

Planning Board  
Village of Tarrytown  
Regular Meeting  
October 25, 2021 7 pm

PRESENT: Chairman Tedesco; Members Friedlander, Raiselis, Birgy Alternate  
Member Gaito, Alternate Member Mendez-Boyer; Counsel Addona;  
Village Engineer Pennella; Village Planner Galvin; Secretary Meszaros.

ABSENT: Member Aukland

APPROVAL OF MINUTES – September 27, 2021

Ms. Raiselis moved, seconded by Dr. Friedlander, to approve the minutes of the  
September 27, 2021 meeting.

Mr. Tedesco asked for a roll call vote:

Member Friedlander: Yes  
Member Raiselis: Yes  
Member Birgy: Yes  
Chairman Tedesco: Yes  
Member Gaito: Abstained (absent at 9/27/21 meeting)

All in Favor. Motion carried. The minutes were approved: 4-0

Mr. Tedesco announced the following two (2) adjournments:

1. Hackley School - 293 Benedict Avenue -Pending Town of Greenburgh Approvals - Site plan approval to demolish existing gymnasium building and construct a net increase of 56 surface parking spaces with stormwater and other related improvements, in connection with the proposed construction of a new Center for Creative Arts and Technology Building on property located within the unincorporated area of the Town of Greenburgh.
2. Mathew Cordone Architect PLLC - 88 Main Street – Pending ZBA determination - Site plan approval for the construction of a scenic roof deck on a 3-family dwelling.

CONTINUATION OF PUBLIC HEARING– Peter and Suzanne Bartolacci – 67 Miller Avenue

Peter Bartolacci, of 67 Miller Avenue, the applicant, appeared before the Board and advised that the outstanding responses to the Hahn Engineering Report and the Nolan Landscape report have been provided to this Board and they have nothing else to submit or comment on.

Mr. Tedesco advised that the final approvals have been received from Hahn Engineering and the Village Landscape Consultant, Nolan Landscape Architects. Ms. Nolan indicated in her final landscape report of October 22, 2021 that all three of her critical final recommendations have been satisfied.

Mr. Tedesco asked if the Board Members or any staff had any comments. No one had comments at this time.

Mr. Tedesco asked if anyone in the public would like to comment.

Public Comment:

Bob Fedigan, of Yonkers, NY, appeared on behalf of his sister 'n law, Geraldine Baldwin, who lives at 66 Riverview Avenue. He read a statement into the record in opposition to the approval of this application, which is attached to these minutes as "Exhibit A-1".

Mary Fedigan, also of Yonkers, NY, read a statement into the record addressing the landscaping issues, on behalf of her son, James Fedigan, and Geraldine Baldwin, her sister, who live at 66 Riverview Avenue. This statement is attached to these minutes as "Exhibit A-2".

Kristen Wilson, Attorney with the Law Firm of Blanchard & Wilson, representing Geraldine Baldwin, who resides at 66 Riverview Avenue, submitted a statement for the record which is attached as "Exhibit A-3". She briefly addressed 4 issues of concern relating to this application which she feels leads to the conclusion that the application is incomplete and if the Board were to act tonight, it would have no choice but to deny the application. First, and not in any order of significance, the October 22, 2021 Hahn Engineering raises a concern regarding the ability to excavate and install the geo grid, with little or no room to stockpile the soil. This is a significant issue specifically because the Zoning Board of Appeals resolution conditions any approval by this Board on a construction management plan. It specifically says the Planning Board must approve a construction management plan that provides for the staging of construction including the protection of neighboring properties and existing trees. This issue is still outstanding. The Hahn report states that this is information that should be submitted to the village prior to a building permit application, which is contrary to what the Zoning Board resolution states. They have raised these issues consistently at the Zoning Board of Appeals, as well as here, and they believe they have the right to know if this plan can work to avoid having this application come back yet again for another iteration, once they find out they cannot excavate as much as they need to, to put the geogrid down, and still stockpile with the soil. Secondly, the Steep Slope Narrative provided by Paul Berté, PE is filled with inaccurate and misleading statements. First, the slope is not in its existing state because of the failure to maintain the previous railroad tie wall. It is based on the original construction of the home in the last century. The February 26,

property was likely built up on reworked fill when the residence was built. So contrary to the statement in the steep slope analysis, it is not a result of neglect of the railroad tie wall. Something needs to be done, but this plan hasn't been shown to actually work. Similarly, there have been a variety of pictures shown by the applicant to this Board of other retaining walls that simply are not in residential neighborhoods.

Ms. Wilson's time was up and Mr. Tedesco asked Ms. Wilson to quickly summarize. Dr. Friedlander said that this rule has to be modified. It is annoying and to him, and not acceptable. People have prepared remarks on an issue that is very important to them and the Board is not giving them adequate time to talk about it. There's no stalling, no obstruction, just facts and positions being taken. It just doesn't seem fair to our citizens. He thinks the Board should reconsider their time since we will not be going until midnight tonight. Mr. Tedesco agreed, that in this case, we should let Ms. Wilson continue.

Ms. Wilson continued and said that numerous walls throughout the village have been shown; however, none of them were of the height that are being proposed here, and certainly not in the R 7.5 densely residential neighborhood zone. It is within the purview of this board to consider whether the proposed application fits with the character of this neighborhood. She humbly submits that it does not and there has been no evidence presented that it does. Third, as Mr. and Mrs. Fedigan have stated, they have received new information at 10:02 this morning from the landscape architect. They tried to review it to compare it to the Planning Board Resolution from 2020 to see if the landscaping plan is just as dense and provides just as much coverage as required. In this instance, based on the Zoning Board resolution, they just haven't had time to do that comparison over the last couple of hours and they ask that we at least have an opportunity to accurately review all the information. And finally, she is curious if the applicant submitted an affidavit of public posting to confirm that the notice was properly posted on this property for the requisite 10 days prior to this hearing. She believes it is there today, but it disappeared for a good part of October. It is the applicant's obligation to submit an affidavit that is complied with the public notice requirements, and she is curious if that affidavit has been submitted.

#### END OF PUBLIC COMMENT

Mr. Birgy commented for the record, that he drives past this property every day and he has seen the sign consistently posted.

Ms. Raiselis asked if there is a condition to address if the plants die within two years. She recalls having conditions like this in past applications. Mr. Tedesco referred to special condition number 1 of the draft resolution.

Dr. Friedlander asked Mr. Pennella to comment on the Engineering items raised this evening.

Mr. Pennella stated that with regard to the factor or safety referred to in the Hahn Engineering Report, the building code requires for overturning, sliding and a varying pressure factor of safety of 1.0 to 1.5. This means that if the factor is anything less than a 1.0, then the wall has a potential to collapse. The analysis is based on the soil exploration, and the factor of safety here is in excess of 1.5. It should be noted that this analysis does not account for the location of rock. Rock is a rigid solid structure underneath, and if they re-did their analysis with rock in its place, that 1.5 factor could be something much greater than 1.5.

Mr. Pennella stated that with regard to the means of method/construction sequence management plan, they have added some notes on the plan indicating where they are starting and so on. However, this plan is dependent on the contractor they hire, who has not been selected yet. The contractor will be required to submit this sequencing information with their building permit application. This plan could include starting with a little bit of wall to the north corner, and only removing a small amount of soil at a time or they could decide to do a larger area. They might require off-site removal of the soil, since they are required to bring in granular material to retain the wall from failure. Prior to the issuance of a building permit, based on the contractor that they select, they will have to give us a full detailed construction plan, which is a condition of this approval.

Mr. Pennella stated that the contractor will also need to advise if they will be stockpiling this material or if they are taking it off site for disposal. With regard to the soil testing, when we see that rock wall design from the manufacturer, they will be setting certain soil testing requirements. The contractor will be required to contract with a third-party testing lab to do soil compaction testing with supervision. These testing requirements will be specified in the conditions of the building permit. They are not there every day, but we will have cursory inspections. This addresses the engineering comments.

