

Planning Board  
Village of Tarrytown  
Regular Meeting  
July 26, 2021 6 pm

**PRESENT:** Chairman Tedesco; Members Friedlander, Raiselis, Birgy; Counsel Addona; Village Engineer Pennella; Village Planner Galvin; Secretary Meszaros.

**ABSENT:** Member Aukland, Alternate Member Gaito and Alternate Member Mendez-Boyer; Counsel Zalantis

Mr. Tedesco moved, seconded by Dr. Friedlander, with Ms. Raiselis abstaining, to approve the minutes of the June 28, 2021 meeting.

Mr. Tedesco asked for a roll call vote:

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

All in favor. Motion carried. 3-0

Mr. Tedesco announced the following 4 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.

3. Christopher and Sonia Cawley - 95 Wilson Park Drive – Pending ZBA determination  
Site plan approval for the construction of a scenic roof deck and elevator shaft on a single-family dwelling.

4. New Public Hearing - Tarrytown Marina, LLC - 236 Green Street  
Board of Trustees referral for a review and recommendation of proposed zoning text amendments to the Waterfront Zoning District (WD) to permit the development of a "Wharf Boatel", consisting of a 4-story luxury boutique hotel with 103 rooms, together with a waterfront restaurant, Marina related improvements and parking.

CONTINUATION OF PUBLIC HEARING - Sunrise Development, Inc. - 99 White Plains Road

Brad Schwartz, ESQ, project attorney with the law firm of Zarin & Steinmetz, appeared before the Board with his colleague, David Steinmetz, ESQ, Philip Kroskin, Sr. V.P. of Real Estate for Sunrise Development, Inc, and the entire project design team. Mr. Schwartz thanked the Board for sharing the draft resolution which they have reviewed and have no comments. He thanked the Board and Village staff for all of their hard work that they put into the project.

Philip Kroskin, Sr. VP for Sunrise, appeared and thanked the Board and staff for their professionalism during this process. They are excited to move forward with the project and hope to begin the design process in earnest so that they can serve the seniors in the community.

Mr. Tedesco asked Mr. Pennella to comment on any other final reviews in addition to the sign offs for the stormwater and landscaping. Mr. Pennella advised that the applicant will be undertaking improvements on Broadway to connect and make repairs for the additional capacity to the existing sewer system and the water modeling is satisfactory.

Mr. Tedesco asked if the public had any comment.

Mark Fry, who worked on the Artis Sr. Living project, just next door to this property, is happy that the historic structure is being preserved. This project will have minimal traffic and school district impacts and it will generate substantial tax revenue for the village.

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

Mr. Tedesco asked for a roll call vote:

Member Friedlander:	Yes
Member Raiselis:	Yes
Member Birgy:	Yes
Chair Tedesco:	Yes

All in favor. Motion carried. 4-0

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 July 26, 2021)**

**Application of Sunrise Development, Inc.**  
**Property: 99 White Plains Road**  
**(Sheet 1.140, Block 89, Lot 2 – Limited Business and A/D & SEAL Floating/Overlay Zone)**

**Resolution of Site Plan Approval**

**Background**

1.The Applicant requests site plan approval for the construction of a total of 85 units including 53 units of assisted living and 32 units of memory care housing for property located at 99 White Plains Road. Property has been rezoned by the Village Board in February 2021 for the new amended A/D and SEAL Floating/Overlay zone.

2.The Planning Board determined that the proposed action was an Unlisted action and declared its intent to be lead agency at its meeting on June 22, 2020, issued a Notice of Intent (NOI) on June 24, 2020, assumed Lead Agency status at its meeting on July 27, 2020 and issued a Negative Declaration for the proposed unlisted action on December 28, 2020.

3.The Applicant opened a duly noticed public hearing on July 27, 2020 and continued the public hearing on August 24, 2020, September 30, 2020, October 26, 2020, November 23, 2020, December 28, 2021, and continued the public hearing on June 28, 2021 and closed the public hearing on July 26, 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 supplemental information from Applicant's Attorneys, Zarin & Steinmetz, including recreation fees dated 10/13/20, 11/6/20 and 12/7/20, reviewed plans provided by JMC on added seating and expanded recreation area plans and tree protection and JMC's submitted responses to landscape and engineering reviews dated 7/14/21, and 5/5/21, reviewed Hahn Engineering's *Stormwater Reviews* dated 12/3/20, 3/22/21, 5/18/21 and final review accepting the stormwater design dated 7/26/21, letter from Woodward & Curran (Village's engineer for water related projects) dated 7/23/21 approving the Project's water demand and capacity of the existing water mains in the vicinity of the site to support the demand, GML letter from Westchester County Planning dated 7/6/20 and correspondence from SHPO dated 11/19/20 and 3/25/21, Evans Associates Wetlands Assessment dated 9/4/20, Steven Tilly's *Report on the Existing Building History and Landmark Status* dated 8/31/20, and received comments and recommendations from the Consulting Village Planner in memoranda dated 7/14/20, 8/11/20, 9/14/20, 10/14/20, 12/15/20 and 7/12/21, a *Denial Letter* from the Village Engineer dated 3/29/21, and reviewed *Landscape Reports* from the Village Landscape Consultant dated 11/11/20, 3/18/21 and final review 7/23/21, which they have considered.

