this wall finally built than wait until the existing wall tumbles gradually down toward her home.

Mr. Jolly wants to know what has happened in the last 3 years that the project was not started and if the applicant will proceed right away with the project if they approve it.

Mr. Bartolacci said they received the variance in 2017. When they proceeded to do the global stability analysis, which was referred to earlier, they ran into difficulties with the design. They had to put their thinking caps on to figure out a way forward, at which point, they explored the option of a poured concrete structure. They spent a considerable amount of time designing a poured concrete wall, as opposed to an engineered concrete block wall. Some indications were that it might end up being more economically efficient to do it that way, so they decided to go forward and that design took quite a while to develop. Ultimately, they got a design that they were comfortable with and brought it to the Planning Board. After several Planning Board meetings, they received approval. When they proceeded to get estimates to build that wall, the cost to build the poured concrete structure was almost as much as they paid for their house which they could not do. They went back to the drawing board, thought long and hard about what they could do. Ultimately, thank goodness, they were put in touch with Mr. Bragdon and they are back. He hopes this explains why there was a delay. It takes a lot of time.

Ms. Lawrence noted that the Village Engineer and several people have asked for a survey. She asked if there was still a problem with the property line that was mentioned at the site inspection yesterday or do they have a survey with the actual property lines.

Mr. Bartolacci said they have not explored getting a new survey. The survey that you have is exactly the same, nothing has changed. Our survey says that the retaining wall was on our property. Ms. Baldwin is saying that it is on her property. The reason that came into play originally, as you may recall, was that there was the possibility of a three-tiered code compliant wall many years ago. With that plan, they would have had to start the wall on the property line to work on the three tiers to get it up. Now that they have abandoned that concept, and are putting it 7.5 feet from the property line, that retaining wall is no longer an issue in terms of rights, etc. and, therefore, he doesn't think the survey issue is relevant to this application.

Ms. Rachlin had a question about the survey and asked Mr. Bartolacci who would be responsible for the stone wall if it's destroyed during your construction. Mr. Bartolacci said that is a good question. According to their survey, they are 100% responsible for it. They would be more than happy to accept any contributions from the neighbor, if she wants to own half of it and wants to pay for it. He hadn't thought about that. He has a kind of laser focus on getting this wall built, not repairing that one. At some point, they would like to repair it since it is clearly damaged from the roots from the enormous tree that they had to take out. It probably doesn't look particularly nice from Ms. Baldwin's property. But honestly, that isn't something that they have considered and they will just have to deal with it as they move along.

Ms. Lawrence asked if anyone else would like to speak.

Ms. Baldwin said with respect to that wall, she had a survey done and that wall is on the property line. And, according to her survey, half of that stone wall is on her property and if Mr. Bartolacci destroys it with his construction, she is not going to be contributing; he is going to be paying for it.

Ms. Weisel asked about how the drainage will factor into this project.

Mr. Pennella commented that this type of wall is different than a concrete wall, which basically acts as a barrier. With this wall, the water naturally drains through it, because there is gravel behind it, and it seeps just to the front. The runoff is decreased and perks into the ground. It is like putting a ball on top of that hill. If it was clear, that ball will run through the bottom as fast as you know, gravity can pull it down, just like water. But if you were to raise that hill up and level it, that ball is not going to roll downhill, it is going to sit there. So, in the case of water, it will perk into the ground so the drainage should be improved.

Ms. Lawrence would like to continue the public hearing to next month. There are several items that need to be addressed by the applicant. She would also like the applicant to submit a few pictures of what the wall will look like for the next meeting.

Ms. Weisel moved, seconded by Mr. Jolly, to continue the public hearing at the May 10, 2021 meeting.

The secretary recorded the vote:

Member Weisel: Yes

Member Rachlin: Yes

Alt. Member Jolly: Yes

Chair Lawrence: Yes

All in favor. Motion carried. 4-0

Adjournment:

Ms. Rachlin moved, seconded by Mr. Jolly, to adjourn the meeting.

The secretary recorded the vote:

Member Weisel: Yes

Member Rachlin: Yes

Alt. Member Jolly: Yes

Chair Lawrence: Yes

All in favor. Motion carried. 4-0

The meeting was adjourned at 8:55 pm.

Liz Meszaros – Secretary