Finally, Mr. Pennella noted that with regard to the Landscape Plan, the landscape architect provided a stabilization method in the excavation area. Originally, woodchips were proposed, but now they will be using fiber mesh to prevent the front of the excavation area from washing out.

Mr. Tedesco thanked Mr. Pennella for the helpful details.

Mr. Birgy asked Mr. Pennella if he had any other concerns about the engineering aspect of this project moving forward. Mr. Pennella said he has no concerns at this time.

Mr. Birgy asked Counsel Addona if she has any concerns with the overall project.

Counsel Addona said this application was before the Zoning Board, who took a close look at it, and they wanted to make sure that there was certain oversight with respect to landscaping and the construction management plan and that this Board would determine how best to appropriately handle these issues. The landscaping plan has been addressed and the construction management plan has been addressed to a certain extent and will continue to be addressed during the building permitting process.

Before closing the public hearing, Mr. Tedesco commented that this Board respects the opinions and voices of those who have had problems with this project and these concerns have moved this Board to investigate this in absolute detail, down to the decimal points, to ensure that those issues were addressed. In that regard, Mr. Tedesco thanked them for continuing to have their voices heard in this application and advised that the Board is satisfied with the engineering and landscaping reports.

Mr. Tedesco moved, seconded by Dr. Friedlander, to close the public hearing.

Mr. Tedesco asked for a roll call vote:

Member Raiselis: Yes  
Member Friedlander: Yes  
Member Birgy: Yes  
Chairman Tedesco: Yes

All in favor. Motion carried. 4 - 0

Dr. Friedlander agrees with the Chair and commented that this has been a long painful process for everyone involved, the neighbors, and the applicant. He thinks this Board has made a heroic effort, has been patient and has listened to every point of view on every issue that was raised. It has been difficult to fathom and understand all the issues and complexities, but the Board has done their best. It is very important for everyone to understand that the Board tried to have the parties find common ground but this was never found. The Board went through different iterations of size of walls, height of walls, number of walls, different iterations of landscaping plans, types of plants, diversity of plants, native plants, you name something, and they did it. The staff and outside consultants also worked very hard. He wishes this would come to a happy conclusion for everybody, but it will not. If people are not happy, he is sorry, but the Board is making the best decision they can, and he appreciates everyone's effort.

Mr. Birgy read through portions of the Resolution and advised that a copy will be provided to the applicant and the entire Resolution will be recorded in the minutes of this meeting.

# **RESOLUTION**

## **VILLAGE OF TARRYTOWN PLANNING BOARD**

**(Adopted October 25, 2021)**

**Application of Peter and Suzanne Bartolacci**

**Property: 67 Miller Avenue (Sheet 1. 70, Block 40, Lot 4 and R-7.5 Zone)**

### **Resolution of Amended Site Plan Approval**

#### **Background**

1. The Applicant requests an amended site plan approval to remove a railroad tie wall and construct a new retaining wall with landscaping in the rear yard on property located at 67 Miller Avenue. The Applicant received approval on September 30, 2020, for a two-tiered cast in place reinforced concrete wall with landscaping between the walls. Applicant's proposed amended plan modifies the existing single wall with a two-tiered engineered concrete block retaining wall system with changes to wall height and construction materials. The application will require a steep slope waiver pursuant to Section 305-67 F (1) (b).

2. The Planning Board previously determined that the original application for the construction of the retaining wall system was a Type II action under NYS DEC 617.5 (c) (10). This determination has not been changed by the modified application. It remains a Type II action.

3. The Applicant presented the amended site plan application to the Planning Board on July 26, 2021, thereupon, the Planning Board opened a public hearing on July 26, 2021, and continued the public hearing on August 23, 2021, and October 25, 2021, 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 the Cover Letter from Applicant's engineer (Paul Berte, PE) dated 7/6/21 describing the changes to the modified retaining wall system, the *Steep Slope Narrative* dated 7/6/21, the EAF, the Zoning Compliance Chart, the *Environmental Clearance Form*, and the proposed structural plans prepared by Souhegan Valley Engineering (SVE), the landscape plan, survey and a denial letter from the Village Engineer dated March 24, 2021. The Planning Board also examined the Hahn Engineering review of the retaining walls and grading dated 8/12/21 and 10/22/21, SVE's response letter dated 8/20/21 to the Hahn Engineering review, SVE's retaining wall calculations dated 1/25/21, Applicant's 10/21/21 email submission of the Tectonic Report, dated 2/26/19,

with boring log information, forwarded to Hahn Engineering, Applicant's email dated 8/1/21 regarding Planning Board landscape comments at the 7/26/21 meeting, letter dated 10/12/21 from Applicant's Landscape Architect responding to Village Landscape Consultant's review dated 8/16/21, updated landscape plan (10/12/21) and revised landscape plan (10/22/21) incorporating recommended change from Village Landscape Consultant provided by Daniel Sherman, Landscape Architect, Applicant's email to Planning Board dated 9/15/21 regarding Hahn Engineering review 8/12/21, and from the Village Consulting Planner comments and recommendations in memoranda dated 7/12/21, 8/10/21, 9/14/21 and 10/11/21, from the Village Landscape Consultant comments in a Landscape Review dated 8/16/21 and 10/21/21, and from the Village Engineer in a letter to the Planning Board dated 9/17/21 providing responses to Applicant's questions regarding the Hahn Engineering review comments, which the Planning Board has considered.

5. The Planning Board has reviewed and considered additional information provided by the Applicant in his ZBA submission including *Photographs of Retaining Wall and Property* (4/27/17), *Listing of 59 Retaining Walls >6' in Tarrytown* with location, material and height (9/13/17), *Examples of Engineered Concrete Block Retaining Walls in Tarrytown and Other Locations*, Presentation entitled "*67 Miller Avenue – Retaining Wall and Property Photos*" with narrative and providing a history of the existing retaining wall on the property, and both written and public comment from neighbors including Ms. Geraldine Baldwin and her attorney, Kristen Wilson, Esq. of Blanchard and Wilson, LLP in submissions in opposition to the application, letters from Mr. Alexander Roberts and Ms. Monica Shepherd, immediate neighbors to the north and south of the Applicant's property in support of the application and letters dated 8/14/21 from Ms. Kimberly Kaczmarek, Mr. Lin Snider/Scott Voth and Mr. Dean Potoki/Bruce Follmer in opposition to the application, all of which have been made part of the Planning Board record.

6. The Planning Board has reviewed and considered the *Narrative on Steep Slopes* prepared by Paul Berté PE (Fusion Engineering P.C) and updated 7/6/21 addressing the criteria for granting the waiver for steep slope disturbance.

7. The Zoning Board of Appeals reviewed the Applicant's request for a variance to exceed the 6' maximum height limit on the proposed retaining walls. The ZBA opened a public hearing on this application on April 12, 2021, and continued the public hearing on June 14, 2021, and July 12, 2021. The ZBA closed the public hearing on July 12, 2021, and approved the variance subject to the following conditions including that the variance is being granted to the two-tier wall concept presented to the ZBA with the first wall of the proposed two-tier wall being located a minimum distance of 7.5' from the rear property line and that the proposed two-tier wall will not be 9.5' for the full length of each of the tiers. The ZBA noted that only limited portions of the proposed retaining walls will exceed the 9.5 feet previously approved by the ZBA. With respect to the northern wall, the maximum height is 10.8 feet and then over the course of approximately four feet in length the wall reduces in height to nine feet along the grade; and with respect to the southern wall, the maximum height is 11 feet and then over the course of approximately four feet in length the wall reduces in height to nine feet - which nine feet is less than the variances granted in the 2017 Approval and upheld in the 2018 Judgment.