5. The Planning Board closed the public hearing on July 26, 2021. After closing the public hearing, the Planning Board deliberated in public on the Applicant's request for approval.

#### **Determination**

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* dated November 6, 2020 is made part of the findings of the Planning Board and described below:

***Neighborhood Character:*** Granting the waiver will not result in an undesirable change in the character of the neighborhood due to the following information provided by the Applicant:

1) The existing steep slopes identified are in the Northwest corner of the property, which is not currently visible from White Plains Road; 2) Most of the existing steep slope area to be impacted by the proposed site development will be restored and stabilized at the completion of the project. The project's permanent steep slope disturbance is approximately 500 square feet; 3) The project's design and grading plan minimizes removal of existing vegetation which will preserve the visual character of the western portion of the site where the steep slopes exist; 4) The property to the West is the Old Aqueduct Trail, which is heavily wooded and supplements the onsite landscape buffer discussed above.

***Alternate Feasible Method to achieve benefit sought by applicant:*** The benefit cannot be achieved by some other method feasible for the Applicant to pursue. The applicant considered various designs when planning the proposed Assisted Living Community. The proposed plan represents the only feasible option for the project which minimizes disturbances to the site's steep slopes by minimizing development in the western portions of the site. Most of the proposed disturbance to steep slopes will be temporary as most of the proposed steep slope disturbance will be restored and stabilized with substantial new plantings. Specifically, 4,160 square feet of the total 4,660 square feet of steep slopes to be impacted will be restored with erosion resistant vegetation, reducing permanent impacts to steep slopes to approximately 500 square feet, or 0.2%, of the site's overall area.

***Impact on Other Properties:*** The project's steep slope disturbance will have no adverse effect/changes on the physical or environmental conditions in the neighborhood. The steep slope areas in proposed conditions will be stabilized by grading and vegetation to minimize erosion of these areas. Site grading techniques utilizing retaining walls and stabilized, planted, slopes are proposed, and existing grades will be restored with erosion resistant vegetation. Disturbed steep slope areas will be seeded and stabilized and maintained by the applicant going forward. The project's grading and drainage design will reduce runoff traveling over the steep slopes. The

proposed stormwater management improvements will provide water quality and quantity enhancements which will mitigate potential adverse impacts to the site as well as downstream / adjacent properties. The applicant will provide a sediment and erosion control plan to control sediment during construction.



**Consistency of Project with Intent of the Steep Slopes Chapter:** The applicant maintains that the granting of the waiver will be consistent with the purposes, objectives and general spirit and intent of the “Visual Character and Environmentally Sensitive Areas” section of the Zoning Law. The project is designed to preserve the site’s existing character and the historic Goebel Building. The project’s disturbances to steep slopes will be screened by existing and proposed landscaping and will not result in an adverse visual impact. The project will result in a more stable and maintainable condition which will provide long-term protection from soil erosion and sedimentation. The project provides an improved storm water management system, which will minimize stormwater runoff, erosion, and flooding. The project employs the use of green stormwater practices including underground infiltration systems and an at-grade biofilter to enhance stormwater runoff quality. This project will improve the site’s aesthetic character and surrounding property values while maintaining, if not improving, health, safety, and welfare of the public in the neighborhood and Village of Tarrytown.

Based on the above, the Applicant believes that this proposal meets the criteria of section 305-67(F)(1)(B) of the steep slope waiver provision and that a waiver can be issued by the Planning Board. Additionally, the Planning 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. It is noted that further justification for the waiver may be found in Section 305-67(F)(1)(a)(2), which allows a waiver where there is adaptive reuse of an historic resource.

The Planning Board determines that based upon the findings and reasoning set forth below, the Application for site plan for the construction of a total of 85 units including 53 units of assisted living and 32 units of memory care housing is approved subject to the conditions set forth below.

I. Findings

The Planning Board considered the standards set forth in Village of Tarrytown Zoning Code (“Zoning Code”) Chapter 305, Article XVI and finds that subject to the conditions set forth below, the proposed site plan is consistent with the site plan design and development principles and standards set forth therein. The Planning Board has 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 extensively reviewed the Applicant’s application. The 4.6-acre subject property is located at 99 White Plains Road. The site is located on the north side of White Plains Road and west of the New York State Thruway Westbound Exit 9 ramps. The property is in the LB zoning district. The property is an eligible parcel covered by the recently enacted A/D SEAL Floating/Overlay zone. The project site is bordered by the old croton aqueduct trail and CVS Pharmacy to the west, apartments to the northwest, DaVita Hudson Valley Dialysis Center to the east, and a wooded area and wetland to the north where the Artis project is being proposed.