In addition, as noted above, the height of the retaining wall on the west/rear side of the Property abutting Ms. Baldwin will not exceed the 9.5 feet allowed by the 2017 Approval. Additionally, the variance is granted subject to the review and approval by the Planning Board of a *Construction Management Plan*, staging of construction of the proposed walls and ensure the protection of adjoining and neighboring properties, including protection of existing mature trees:

8. The Zoning Board of Appeals specifically contemplated that the Planning Board could make changes to the proposed plans provided that the any new plan was: (1) consistent with the two-tiered wall design; and (2) consistent with the proposed wall based on the first two-tiered wall being located a minimum distance of 7.5 feet from the rear property line.

9. The Planning Board closed the public hearing on October 25, 2021. 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 approval and the waiver for steep slopes disturbance are granted subject to the conditions set forth below.

#### **I. Findings**

The Planning Board finds that the Applicant has satisfactorily addressed the criteria for granting the waiver for steep slope disturbance under 305-67(F)(1)(b) and the Planning Board finds that the applicant has established that the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant. The applicant's *Narrative* prepared by his engineer and updated July 6, 2021, is made part of the findings of the Planning Board and described below:

***Neighborhood Character:*** There will be no undesirable change produced in the character of the neighborhood. The Applicant introduced under a previous but substantially identical application numerous examples of similar sized, similarly constructed, and similarly finished retaining walls in the immediate neighborhood and surrounding community built on steep slopes for the same purpose. Further, for this previous application, there was evidence produced that there had previously existed a significant retaining wall in the Applicant's yard (and there are existing portions of said wall on the Applicant's property currently) and that Applicant is proposing to restore the property to its approximate original condition based on aerial photos provided and corroborating testimony from at least six former and current neighbors. These same exhibits will be provided for the record of this application. The proposed two-tiered wall system allows for robust and large sized plantings in front of each of the proposed tiered walls that will afford greater screening to the neighboring properties, thereby, significantly improving on the existing visual aesthetic which currently consists of dense wildly overgrown underbrush and parasitic vines (a danger to trees), mud, rotting

creosote coated railroad ties, exposed drainage pipes and cinder blocks, large protruding rusty nails, poison sumac, poison ivy, and tree stumps.

***Alternate Feasible Method to achieve benefit sought by applicant:*** The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than a steep slope waiver. Whatever is done to stabilize the property will require a steep slopes waiver due to the erosion induced topography of the property and the location where work must be performed. The existing retaining wall that is collapsing was built some 60 years ago and the current condition is the result of years of neglect by prior owners of the property.

***Impact on Other Properties:*** Granting the waiver will not be detrimental or injurious to other properties - it will restore the property substantially to its original condition as it was for at least 30 years prior to the retaining wall starting to collapse. Furthermore, it will provide the benefit to neighbors of much improved aesthetics (vs. what is there now and had been there previously) due to the proposed plantings for screening and the tiered retaining wall vs. the large single retaining wall that once stood on the property. The proposed engineered concrete block structure is not flammable and is far better for the environment than the creosote-soaked railroad ties used in constructing the existing retaining wall and which remain on the property today. In the process of installing the

engineered concrete block retaining wall, all remaining environmentally hazardous creosote-soaked railroad ties will be removed from the property, helping ensure that no further harmful and potentially carcinogenic materials seep into the ground. The proposed design eliminates the severe public safety hazard present due to the collapsed railroad tie retaining wall. There will be no impairment of a slope area- the existing slope to be disturbed, which is not natural or man-made, was entirely created by erosion due to the retaining wall collapse and would not exist had the property been maintained to its original specification.

***Consistency of Project with Intent of the Steep Slopes Chapter:*** The waiver is consistent with the purposes, objectives, or general spirit and intent of this chapter as the proposed tiered retaining wall will:

- a. Improve drainage and reduce the velocity of storm water runoff by allowing water to percolate through the soil behind the proposed retaining wall;
- b. Increase slope stability and protect against future slope failure;
- c. Improve the property's aesthetics for adjacent properties with the proposed planting of evergreen screening while ensuring the public health, safety, and general welfare of the Village and its residents.

Additionally, the Planning Board finds that under 305-67(F)(2) that for the reasons set forth above, the proposed development will not be materially detrimental or injurious to other properties and will not increase the danger of fire or flood, endanger public safety or result in substantial impairment of the slope area. Also, as set forth above, the waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of the chapter. Finally, the waiver is the minimum relief necessary to relieve the extraordinary hardship established by the Applicant. Over the course of the review, the Applicant has significantly reduced the proposed scope and scale of the two walls and reduced the amount of necessary fill. Granting this waiver based upon the Approved Plans (defined below) is the minimum relief that could be granted to address the Applicant's hardships, including but not limited to, the need to increase stability, to protect against future slope erosion and failure; to remove hazardous materials; and to create safer living conditions and a safer rear yard.

In addition, the Planning Board has considered the standards set forth in the 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 also reviewed the proposed landscaping and plantings and finds that the landscape plantings are in conformity with the natural resources goals and policies of the Village's Comprehensive Plan relating to the promotion of functional and native plant species, habitat creation and biodiversity, and guidelines for the removal of nonfunctional invasive species.

The Planning Board has conducted an extensive review of the applicant's proposal to remove the existing, deteriorated railroad tie wall and construct a new retaining wall. The subject property is a 7,500-sf property located at 67 Miller Avenue in an R 7.5 Residential District. The property's steep slopes constitute 2,512-sf of the property or 33% of the total site. The existing railroad tie retaining wall is failing and can pose a hazard to the property owners and adjacent neighboring properties. Continued deterioration may result in a total wall failure similar to the wall failure on the adjacent property to the north.

The Project has undergone various iterations ranging from a single wall to multiple tiers. The initial proposal was a single wall at a height of 20'. The proposed three-tier wall system would have been code compliant with none of the walls being above 6' in height. The Applicant's revised two-tier poured concrete retaining wall system was granted a variance by the ZBA on 8/10/17 for a 9.5' height for each wall. This proposed system provided the opportunity for more significant landscape screening for the neighboring properties. The applicant's phasing plan proposes a construction sequencing requiring the off-site storage of materials to reduce impacts to the site and neighboring properties.

Applicant's proposed plan modifies the existing single wall with a two-tiered engineered concrete block retaining wall system with changes to wall height and construction materials. Applicant will now be using a mesa modular block design with geogrid technology instead of the concrete in place concrete walls. Applicant indicates that this will minimize the volume of earthwork required for installation with reduced footing depths. Plans show that 475 cf of fill will need to be brought to the site. Landscaping is proposed to include 6' - 7' Green Giant arborvitae between the walls. SVE's memo (8/20/21) references the necessity of cutting the geogrid and the wall stability by noting *"that the wall design does not prohibit the cutting of geogrid, should it be required for plantings. Based upon a review of the planting plan, the arborvitae being proposed for installation will have a root ball of approximately 18" in size. Further, the area between the walls, where the arborvitae are proposed to be planted, will have a soil slope such that the installation of the arborvitae will not require any cutting of the geogrid of the lower wall"*.

The first wall of the proposed two-tier wall will be located 7.5' from the rear property line in compliance with the ZBA approval. The upper wall will be located approximately 13.5' from the rear property line. Applicant slightly modified design consisting of modular concrete blocks that would increase the height of the walls on portions of the north and south sides to a maximum of 11.5' in limited areas. Only limited portions of the proposed retaining walls will exceed the 9.5' previously approved by the ZBA. With respect to the northern wall, the maximum height is 10.8' and then over the course of approximately four feet in length the wall reduces in height to nine feet along the grade; and with respect to the southern wall, the maximum height is 11 feet and then over the course of approximately four feet in length the wall reduces in height to nine feet - which nine feet is less than the variances granted by the ZBA in 2017. In addition, as noted above, the height of the retaining wall on the west/rear side of the Property abutting Ms. Baldwin will not exceed the 9.5' allowed by the 2017 Approval by the ZBA.