The existing building in the front consists of approximately 17,000 sf. The first-floor space that would be enjoyed by the Project residents amounts to approximately 7,000 sf. The upper floors of the existing structure are approximately 10,000 sf which are anticipated to be used as ancillary office and/or storage space for Sunrise. The recently constructed rear addition to the existing structure would be taken down. A total of 73,900 sf of new space would be built in the new building. The new building would be comparable in height to the existing structure to ensure that the Goebel building remains a visual focal point on the Property, and is not obscured by the new building.

The 73,900 sf of new construction essentially replaces the existing 74,00 sf rear building addition. The adaptive reuse of the front building consisting of 17,000 sf is essentially repurposing of the existing building and does not expand the existing building's footprint. The facility would also contain a variety of indoor amenities for its residents, including sitting rooms, a library, dining areas, salon/spa, and entertainment and activity rooms. These amenities would be situated throughout the facility, including on the first floor of the existing structure to allow the residents to enjoy the grand staircase and views towards the Hudson River. The facility would also contain outdoor amenities, such as a porch, patio, wellness garden, and walking paths.

Access to the Project would remain off NYS Route 119. Approximately 54 parking spaces would be provided to service residents, staff, and visitors (for comparison, there are currently 65 striped parking spaces at the Property). The parking spaces will be set back from Route 119 to minimize any potential visual impacts from Route 119. Additionally, the existing stone walls along the Property's southerly boundary on Route 119, on both sides of the driveway entrance, would remain in place. The proposed parking spaces are clustered in bays of 5 to 7 spaces separated by landscaped islands and are primarily placed to the side of the building. This design is meant to minimize the overall visual impact of the parking and pavement and creates a more residential feeling than commercial.

The Project proposes an attractive Porte Cochere that is needed to ensure residents have the ability to enter and exit the building safely. The New York State Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP) reviewed these plans and determined that there would be no adverse impact on the eligible Martin Rumsey Miller Estate/Goebel Collectors Club building. The work on the Porte Cochere will also include reconstruction of the existing circular driveway entrance. There are no wetlands on the property.

A small pocket of wetland is found immediately north of the northwest property corner, and there is a man-made detention pond on the adjacent property to the north. There are no NYSDEC wetlands on or near the property. A small portion (approximately 11,065 sf or 0.25 acres) of the overall 150' adjacent wetland area (overall approximately 33,625 sf or 0.77 acres) will be encroached upon for the construction of the building and surrounding grades. A portion of the existing building to be removed also encroaches in this buffer.

The Applicant after extensive discussions the adjacent property owner has decided to replace the property's existing sanitary sewer service with a new service that is connected to the existing 8" sewer main on Rte. 119. Applicant shall provide sanitary system improvements required by the Village Engineer. JMC has provided updated plans based on conversations with the Board and Village Landscape Consultant regarding protecting the 26" Red Oak tree in the southeast

portion of the parking lot. The following changes have been made on the plans to protect this tree: The layout of the proposed underground stormwater infiltration system is proposed to be completely removed from the 26' radius influence area for the existing tree 26" Red Oak Tree (Tree # 195). All other proposed utility / drainage lines have been modified to be out of this influence area / radius. Asphalt curbing is proposed to install on the area adjacent to the tree. Grading activities will be limited in the 26' radial influence area around the tree which will be delineated during construction with a fence (refer to note #7 on Drawing C-200). Notes 2 and 3 have been added on Drawing C-300 to further protect the existing tree to remain. This will require excavation in the 26' radius of the tree to be performed by hand or with an air spade. It also requires an arborist to monitor the construction work in this location and also requires measures to protect the tree roots.

Sunrise has investigated additional opportunities for seating areas away from the proposed building for families to use when visiting. The front area between the parking area and Route 119 was identified as an ideal location to provide a garden where families can visit quietly while their grandkids play. This area is ADA accessible, avoids the need for significant grading, provides privacy and shade from existing and proposed landscaping and is adjacent to a level lawn area. This new garden seating area, when combined with its adjacent lawn, adds approximately 13,000 sf of recreation space to the previously proposed 20,000 sf discussed with the Board during the project's rezoning and environmental review phase. The proposed recreational / activity space on the property now totals 0.75 acres.

## 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:

*Civil Drawings and Landscape Plans for Sunrise of Tarrytown, (Tax Map Section 1.140, Block 89/Lot 2), 99 White Plains Road, Village of Tarrytown, New York for Sunrise Development Inc. prepared by JMC last revised July 23, 2021; and Architectural Plans for Sunrise of Tarrytown, Village of Tarrytown for Sunrise Senior Living prepared by Engelbrecht & Griffin Architects (EGA) dated January 29 ,2021 unless otherwise noted entitled:*

### *Civil Drawings and Landscape Plans prepared by JMC, PLLC*

- C-000 *Cover Sheet*
- C-001 *Rendered Site Plan* dated 5/1/20
- C-010 *Existing Conditions Plan* dated 6/4/20
- C-050 *Tree Removal Plan* dated 9/4/20
- C-051 *Tree Removal Table* dated 9/4/20
- C-100 *Site Layout Plan* dated 6/4/20
- C-150 *Fire Access Plan* dated 9/4/20
- C-151 *Fire Access Path "A" and Path "B"* dated 9/4/20
- C-152 *Fire Access Path "C"* dated 9/4/20
- C-200 *Site Grading Plan* dated 6/4/20
- C-300 *Site Utilities Plan* dated 9/4/20
- C-310 *Sanitary Sewer Connection Study* dated 5/5/21
- C-400 *Erosion & Sediment Control Plan* dated 2/26/21

- L-100 *Landscape Plan* dated 5/1/20
- L-101 *Detail Landscape Plan* dated 1/29/21
- L-102 *Plant List and Landscape Details* dated 1/29/21
- C-900 *Construction Details* dated 2/4/21
- C-901 *Construction Details* dated 2/4/21
- C-902 *Construction Details* dated 2/4/21
- C-903 *Construction Details* dated 2/4/21
- C-904 *Construction Details* dated 2/4/21
- C-905 *Construction Details* dated 5/5/21
- DA-1 *Existing Drainage Area Map* dated 9/4/20 and last revised 2/4/21
- DA-2 *Proposed Drainage Area Map* dated 9/4/20 and last revised 2/4/21
- ASRI *Additional Seating & Recreational Area Plan* dated 7/13/21
  
- Alta 1 *Land Title Survey for Sunrise of Tarrytown* prepared by Alta/NSPS dated 4/30/20
- TS-1 *Topographic Survey for Sunrise of Tarrytown* prepared by Alta/NSPS dated 2/28/20
  
- *Stormwater Pollution Prevention Plan (SWPPP)* prepared by JMC dated 9/9/20 and last revised 5/5/21

Architectural Drawings prepared by Engelbrecht & Griffin Architects (EGA)

- A 1 *Rendering* dated 4/15/21
- A 2 *Existing Goebel House Images* dated 1/29/21
- A 3 *Exterior Elevations* dated 1/29/21
- A 4 *Existing Elevation* dated 1/29/21
- A 5 *Material Board* dated 4/15/21
- ARB 1 *Porte Cochere* dated 3/1/21

Architectural Drawings prepared by Engelbrecht & Griffin Architects (EGA) continued:

- A 8 *Basement Floor Plan* dated 1/29/21
- A 9 *First Floor Plan* dated 1/29/21
- A 10 *Second Floor Plan* dated 1/29/21
- A 11 *Third Floor Plan* dated 1/29/21

II. 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 Board review of this Application.
  - (g) 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.
  - (h) Landscaping: All landscaping on the approved planting plan shall be installed in a healthy and vigorous state and shall be inspected at the beginning and end of the growing season within the first and second year of installation. Individual species that do not survive beyond the first and second year shall be replaced at the beginning of the next growing season.
- (a) Plantings Cash Bond: Prior to issuance of a building permit, Applicant shall provide a separate cash bond, in an amount fixed by the Village Engineer and/or Planning Board's

Landscape Consultant to ensure the Applicant replaces any plantings that do not survive for two (2) years ("Cash Bond").

- (1) In the event the Applicant fails to complete the plantings or replace same when it is determined by the Building Inspector or Code Enforcement Officer to be necessary, then in that event the Village may utilize the funds deposited in the Cash Bond to plant or replace plantings.
- (2) At the end of the two-year period, the Planning Board's Landscape Consultant and/or Building Inspector or Code Enforcement Officer shall inspect the Premises and indicate if all plantings called for in the approved plans are present and in good health.

(b) Release of Cash Bond: Prior to releasing or reducing either the Cash Bond the Applicant shall submit a written request, accompanied by three (3) copies of signed and sealed "as built" drawings, including a landscape plan showing landscape conditions at the time of the re-evaluation to the Village Engineer stating the reasons why the Bond and/or Cash Bond should be reduced or released. The Village Engineer shall forward the request to the Village's Landscape Consultant and attorney each of whom shall provide a written recommendation to the Village Engineer concerning the request.

#### **IV. Specific Conditions**

- a) Prior to the issuance of a building permit, a *Stormwater Management Agreement* for the stormwater management facilities related to the Sunrise Senior Living Project at 99 White Plains Road, in a form satisfactory to the Village Engineer and Village Attorney, shall be fully executed and submitted to the Building Department with proof that the Agreement has been filed for recording in the Westchester County Clerk's Office.
- b) Prior to the issuance of a building permit, in accordance with recommendations contained in the letter dated March 25, 2021 from the NYS Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP), a construction protection plan must be drafted and implemented to ensure that no structural damage is sustained to the eligible Martin Rumsey Miller Estate. The protection plan should include pre-construction inspection and documentation, as well as ongoing monitoring during construction and be provided to the Village Engineer with a copy to NYS OPRHP.
- c) In recognition of the extent of on-site recreation amenities available to both assisted living and memory care residents provided by Sunrise and the supporting record that there will be use made of the Village Parks and waterfront access paths, the Planning Board finds it appropriate given the particular circumstances of this Application to reduce the recreation fee to 20 percent of the recreation fee and the Applicant has

consented to such fee and agreed that it is reasonable and appropriate for the Village to impose a reduced recreation fee of 20 percent of the Village's current \$10,300 recreation fee (\$2,060 per unit) to be applied to the facility's 53 assisted living units and 32 memory care units. Applicant shall pay a total of \$175,100 into the Village Recreation Fund prior to the issuance of a building permit.