## II. Approved Plan:

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

*Site Plan* by Paul Berte, PE, ARQ, Architecture, P.C. prepared for *Bartolacci Residence, 67 Miller Avenue, Tarrytown, NY* dated 3/25/21 and last revised 10/1/21 and *Retaining Wall Replacement Project* prepared by Randall H. Bragdon, PE, Souhegan Valley Engineering (SVE), for *Peter & Suzanne Bartolacci, 67 Miller Avenue, Tarrytown, NY* dated 1/5/21 and *Planting Plan* prepared by Daniel Sherman, Landscape Architect, for *Bartolacci Residence, 67 Miller Avenue, Tarrytown, NY* dated 10/10/17 and last revised 10/22/21. The plans are entitled as follows unless otherwise noted:

Site Plan by ARO, Architecture, P.C.

- Sheet 1 of 2 “Site Plan” last revised 10/1/21
- Sheet 2 of 2 “Phasing Plan” last revised 10/1/21

Retaining Wall Replacement Project by Souhegan Valley Engineering

- Sheet 1 of 3 “Retaining Wall Design Sheet 1” last revised 7/7/21
- Sheet 2 of 3 “Retaining Wall Design Sheet 2” last revised 9/23/21
- Sheet 3 of 3 “Retaining Wall Design Sheet 3” last revised 9/23/21

Planting Plan by Daniel Sherman, Landscape Architect

- L-1 “Planting Plan” last revised 10/22/21
  - L-2 “Planting Section” last revised 10/22/21
- (the “Approved Plans”).

III. General Conditions

- (a) **Requirement to Obtain Approvals:** 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.
- (b) **Changes to Approved Plans:** 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.”
- (c) **Force and Effect:** No portion of any approval by the Planning Board shall take effect until (1) all conditions are met, (2) this Final Site Plan resolution is signed by the chair of the Planning Board and (3) the Final Site Plan resolution signed by the Planning Board Chair has been filed with the Village Clerk
- (d) **Field Changes:** In the event the Village Engineer/Building Inspector agrees that, as a result of conditions in the field, field changes are necessary to complete the work authorized by the Approved Plans and deems such changes to be minor, the Village Engineer/Building Inspector may, allow such changes, subject to any applicable amendment to the approved building permit(s). If not deemed minor, any deviation from or change in the Approved Plans shall require application to the Planning Board for amendment of this approval. In all cases, amended plans shall be submitted to reflect approved field changes.
- (e) **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.

- (f) The applicant shall pay all outstanding consultant review and legal fees in connection with the Planning Review of this Application.

#### IV. Specific Conditions

1. Landscaping: Landscaping shall maintain continuous screening of the retaining walls with healthy plant material as determined by the Building Inspector.
2. Prior to the issuance of a building permit, Applicant shall provide an updated construction management sequencing plan for the review and approval of the Building Inspector/Village Engineer that will provide for sageing of materials removed from the site at an off-site location specific to the selected contractor for construction of the proposed walls in addition to providing detail to ensure the protection of adjoining and neighboring properties, including protection of existing mature trees.
3. If necessary, written permission (signed and notarized) from the property owner to the north should be provided for temporary construction access/use to install the section of the wall on the north side.
4. If necessary, written permission (signed and notarized) from the property owner to the south shall be provided for temporary construction access/use to install this section of the wall on the south side.
5. Additional details of the temporary shoring and piles shall be provided to the Village Engineer as construction details or construction plans.
6. Nothing herein authorizes improvements on any other property other than 67 Miller Avenue.

End

Mr. Pennella requested and the Board agreed that the following Item 1 in the Special Conditions be amended to add the language in “***bold italics***” below as follows:

1. Landscaping: Landscaping shall maintain continuous screening of the retaining walls with healthy plant material as determined by the Building Inspector, Insert language here, “***except that no replacement plantings shall be required to be done during winter months***”.

Mr. Tedesco moved, seconded by Dr. Friedlander, to approve this amended site plan application as modified.

Mr. Tedesco asked for a roll call vote:

Member Raiselis: Yes  
Member Friedlander: Yes  
Member Birgy: Yes  
Chairman Tedesco: Yes

All in Favor. Motion carried. 4-0

#### CONTINUATION OF PUBLIC HEARING – Tedd Trading, LLC- 27 N. Broadway

Christine Broda, RA, the project architect, appeared and introduced her client, Ehud Cafri, the owner of the property, who will be operating the restaurant. She advised that they have appeared before the Zoning Board and have received variances for the required 7 off-street parking spaces and one off-street loading space. She presented the updated site plan indicating all of the possible locations they have considered for their deliveries as requested by the Zoning Board. She noted that there is no parking available on the property as the building covers the entire site. She showed the 5 parking spots that are available on Central Avenue and the 15 minute only parking space that is often used for deliveries on Broadway. She noted that her client’s preferred spot would be the street parking area on Central, that is alongside the building. The driveway area leads directly to the kitchen and basement level in the back area, where they intend to have some storage. The trash will also be stored in an enclosed area and put out on collection days. Food deliveries and garbage collection will take place three times per week.

The Zoning Board granted the variances and accepted the use of these spaces for deliveries with the provision that they would pay the meter. The Zoning Board also restricted their deliveries to take place in the morning hours prior to 9:30 a.m., which is the ideal time since that gives them time to prepare for the lunch and dinner service. In

addition, they have put in an application to the Architectural Review Board for signage that they are proposing for the restaurant.

Ms. Raiselis asked if the garbage will be stored and out of site until collection time so people walking by won't have to look at it. Ms. Broda noted that the garbage will be collected 3 times per week and the garbage will be kept in an enclosed space with a fence.

She showed the 15 Minute parking space on North Broadway, which is more likely for the deliveries, but it is less desirable since it is very far away from the kitchen.

Ms. Raiselis asked if they have had any discussion with your neighbor about sharing that driveway in the back or being able to use that driveway occasionally for deliveries. She is not saying that it would be conditional on approval of this application but there are two driveways that are adjacent to your loading necessities and if you can work out something with your neighbor that would be good for the loading trucks to be off the street. She asked what they will do if they can't use one of these spaces.

Mr. Cafri came up and said that he has observed this area very often in the morning, and there has never been a situation where these spaces were occupied. Ms. Broda said that she is aware that one of these buildings uses their driveway for their own loading and parking and there are cars frequently parked in that driveway. She noted that the loading will take 15 to 20 minutes maximum and the garbage collection will take 3 to 5 minutes maximum.

Mr. Tedesco referred to an October 12<sup>th</sup> email of the Zoning Board from Heather Haggerty which she asked be forwarded to this Board. Her letter indicates a lot of interesting things about that area, and a lot of this isn't in the purview of the Planning Board to act and may be the Board of Trustees. He would like to read it into the record and sent to the Board of Trustees, for their review since they might be able to take some action.

Mr. Tedesco read her letter into the record as follows:

*"To Zoning Board of Appeals,*

*I live and own a house on Kaldenberg Place, the small street around the corner from this establishment. I listened to a previous meeting regarding loading zones and garbage pick up on central ave. I believe Broadways should have timed loading zones (morning) and garbage pickup. Central is heavily used and additional trucks will cause Kaldenberg Place to be used as an alternative for deliveries. This is already happening at an increasing rate in the last year. Deliveries for Main St and Broadway are constant. DPW recently repaired several areas of the sidewalks damaged by trucks and installed another no parking sign. Kaldenberg is clogged up*

*with cars double parking for food pickup, dropping off kids and cars driving the wrong way. The infrastructure of this tiny street is breaking, the trucks will need to drive on Kaldenberg to delivery on Central, loading zones on Broadway will decrease this.*

*I also urge parking spots on Broadway near this establishment be converted into spaces for pickup companies such as door dash and uber eats. Many towns have started this practice and this establishment will cater to pick up. Kaldenberg is already used a pick-up area for many places on Main St. Cars and trucks are constantly double parked, illegally parked on the curb, blocking driveways and parked in private lots. I have no doubt the corner of Kaldenberg and Central will be used to double park for pick up orders. Cars cannot double park on central. It will be the closest alternative if no parking spots for pick up are created.*

*Thank you for your time.*

*Best,*

*Heather Haggerty”*

Ms. Broda advised the Board that she also received this letter and she thinks that the idea of having a certain time period like 7 a.m. to 9:30 a.m. designated strictly for deliveries is a great idea. It does not handle the Uber Eats and so on, but it does help with the deliveries. She showed the site plan on the screen and noted that a majority of the properties on Broadway are landlocked in terms of Kaldenberg. There is no access to them, whatsoever, so any deliveries that someone would make to Broadway from Kaldenberg is highly unlikely due to the long distance to travel all the way up Central and around to Broadway. These delivery trucks are on a timetable and most likely double park on Broadway. Ms. Haggerty may be seeing some traffic from that but to assume that those are deliveries specifically targeted to restaurants or other establishments that are on Broadway is probably not quite accurate. That said, she noted that there are parking spaces for them to use for deliveries right in front of the building and as Mr. Cafri has said earlier, he has not seen any cars parked there in the morning on many occasions, even at 10 o'clock in the morning, the spots are empty.

Mr. Cafri commented that the truck that they will be using for deliveries is a small van that can fit into a standard parking space.

Mr. Tedesco asked if any Board Members had any other comments or questions.

Ms. Mendez-Boyer has concerns about the deliveries taking place so close to the area where the buses coming up from the train turn onto Broadway, which could be problematic. Ms. Broda understands and noted that the preferred loading area is actually 2 spaces behind the designated area for the bus stop and she has observed the buses turning and they do not interfere with the spot they intend to use. Ms. Raiselis suggested that they make the delivery people aware of the traffic bus situation in the area to avoid any issues.

Mr. Pennella commented that the applicant will also be required to have this space fully sprinkled and will be required to have private garbage collection.

Mr. Tedesco asked if anyone in the public has any comment.

Fran McLaughlin, 18 North Broadway, read her letter into the record:

*"My husband and I live directly across from way from the proposed restaurant and we are in favor of more restaurants we can walk to in the central business district, and hope to be among this restaurant's first customers. However, I have a suggestion for a condition of approval on all the restaurant applications that will make life better for the neighbors. We moved into our condo in June of 2019 and the first night there, my husband shouted, "There is a horrible burning odor in the kitchen, check the stove." The obnoxious smell was actually coming in the window from restaurants along Broadway and down Main Street. The odors are so strong, they come in our apartment, even when the windows are closed. Some of you know I was on the Greenburgh Planning Board for 23 years. We had a similar situation in Hartsdale near the train station, where there's a mix of apartment buildings and many restaurants. We solved it by requiring restaurants to have specialized exhaust systems that prevent of noxious odors from spewing out into the neighborhood. There are a number of cost-effective pollution control devices specifically designed for commercial restaurant and kitchen exhaust systems. The condition is as simple as requiring the applicant to provide additional information to the satisfaction of the building inspector regarding the ventilation system design, and the placement of the discharge location to the exhaust system in an effort to minimize the effect of any smoke and odors from the restaurant. Thank you for your time and please consider my suggestion. It is good to see you all. Thank you, and I look forward to the restaurant."*

Mr. Tedesco asked Mr. Pennella to comment on this issue.

Mr. Pennella said the applicant can speak on this matter but noted that this restaurant does not use heavy grease for cooking. They have a deep fryer. They will be required to install a fire suppression system for the Type I hood. They do have air scrubbers, but this restaurant is more of takeout restaurant.

Dr. Friedlander suggested that we look into this situation in general and perhaps make a recommendation to the Board of Trustees.

Mr. Pennella said this can be included as a condition in the resolution. This location of exhaust systems are critical and this building is a taller building; the higher you go the less likely there will be a problem. Mr. Cafri agreed with Mr. Pennella and said the building is 3 stories high and he has never had any odor problems with his other restaurants. He is confident that with proper cleaning and maintenance of the exhaust system, there should be no issue.

Mr. Tedesco thanked Mrs. McLaughlin for her comments and for her service to Greenburgh. There was no further public comment.

Mr. Tedesco moved, seconded by Ms. Raiselis, to close the public hearing.

Mr. Tedesco asked for a roll call vote:

Member Raiselis: Yes  
Member Friedlander: Yes  
Member Birgy: Yes  
Chairman Tedesco: Yes

All in favor. Motion carried. 4 - 0

Ms. Raiselis read through portions of the Resolution and advised that a copy will be provided to the applicant and the entire Resolution will be recorded in the minutes of this meeting.

**RESOLUTION  
VILLAGE OF TARRYTOWN PLANNING BOARD  
(Adopted October 25, 2021)**

**Application of Tedd Trading LLC  
Property: 27 North Broadway (Sheet 1.40, Block 18, Lot 6 and RR Zone)**

**Resolution of Site Plan Approval**

**Background**

1. The Applicant, Tedd Trading LLC requested site plan approval for the construction of a self-service restaurant on the first floor located at 27 North Broadway in the RR zoning district. The new use will replace existing office space. The application is for the interior renovations only with no change to the exterior façade. A parking variance is required from the Zoning Board of Appeals.

2. The Planning Board on January 25, 2021, 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 of 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."* Therefore, no further SEQRA review was required.

3. The Planning Board has conducted a duly noticed public hearing on August 23, 2021, and continued on October 25, 2021, 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 the Architect's first floor plans, elevations and parking requirements, survey and photographs of the front on North Broadway indicating the location of the lift for wheelchair access and the side and rear of the building along Central Avenue. The Planning Board also reviewed comments, and recommendations from the Consulting Village Planner in a memorandum dated August 12, 2021, and denial letters from the Village Engineer/Building Inspector dated July 20, 2021, and August 16, 2021, which they have considered.

5. The Zoning Board of Appeals reviewed the Applicant's request for a parking variance for seven parking spaces and a loading space at a public hearing held on October 12, 2021. The proposed use is located in the RR district and has a parking credit of five spaces for a previous retail use but requires an additional seven parking spaces per the Zoning Code. The ZBA reviewed the application for the proposed use and the denial letters from the Village Engineer/Building Inspector dated July 20, 2021, and August 16, 2021, and closed the public hearing. The ZBA approved the requested variance for seven parking spaces and a loading space at their October 12, 2021 meeting with conditions that Applicant shall use only small vans for deliveries and such deliveries shall take place before 9:30 am and a contribution of \$9,000 shall be made into the Village Parking Fund in lieu of providing seven on-site parking spaces pursuant to §305-63C(7)(d)(1,2) which is applicable since the property is located within the RR zoning district.

6. The Planning Board closed their public hearing on October 25, 2021. 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 approval is granted 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 site plan and application. The subject property is a three story, cast stone building at the southwest corner of North Broadway and Central Avenue. The first-floor space consists of 2,001 sf. The proposed new restaurant will replace three existing offices. The second and third floors have one office each which will remain. Construction will consist of interior renovations converting office space into restaurant use.

The proposed restaurant "(Felafel Place)" will offer counter, take-out and sit-down services. No alcohol will be served on premise. The Applicant describes the services as self-service and, therefore, the number of employees on-site are limited. The hours of operation will be from 11:30 am to 8:00 pm. Loading will be done at the rear, on the street in front of the rear open area, using a public parking space. The site plan shows three existing metered public parking spaces with two along Central Avenue at the rear of the building and an existing 15-minute metered parking space in the front at 25 North Broadway. The garbage cans are located in an enclosure under the stairs at the rear of the building accessible from Central Avenue. Trash and recyclables will be removed from the premises by a private carting company. Deliveries will be done through the enclosure at the rear to either the first-floor kitchen or the basement storage. A lift for wheelchair access is being proposed the left of the front entrance on North Broadway.