- d) Applicant has agreed to design and build a LEED certifiable project and shall retain, at its cost, a LEED consultant to manage the LEED aspects of the project's design and construction. The LEED consultant would certify to the Village that LEED standards have been met and will coordinate with and provide regular updates to the Village Engineer.
- e) Applicant has agreed to provide a *Sunrise Reduced Rental Program* to rent four (4) assisted living units at a reduced rate that is 20 percent below the full rental rates and available for households at 80 percent of County Area Median Income (AMI) and verification provided to the Building Department prior to the issuance of any Certificate of Occupancy. The rental price does not just cover housing but also essential daily supportive services including cable/internet, food (3 meals/day + snacks, laundry, housekeeping, transportation, activities/exercise classes, and staff support.
- f) Applicant has agreed to replace the property's existing sanitary sewer service with a new service that is connected to the existing 8" sewer main on Rte. 119. Applicant shall provide and pay for all costs associated with the sanitary system improvements required by the Village Engineer, after obtaining any and all necessary permits and approvals at Applicant's cost. The Applicant shall make best efforts to perform the proposed sewer improvements in the July 22, 2021 Sewer Report by JMC prior to the projected re-paving of Route 9 by NYSDOT in the Spring of 2022, thus alleviating disturbance of the newly paved area. A bond in an amount to be determined by the Village Engineer will be required for R.O.W. improvements. Such work can begin at the discretion of the Village Engineer to expedite work in the Route 9/South Broadway Right of Way and minimize pavement patches.
- g) Applicant shall use all best efforts under the guidance of the Village Engineer and in compliance with Westchester County Department of Health regulations to place the required backflow device inside of the building rather than an accessory structure which protrudes above grade and visible from street level.

Mr. Tedesco moved, seconded by Ms. Raiselis, to approve this site plan application.

Mr. Tedesco asked for a roll call vote:

Member Friedlander: Yes

Member Raiselis: Yes

Member Birgy: Yes

Chair Tedesco: Yes

All in favor. Motion carried. 4-0

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

Robert Stout, Jr., Attorney with the Law Firm of Whiteman Osterman & Hanna LLP, appeared on behalf of the applicant, and advised the Board that he has read the draft resolution and had minor comments that have been incorporated into the draft. They are seeking approval for approximately 3,300 s.f. of office space to train patients to perform kidney dialysis at home. This training requires 2 visits per month as opposed to the more intensive three visits per week for traditional dialysis. He is happy to answer any remaining questions.

Mr. Tedesco asked if the Board or staff had any questions. There was no further comment.

Mr. Tedesco asked if there was any public comment. No one appeared.

Dr. Friedlander moved, seconded by Ms. Raiselis, to close the public hearing.

The secretary recorded the vote:

Member Friedlander: Yes

Member Raiselis: Yes

Member Birgy: Yes

Chair Tedesco: Yes

All in favor. Motion carried. 4-0

Dr. Friedlander 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 July 26, 2021)**

**Application of DaVita Inc.  
(a/k/a DaVita Kidney Care and True North Dialysis Center, LLC)  
Property: 200 White Plains Road (Sheet 1.201, Block 122, Lot 4 and MU Zone)**

**Resolution of Site Plan Approval**

**Background**

1.The Applicant is currently under contract to lease approximately 3,360 sf of space within an existing office building at 200 White Plains Road in the Mixed Use (MU) zone. Applicant is seeking site plan approval to operate its proposed kidney dialysis office within this space. Applicant will only do interior renovations within the building space.



2. The Planning Board on May 24, 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 or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls."* Therefore, no further SEQRA review is necessary.

3. The Planning Board has conducted a duly noticed public hearing on May 24, 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 including the cover letter from the Applicant's Attorney dated May 5, 2021 describing the Project History and Project Narrative reviewing site plan and CUP standards, the site plan including the overall site plan, exterior elevations, egress plan and survey, an aerial photograph of the site and photographs of the existing buildings on site, the *Environmental Clearance Form*, ZBA resolution dated April 12, 2021, comments and recommendations from the Consulting Village Planner in a memorandum dated May 11, 2021 and a denial letter from the Building Inspector/Village Engineer dated January 20, 2021 which they have considered.

5. The Zoning Board of Appeals reviewed the Applicant's request for an interpretation that the Applicant's proposed use was allowed in the MU district at a public hearing held on February 8, 2021, and continued on March 8, 2021, and April 12, 2021. The ZBA closed the public hearing and based upon the specific details of the Applicant's proposed use and the nature of the office operations, the ZBA issued 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. The ZBA further indicated that this interpretation was specific to this application and 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.

6. Applicant received the required Compatible Use Permit (CUP) for the proposed use from the Village Board of Trustees at a public hearing on July 19, 2021.

7. The Planning Board closed their public hearing on July 26, 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.

### **III. Findings**

The Planning Board 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 reviewed the Applicant's site plan and application. Applicant is currently under contract to lease approximately 3,360 SF of space within the existing building at 200 White Plains Road for the proposed dialysis office facility. The space would be located in the southeast corner of the first floor of the building. The proposed site is within an existing office park in the Mixed Use (MU) zone on the south side of White Plains Road. The Office Park consists of two existing office buildings, 200 and 220 White Plains Road. The existing office space is largely vacant. The building at 200 White Plains Road is 70 percent vacant while 220 White Plains Road is 90 percent vacant.

The proposed dialysis facility will include peritoneal dialysis ("PD Stations") and other related uses (*e.g.*, counseling rooms, administrative offices, etc.). Peritoneal dialysis is a form of dialysis that enables patients to conduct treatments at home, following appropriate training at in-office PD Stations. The PD Stations will be used for initial patient training on home dialysis and subsequent twice monthly in-office appointments. This type of treatment is similar but distinct from the more typical dialysis center use, which is known as center hemodialysis ("ICHD"). ICHD Stations are out-patient dialysis service where the patients come for a treatment three times per week. The proposed facility will be open from 8am-5pm Monday through Friday. Applicant proposes to have 8 - 10 employees and 8 patients at full capacity. Due to the length of patient consultations, Applicant expects 10 patients a day. During training (when patients are initially learning the in-home dialysis process), patients come every day for 1-2 weeks. PD patients then come to the facility twice monthly to meet with a nurse and doctor to ensure that they are following proper procedures and protocols.

Applicant operates an existing dialysis center at 155 White Plains Road, on the north side of White Plains Road in the OB zoning district. The 155 White Plains Road facility includes ICHD Stations where patients receive dialysis treatments three times a week. The proposed facility on the Project Site will not replace this existing facility but is designed to satisfy the growing need in the region. There will be no overnight stays nor will there be any emergency, surgical or diagnostic procedures at the office facility.

The proposed facility occupies a small portion of the existing office building which is vacant office space. The main entrance to the facility on the ground floor is at grade. It can also accommodate another means of ingress and egress directly into the office space at ground level for emergency purposes. A large parking lot is adjacent to the existing building with two new handicapped accessible spaces constructed near the building's entrance. The building has appropriate sidewalks for safe pedestrian access around the building. Additionally, there are another seven handicapped spaces at the rear of the building. Applicant is only proposing interior renovations. All exterior lighting is existing. There is no additional outside lighting proposed. Some minor landscaping is proposed on the side of the building facing the parking lot to hide the condensing units and ATS. All refuse including medical waste will be safely stored in a separate room and collected twice weekly by a licensed medical waste removal firm.

IV. 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:

Tecton Architects prepared Architectural Plans for *Tarrytown Home Training, 200 White Plains Road, Village of Tarrytown, NY 10591* dated June 18, 2020 and last revised December 18, 2020 unless otherwise noted entitled:

- AS-101 *"Overall Site and Pavement Plan"*
- A - 201 *"Exterior Elevations"*
- G - 101 *"Egress Plan and Code Data"*
- S - 1 *"ALTA/NSPS Land Title Survey"* prepared by LAN Associates Surveyors dated 11/17/19.
- S - 2 *"ALTA/NSPS Land Title Survey"* prepared by LAN Associates Surveyors dated 11/17/19.  
(the "Approved Plans").

V. General Conditions

1. **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.
2. **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."
3. **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.
4. **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.
5. **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.

6. The Applicant shall pay all outstanding consultant review and legal fees in connection with the Planning Board review of this Application.
7. Landscaping: All landscaping on the approved planting plan shall be installed in a healthy and vigorous state and shall be inspected at the beginning and end of the growing season within the first and second year of installation. Individual species that do not survive beyond the first and second year shall be replaced at the beginning of the next growing season.

Mr. Tedesco moved, seconded by Ms. Raiselis, to approve this site plan application.

Mr. Tedesco asked for a roll call vote:

Member Friedlander: Yes

Member Raiselis: Yes

Member Birgy: Yes

Chair Tedesco: Yes

All in favor. Motion carried. 4-0

NEW PUBLIC HEARING – Tarrytown Self Storage II - 29 South Depot Plaza

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, July 26, 2021 at 6:00 p.m.** at the Municipal Building, One Depot Plaza, Tarrytown, New York, to hear and consider an application by:

Tarrytown Self-Storage II, LLC  
34 Norm Avenue  
Bedford Hills, NY 10507

To request an additional one (1) year extension to the site plan approval which will expire on March 26, 2022, for the conversion of an existing warehouse facility into a self-storage facility with a retail component.

The property is located at 29 South Depot Plaza and is shown on the Tax Map of the Village of Tarrytown as Sheet 1.70, Block 29, Lot 38 and is located in the ID zoning district.

Documents are available for inspection in the Planning and Zoning Office. All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing-impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

By order of the Planning Board.