## II. Approved Plan:

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

Site Plan prepared by Christine H. Broda, Architect for *Falafel Place, 27 N. Broadway, Tarrytown, NY 10591*, dated 9/3/21, and last revised 9/24/21 unless otherwise noted entitled:

- SP1 "Site Plan"
  - A1 "First Floor Plan"
  - A2 "Elevations"
- (the "Approved Plan").

## III. General Conditions

- (a) **Requirement to Obtain Approvals:** 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.
- (b) **Changes to Approved Plans:** 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."
- (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.
- (d) **ARB Review:** No construction may take place and a building permit may not be issued until Applicant has obtained approval from the Board of Architectural Review in accordance with applicable provisions of the Village of Tarrytown Code.
- (e) The Applicant shall pay all outstanding consultant review and legal fees in connection with the Planning Board review of this Application.

## IV. Specific Conditions:

1. Based on §305.63C(7)(d)(1,2), the Applicant is required to provide a payment fee in lieu of the seven (7) required parking spaces in the amount of \$9,000 prior to the issuance of a building permit.

Mr. Pennella recommended, and the Board Members agreed that the following specific conditions be added to the Resolution as follows:

2. All food deliveries shall occur before 9:30 a.m. and only small vans, no large trucks, may be used for deliveries. (also a condition of the ZBA resolution)
3. The issuance of a building permit is subject to obtaining all applicable State and County approvals.
4. The installation of an air scrubber on the exhaust system shall be installed to the satisfaction of the Building Inspector.

Mr. Tedesco moved, seconded by Dr. Friedlander, to approve this site plan application with as modified.

Mr. Tedesco asked for a roll call vote:

Member Raiselis: Yes  
Member Friedlander: Yes  
Member Birgy: Yes  
Chairman Tedesco: Yes

All in Favor. Motion carried. 4-0

NEW PUBLIC HEARING – David A. Barbuti, RA- 21 N. Broadway

Mr. Tedesco read the following 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, October 25, 2021 at 7:00 p.m.** at the Municipal Building, One Depot Plaza, Tarrytown, New York, to hear and consider an application by:

David A. Barbuti, RA  
150 White Plains Road  
Tarrytown, NY 10591

For site plan approval for a change of use from existing vacant space into a liquor store.

The property is located at 21 North Broadway and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.40, Block 18, Lot 4 and is located in the RR Zone.

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.

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

Additional approval will be required from the Zoning Board and Architectural Review Board.

By Order of the Planning Board

Lizabeth Meszaros  
Secretary to the Planning Board

Dated: October 15, 2021

The mailing receipts were received and the signs were posted.

Mr. Tedesco advised that the Planning Board has received correspondence with an attachment, regarding the New York State Liquor Authority 200- 500 foot Rule, which has been forwarded to the applicant to address. Mr. Barbuti confirmed receipt of this correspondence.

David Barbuti, RA, the project architect, appeared before the Board, representing this application, to convert an existing vacant (former beauty salon), into a liquor store. The project consists of interior renovations, creating display areas, a high-end liquor display room, and office and storage space. There will be no exterior facade or lighting modifications to the exterior and a sign permit application will be filed with the ARB prior to the installation of the sign. As with all of these storefronts along North Broadway, deliveries will be accepted on North Broadway generally between the hours of 8 am and 11 am, and those deliveries will be made by a 20 ft. (maximum) box truck, or smaller type van; no tractor trailers or larger vehicles will be used. Trash and recyclables will be removed by a private carter at least once per week. Most of the waste will be broken down recyclable boxes which will be placed at curbside along N. Broadway collected most likely before 9:00 am. The Building Inspector made a determination regarding parking and loading, and they will be required to go to the Zoning Board for 8 off-street parking spaces and 1 off-street loading space. This space is directly next to Mr. Nick's pizza and there is a small driveway in the back of this property at 2 Central Avenue. The landlord has advised that 2 parking spaces associated with this property.

Dr. Friedlander asked how far the liquor store is from the corner of Central. Mr. Barbuti said it was the second building in from the corner.

Ms. Raiselis asked if the box truck will fit in a parking space. Mr. Barbuti said the size of the truck is similar to what the 27 N. Broadway applicant has proposed.

Mr. Birgy said the size of the truck should not be an issue.

Ms. Raiselis would like to know if they can use the driveway in the back, rather than on Broadway.

Mr. Pennella said if they were to use the back on Central, they could park there without a problem since they own that driveway.

Mr. Barbuti said that the conversation originally was that it would be easier to load from the front, because you don't have to walk up the hill. He could speak to the client and see what they want, but they would prefer loading off of North Broadway, as all the other stores do.

Ms. Raiselis is concerned about double parking around the lunch time hour, around 11 o'clock when the spots are already filled. If she were doing a parking plan, she would encourage her client to deliver in the back.

Dr. Friedlander said perhaps we could look into the hours of delivery instead.

Mr. Barbuti is open to earlier deliveries. He has seen empty spots in the early morning hours. He does not know when it starts getting heavier.

Mr. Birgy said if there is an open space you use it. There is nothing to prevent them from pulling up and unloading in a public spot.

Mr. Barbuti also mentioned the 15-minute parking space near the corner that could also be used.

Mr. Pennella said no as long as they pay for the parking. He did note that in the past this Board restricted the unloading in this spot. Traffic patterns have changed and he reminded the Board that the applicant will be required to go to the Zoning Board for parking and loading variances.

Dr. Friedlander asked the applicant about the 200 to 500-foot rule.

Mr. Barbuti advised that his client has been in contact with a Liquor Authority Consultant Attorney and it is his understanding this rule only applies if the use is solely as a school or a church. If the building has multi uses, the 200 ft. rule is not applicable. The applicant is looking into this.

Mr. Pennella advised that the applicant has made an application to this Board and it would be subject to obtaining the necessary regulatory approvals. They will not be able to make an application to the State Liquor Authority without getting site plan approval from the local jurisdiction. We just approved this prior application with the same condition. Mr. Barbuti will keep the Board advised on this issue and update the Board.

Mr. Gaito commented that the Reformed church is used by various groups. A brief discussion took place about the SLA approval process in the village. Counsel Addona noted that the Village does get notified when an application is made.

Ms. Mendez-Boyer confirmed with Mr. Barbuti that there will be 2 garbage collections per week. She suggested coordinating collection with the prior applicant at 27 N Broadway.

Mr. Tedesco moved, seconded by Dr. Friedlander, to declare this a Type II action with no further environmental review required under SEQRA.

Mr. Tedesco asked for a roll call vote:

Member Raiselis: Yes  
Member Friedlander: Yes  
Member Birgy: Yes  
Chairman Tedesco: Yes

All in Favor. Motion carried. 4-0

Mr. Tedesco moved, seconded by Dr. Friedlander, to continue the public hearing when appropriate.

Mr. Tedesco asked for a roll call vote:

Member Raiselis: Yes  
Member Friedlander: Yes  
Member Birgy: Yes  
Chairman Tedesco: Yes

All in Favor. Motion carried. 4-0

NEW PUBLIC HEARING – John Malone, RA- 9 Powder Horn Way

Mr. Tedesco read the following 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, October 25, 2021 at 7:00 p.m.** at the Municipal Building, One Depot Plaza, Tarrytown, New York, to hear and consider an application by:

John Malone, RA  
1 Bridge Street, Ste 29  
Irvington, NY 10533

For site plan approval for the construction of a 757 s.f. rear addition and deck to an existing 4,187 s.f. single family dwelling.