Lizabeth Meszaros  
Secretary to the Planning Board

DATED: July 16, 2021

The mailing receipts were received and the signs were posted.

Mr. Tedesco advised that the reason for this extension request is to allow Mr. Collins time to present a new site plan for this project that will address the major concerns that were found by this Board in their SEQRA review of the original site plan. Mr. Collins will be presenting this plan at the August Planning Board meeting. Mr. Birgy asked for a brief summary of the discussion since he was not at the work session. Mr. Tedesco said that in order to get a look at the detailed new site plan, the extension would have to be in place. Mr. Galvin said that if it was not approved, then possibly the applicant will proceed with the self-storage.

Mr. Birgy heard that the new plan proposes 95 or 96 units. Mr. Pennella advised that the applicant has submitted a building permit application and he has not had an opportunity to review it. He will review the plans and issue a denial letter, which will allow the applicant to move forward to the Planning Board, whether that is in August or September is to be determined.

Mr. Birgy said that he is unable to vote because he is lacking information that could potentially impact his vote. He is kind of stuck and feels that maybe he should recuse himself. Counsel Addona advised Mr. Birgy that the Board is just granting an extension of what they already approved but he is completely within his right to abstain from voting on this. Mr. Birgy said he would rather vote with more information. Counsel Addona said that from what she understands the applicant is pursuing an alternate proposal, but they've already gotten approvals for the self-storage. As the Chairman said, in order to get the applicant time to pursue that plan before this Board, they would like to keep those approvals in place.

Mr. Birgy thought that the applicant was not going to do the self-storage and asked why they are voting on this. Counsel advised that depending on what happens during the review of their alternate proposal is the issue. Mr. Tedesco said they have approval for the self-storage and if the approval is not extended, they could forget about the alternate plan and just do the self-storage. Ms. Raiselis said they would like to keep that approval in place for security. Mr. Birgy wants to know if the owner does not intend to build the self-storage before he votes. Mr. Tedesco advised that Mr. Collins addressed many of the major issues that we had with the original site plan, specifically some of the concerns of Mr. Birgy and Dr. Friedlander. Granting the extension for something that was already approved, will give time to review the plan. Mr. Galvin said there are no guarantees that they will close on the property, it may not happen, that is between the two parties. Mr. Birgy does not feel that the issue has been addressed if the density has been increased by 25 to 30 units. Mr. Tedesco said there are two buildings on the site and he does not think the number of units in this other building will go up, but they don't have the details yet.

Ms. Raiselis said the question is do we allow this application to be extended so the owner has the ability to build self-storage. When the residential site plan is reviewed,

Mr. Birgy can always vote no. Mr. Birgy said he can't vote now because he doesn't have enough information. Ms. Raiselis does not understand.

Dr. Friedlander said it is much more complicated than meets the eye. If the applicant came in and requested an extension to this approval, we would either decide yes or no. In this case, the Board entertained a developer with a proposal, not directly related to this application, except that he said the only way he can do this is to buy the property from Mr. Ferraro and unless he gets the land and building he can't file an application. If you recall, way back when, the Planning Board unanimously voted that they would prefer having mixed use or residential on that site to move the station area project along. The Board encouraged Mr. Ferraro to hold off until the stationary project is done adding to his property value. During this last work session, Mr. Collins came in and said the zoning would permit in excess of 90 units. The Board didn't go into details. It wasn't a site plan review, so there was no discussion about the need for variances. When Ms. Raiselis asked him to comment, Dr. Friedlander referred to the Minority Report and whatever differences in the plan that are not in line with this report would be his difference of opinion. When the Board of Trustees was reviewing the zoning change, after much debate and public input, they reduced the height from 60 feet to 48 feet. Based on the original 88-unit proposal, by removing one floor, they thought it would reduce the number of units down to 66. He believes that the Trustees voted on this proposal believing that there would be 66 units allowed under the zoning, but in reality, that is not the case, it could be more, which is a big concern and has caused confusion. The issues that he will be raising at site plan is the 300-foot-long building, unless they mitigate it. Similarly, there are no other side yard setbacks that exist, including coverage of 75% in an industrial zone. The plan does not meet his concerns or Mr. Birgy's concerns. He thinks that the Trustees, including the Mayor, thought that only 66 units could be built. Mayor Butler was in the audience and disagreed with Dr. Friedlander. Dr. Friedlander asked him to check the record.