The property is located at 9 Powder Horn Way and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.220, Block 128, Lot 23 and is located in the R-15 Zone.

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.

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

Additional approval will be required from the Zoning Board and Architectural Review Board.

By Order of the Planning Board

Lizabeth Meszaros

Secretary to the Planning Board

Dated: October 15, 2021

The mailing receipts were received and the sign was posted.

Mr. Tedesco advised that the applicant has submitted a Stormwater Report and a Waiver of Steep Slope request for the Board to consider. The Landscaping Plan was forwarded to Ms. Nolan and she has reviewed the plans and submitted a 10-21-21 report which has been forwarded to the applicant to be addressed.

John Malone, RA, the project architect appeared and showed the landscaping plan. He noted that the rear portion is already within the buffer. Ms. Nolan suggested that they could do something to screen the view from Broadway. They discussed putting a native dogwood to buffer. There is also a stockade fence along this area. The applicant will improve this area, but it has to go before the HOA to get approved. The HOA wants the fence to be consistent and they have not been able to come to an agreement on this. They are proposing to replace it in kind since it is in disrepair, until a decision is made by the HOA.

Mr. Birgy thought that consistency is good for that area just like the walls along Broadway. It is a gateway to the village to make it look nice if everyone agreed.

Mr. Malone said the fence line runs across 5 properties. They do not want to hold up the renovation just for the fence. He just wanted to make the Board aware of this situation.

Dr. Friedlander asked if the owner called the neighbors and asked if they all want to chip in for the fence improvement. Mr. Malone said there is an expense associated with this

and she did get some pushback. She will continue to work on this. It is a gateway and has always been a sore point. Dr. Friedlander said when it was built there was uniformity.

A brief discussion took place with regard to the approval process for HOA.

Ms. Raiselis said that they can address the fence situation later on and the fence is not contingent upon approval. Mr. Pennella said they can remove the fence from the plan. Mr. Malone said they have added root protection and the dogwood tree and have resubmitted the plan for Ms. Nolan's review. Mr. Pennella also noted that there is a sewer easement that runs through the property so they just can't plant anywhere they want.

With regard to the fence, Mr. Malone said they want to at least replace the fence with something similar while negotiations continue with the HOA. He advised that this new room will be used for the owner's Star Wars Literature collection.

Mr. Tedesco moved, seconded by Ms. Raiselis, to declare this a Type II action with no further environmental review required under SEQRA.

Mr. Tedesco asked for a roll call vote:

Member Raiselis: Yes  
Member Friedlander: Yes  
Member Birgy: Yes  
Chairman Tedesco: Yes  
All in Favor. Motion carried. 4-0

Mr. Tedesco moved, seconded by Ms. Raiselis, to continue the public hearing when appropriate.

Mr. Tedesco asked for a roll call vote:

Member Raiselis: Yes  
Member Friedlander: Yes  
Member Birgy: Yes  
Chairman Tedesco: Yes  
All in Favor. Motion carried. 4-0

Adjournment:

Mr. Tedesco moved, seconded by Ms. Raiselis, to adjourn the meeting at 8:30 p.m.

Mr. Tedesco asked for a roll call vote:

Member Raiselis: Yes  
Member Friedlander: Yes  
Member Birgy: Yes  
Chairman Tedesco: Yes  
All in favor. Motion carried: 4-0

Liz Meszaros – Secretary

**EXHIBIT A-1**

**67 Miller Avenue – Robert Fedigan submission  
Public Comment Letter  
o/b/o Geraldine Baldwin**

*Submitted by B. Fedigan @ 10/25/21 PB. my*

Statement of Geraldine F Baldwin to the Planning Board Meeting of 10/25/21

Applicants' revised plans have once again been reviewed by the Village Consultant Engineer and been found seriously wanting in relevant factual information which must be addressed by Applicants' Engineers prior to any approval.

The Consultant Engineer states that a number of items need to be addressed (Memo of James J Hahn Engineering, P.C. 10/22/21, "Hahn Memo 2"), **Three very significant issues highlighted are:**

**1. Global Stability Analysis re the rock ledge**

Hahn Memo 2 notes that the depth of the ledge rock has not been included in the global slope analysis. As he explained, such analysis is needed to: "confirm there is not a decrease in the factor of safety" (Memorandum of James J Hahn Engineering, P.C. of 8/12/21, "Hahn Memo 1").

A mere assertion with no factual demonstration of no change of safety factor is not a sufficient reply.

**2. No cut and fill data on the plans – no location for material excavated**

Hahn Memo 2 states that Applicants' Engineers have NOT ADDRESSED the fact that the cut/ fill analysis omits the materials being excavated. Moreover, since the "entire rear yard will need to be excavated to install the geogrid"—there is NO ROOM for any stockpile. (Hahn Memo 2, p. 2, ¶1b).

Hahn Memo 2 further indicates that the yard must be excavated to within 8 feet of the house.

In earlier meetings, Applicants have argued that such digging would undermine the house. How is this safe for the house and the downslope neighbors?

**3. No testing and inspection requirements on the plans**

Hahn Memo 2 states that "Testing and inspection requirement . . . should be shown on the plans". None are shown on the current plans.

Additionally, as noted in the Hahn Memo 1, the elevation of the upper wall footing is higher than the top of the lower wall as shown in the ARQ plan – this still conflicts with Section B-b on pg. 1 of 2 by the Souhegan Valley Engineer ("SVE"). Similar discrepancies exist between Sections B-B and D-D and E-E of Sheet 2 of ARQ Engineering Plans.

How will the contractor know how or where the walls are to be constructed?

As explained by the Village Engineer Donato Pennella, PE at the Planning Board Work Session of 8/12/21 nothing can be added to a plan once site plan approval is granted – the current plans need information before they are complete enough for any approval. Hence, the inconsistencies must be addressed prior to approval of the plans.

Moreover, Hahn Memo 2 states that the Souhegan Valley Engineer should submit a statement indicating he has reviewed all the **most current plans and that the landscape** will not impact the integrity of the walls.

No such letter has been received. In fact, it cannot since the last submitted information from SVE of 9/23/21 is prior to the revised Landscape plan of October 10, 2021 and of ARQ plans last revised on 10/1/21.

Additionally, according to SVE p. 1 of 3., the fence should preferably be moved a distance behind the walls beyond the geogrid. The ARQ plan locates the fence in different location on Sections, B-B, C-C and D-d – all different from SVE preferred location.

The sole boring log relates to a single hole showing bedrock at 25 feet below the hedge. No boring log has been inserted onto the plans as specified by Hahn Memo 2.

Another serious unanswered Question remains regarding global stability analysis: **Since the walls will be interconnected, was the correct algorithm used to determine the global stability analysis?** The independent Hahn Engineer should confirm that the correct algorithm was used to determine global stability analysis since interconnection may well impact the surcharge of the upper wall onto the lower wall and may not have been taken into consideration by the algorithms routinely employed.

Unless and until all the outstanding issues are answered to the satisfaction of the Village Consultant Engineer no approval can be granted to Applicants' plans.

**EXHIBIT A-2**

**67 Miller Avenue – Mary Fedigan Submission  
Public Comment Letter  
o/b/o Geraldine Baldwin**

Record - Mary Fedigan c 10/25/21 PB my

Statement of Mary Fedigan to the Planning Board  
re: 67 Miller Ave Application Landscape Issues Revised 10/25/21

My sister Geraldine F Baldwin asked me a Certified Master Gardener to address the landscape issues. In good faith, I reviewed the information received from the Planning Board at 3:41 p.m. Friday 10/22/21 after the Building Dept closed to the public at 3:30 p.m. I reviewed Applicants' revised Landscape Plan of 10/12/2021 and a Report of the Village Landscape Consultant Nolan of 10/21/2021 (Nolan 2).

As noted in Nolan 2 there were serious issues not been addressed by Applicants' revised Landscape Plan of 10/12/21.

Most significantly, both the Consulting Engineer's Hahn Memo 2 and the Nolan 2 seriously question how the Giant Green Arborvitae will be planted on the 60 % slope between the walls on the western property.

Nolan 2 asserts: "A planting detail specific to planting on the lower tier wall should be provided to show how planting will be accomplished on the steep slope (1:2) of the terrace, and the relationship of the root ball to the geogrid"

Only this morning after 10AM, did we receive Applicants' Landscape Plan of 10/22/21 (10/22 LP) and a third Nolan Report of 10/22/21 (Nolan 3).

Nolan 3 appears to indicate that the 10/22/21 Landscape Plan show how the trees can be planted.

IT DOES NOT.

Applicants' 10/22 LP DOES Not accurately show how the Arborvitae will be planted on the 60 % slope between the upper and lower walls on the west.

Page 1 of 10/22 LP, the Detail Tree Planting shows the trees planted in a hole on a level surface--- no steep slope.

Page 2 of 10/22 LP alleges 5 feet available for the plants. This is contrary to the Engineers' plans. As shown in the SVE Plan, there is a foot of impervious soil behind the wall and hence only at most 4.3 feet of soil between the walls.

Also, page 2 of 10/22 LP shows the top of the lower wall well below the base of the upper wall. This continues the inconsistencies of the current plans of Applicants' Souhegan Valley Engineer and ARQ Engineer.

No clear demonstration how the Arborvitae can be planted on the steep slope between the walls.

Moreover, Nolan 2 explains that based on the Sherman reply, the "lower tier wall terrace are being treated as a planter" and thus "supplemental water is needed to mitigate the limited volume of uncompacted soil and rooting area". No irrigation is provided.

The Planning Board Resolution of 10/1/20 specifies that the planting must be "in conformity with the natural resource goals and policies of the Villages' Comprehensive Plan relating to the promotion of functional and native plant species, habitat creation and biodiversity and the guidelines for the removal of nonfunctional invasive species.'

Green Giant Arborvitae is NOT Native to New York. It is found on the Western Coast of North America. *Euonymus kiautschovicus* 'Manhattan' is NOT NATIVE to New York. It is a cultivar of a Japanese shrub developed at Manhattan, Kansas. Other species of the *Euonymus* genus are Listed as Tier 3 Non-native invasive plants in New York. Recommended control of such plants is "use of a chain SAW AND GROUNDING DOWN THE STUMP".

Monocultures of Arborvitae and *Euonymus kiautschovicus* 'Manhattan' do not meet the requirements of native plants, biodiversity and habitat creation specified by the earlier Resolution of this Planning Board.

In sum of all the outstanding issues regarding the failure to meet the Landscape requirements I submit that no approval can be made until and unless all the requirements of the Village Consultants, the Village policies and this Planning Board are met.

**EXHIBIT A-3**

**67 Miller Avenue**

**Kristen Wilson, Attorney Blanchard & Wilson**

**Public Comment**

**o/b/o Geraldine Baldwin**

# BLANCHARD & WILSON, LLP

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235 Main Street, Suite 330  
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October 25, 2021

**By Hand**

Honorable Chairperson and Members of the Planning Board  
Village of Tarrytown  
One Depot Plaza  
Tarrytown, NY 10591

Re: 67 Miller Avenue – Bartolacci Wall Application Parcel ID # 1.70-40-4

Dear Honorable Tedesco and Members of the Tarrytown Planning Board:

We are back in front of the Planning Board addressing, again, the seemingly endless unanswered questions regarding Peter Bartolacci's most recent application (the "2021 Application"). Although the Board may be considering an approval resolution this evening, for the following numerous reasons, this matter must be adjourned.

**False and Inaccurate Statements in 2021 Application**

As originally raised by Ms. Baldwin and submitted to this Board on July 26, the 2021 Application is fraught with misstatements and inaccuracies. In addition, the Steep Slope narrative does not provide this Board with sufficient justification for the required Steep Slope waiver.

In particular, the Teconic Engineering & Surveying Consultants PC report dated February 26, 2019 clearly states:

"Based on historic maps of the area provided by the United States Geological Survey, significant grade changes appear to have occurred in the western end of the property between 1957 and 1967. The western end of the property was likely built up on re-worked fill when the residence was built"

Contrary to the statements set forth in the 2021 Application, the steep slope is actually the result of topography and the house building last century – not the result of the deterioration of the existing railroad tie wall. In addition, despite the variety of walls the Applicant has referenced, there are no two- tiered 9 or 9.5 ft- high walls on a single steep slope in a residential neighborhood or in any Tarrytown neighborhood of an R 7.5 District of small single-family homes. There are no recently built walls of 11- or 11.5- feet- high in the Miller/Benedict Park neighborhood. Indeed, the only wall about 7-8 ft high was built on a steep slope at my neighbor's house - 63 Miller Ave. This is the wall that collapsed. Can we not learn from past mistakes?

The Village Code §305-67 is intended to preserve particular sensitive characteristic features of the Village landscapes. This Planning Board is required to restrict new construction on steep slopes to preserve the character of the Village. The idea of granting excessively large retaining walls to permit Bartolacci to enlarge the flat portion of the rear yard by 15 feet or more is completely contrary to the objectives of the Code. This is the exact type of development and invasive construction that the Code was intended to prevent.

Regardless of the landscaping, the huge walls will be readily seen from Riverview Avenue and there will be a very significant negative change created in the neighborhood.

#### **Information Received Today From Nolan Landscape Architects**

We received information as recently as 10:00 a.m. this morning and respectfully request that the matter be adjourned until my client has had sufficient time to review same. Notwithstanding the last minute information received, the proposed landscaping still includes non-native species. In addition, this is not consistent with the condition set forth in the Zoning Board of Appeals resolution that requires a landscaping plan that is consistent with the landscaping required by the 2020 Planning Board approval.

#### **Failure to Properly Post Notice of Public Hearing on Property**

The Village Code makes it clear that an applicant for public hearing must post a sign on the Property for at least ten (10) days immediately preceding the hearing date. It appears that the current sign on the property was removed for some period of time. The Board should confirm that the Applicant has submitted the necessary affidavit showing that the sign was posted in accordance with the applicable Tarrytown Code requirements. If such affidavit has not been submitted or if the notice was not proper, this Board should adjourn the matter until such time that the Applicant properly notices the hearing.

#### **Engineering Questions Must be Answered**

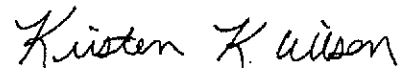
Hahn engineering submitted a letter dated October 22, 2021 (the "October 22 Letter") raising questions that remain unanswered. Specifically, the concern raised regarding the ability to excavate and install the geogrid, leaving little or no room to stockpile the soil. This is a significant concern given the steepness of the slope, the proximity of the down gradient homes, and the extent of the excavation required. *The Zoning Board of Appeals resolution specifically requires the Planning board to approve a Construction Management Plan that provides for the staging of construction, including the protection of neighboring properties and existing trees.* Isn't the information requested in the October 22 Letter a necessary and integral part of the Construction Management Plan?

Let's make sure the proposed plan set forth in the 2021 Application actually "works" and can be constructed before any approval is considered. Otherwise, another revision will be back before this Board to seek a new approval.

Based on the foregoing reasons, this Board should refuse to render a decision on the 2021 Application as it is clearly not complete. Furthermore, we are asking the Planning Board to deny

the Application as it fails to meet the clear requirements for the Steep Slope waiver and the Village Code requirements.

Respectfully submitted,

A handwritten signature in black ink that reads "Kristen K. Wilson". The script is cursive and fluid, with the first name "Kristen" and last name "Wilson" clearly legible.

Kristen K. Wilson

cc: Geraldine F. Baldwin  
Katherine Zalantis, Esq. (via email)