Mr. Birgy said we have a vote coming up and nobody wants to say what was said at the meeting. Ms. Raiselis said we just discussed what happened at the meeting. Mr. Birgy said if the developer is not going to build self-storage, he needs to know that in order to vote. He also thought that the Board agreed to not let Developers attend work sessions with proposed plans to get feedback from the Board since they have been criticized for doing this in the past. Mr. Tedesco corrected Mr. Birgy and said that the Board listened to the Developer's new idea on the site plan and his intent to buy the property. They did not discuss plan details with him and they consulted with Counsel with regard to granting the storage extension. Mr. Birgy asked if there was a discussion of density. Mr. Tedesco said the applicant mentioned details about units that would be in the main building, and units proposed in the other lot. He mentioned underground parking and changing the architecture similar to Hudson Harbor. Mr. Birgy said that he had heard that there was feedback given from the Board. Ms. Raiselis said there was no feedback from the Board and the Board is not holding anything back from Mr. Birgy or the public. Dr. Friedlander just described what happened at the meeting and she resents Mr. Birgy's comments that the Board is holding out. Counsel Addona said whatever is going to be

decided by this Board as part of any potential subsequent site plan approval is going to be in an application considered during a public hearing. She believes that the issues being discussed are separate. The self-storage site plan approval is set to expire in March of 2022, so the owner is ahead of the game. If they don't get the extension, they still have another eight months until the approval expires and, if it is not extended, they are going to build the self-storage.

Dr. Friedlander understands Mr. Ferraro's position that he wants to retain his right to build the storage. He was under the impression that this extension is expiring next month. He asked why they can't wait for the new site plan to come in. Counsel Addona said the applicant is at a crossroad. He is either going to build self-storage, or he is going to ask for another year until March of 2023 to pursue this alternative proposal. If the Board does not grant this extension, she presumes that self-storage is the direction they will go in. If the Board grants the extension, it gives them time to invest in these plans and come before the Board with an alternate proposal which will go through the normal public hearing process for site plan review. Approving the extension gives the owner a sense of security to allow the process to move forward.

Dr. Friedlander suggested that in order to save time, effort and money, that Mr. Collins come in with the plan and see the response of the Board and public. That could take 2 months and Mr. Ferraro can keep the extension alive. Counsel Addona said you may want to ask the applicant to respond.

Mr. Tedesco asked if it makes sense to extend the approval 6 months instead of 1 year. Counsel Addona said it is at the Board's discretion. Dr. Friedlander does not want to give him less of an extension. He would like the public to be able to see the new plan and comment on it. The extension can still remain on the agenda and be considered in September or October. Ms. Raiselis still does not understand the difference between voting now or two or four months from now if the applicant is still going to present a plan. Dr. Friedlander wants the public to be able to participate and not think that this is a done deal. This will give Mr. Ferraro the ability to know the mood, tenor and reaction of the public and the Planning Board to the proposal and give Mr. Collins a chance to modify it. Mr. Birgy feels the Board should know the fundamental question of whether or not the applicant is going to build the self-storage. He is not against the residential mixed use but the density is too high for what is going on in the village at this particular time. Ms. Raiselis said the plan will be apparent when the applicant presents it next month and thinks it is the owner's right to apply for an extension. Mr. Birgy said it is also his right as a Board Member to say that he doesn't have the information to make the proper vote on this tonight. It makes sense to him, as Dr. Friedlander said, to present the new plan and wait a month or two. He does not understand the rush and sees no downside to waiting. The downside to voting now is that he doesn't have the information that he feels is reasonable and necessary to have.

Mr. Tedesco suggested that the plan be presented in August, possibly, or September, at a public hearing to understand the details and get public feedback. At that point, after

the initial review, they consider the extension. Mr. Pennella advised that the applicant has submitted a building permit application which he will need time to review to determine the need for any variances and if the proposal complies with the TOD, so the hearing may have to roll over to September.

Peter Ferraro, Sr., applicant and owner of the property, appeared before the Board. He thinks they are confusing apples and oranges. He is not sure when, maybe in the very near future, maybe two months from now, they may come in with a different site plan where they might propose apartments. The Covid situation has affected supply chains and financing. By the time the Board reviews the plan, and if changes have to be made, that could change the financing. In today's environment, 6 or 8 months down the road is right around the corner. All they are asking for is an extension of 12 months so if the project is not approved, or cannot be financed, or for whatever reason, then they can decide to put up a different project. They want to preserve their right to be able to build the storage. What comes after that is a whole different application, and the Board can decide on that one, but right now he wants to make it clear that they are comparing apples and oranges.

Dr. Friedlander agrees with Mr. Ferraro except that the procedure got muddled up by the presentation at the work session that made everyone think twice. If this was done without any knowledge of another project, they would have voted yes. Mr. Ferraro said that he still does not know where they are going with this project. Dr. Friedlander said it is not clear in his mind or the public's mind whether this would be the most appropriate thing to vote on without knowing if the other thing is going to be approved. Mr. Ferraro said he doesn't know if it will be approved which is why he is asking for is the 12-month extension on the storage.

Dr. Friedlander confirmed with Mr. Ferraro that if the site plan is rejected, he still wants the right to build the self-storage, which he should have. He asked Mr. Ferraro why he can't wait another two months. Mr. Ferraro said the only reason he is asking now is because with Covid, everything came to a standstill and the cost of supplies has gone up 30% to 40%, and they are not sure if the plan they will present will make any sense to build. They really don't know when the plan is going to be presented. The 12 months is requested because it takes time to get the necessary building permits, then a demolition permit, and then they have to deal with the MTA, so the extension request is not that far away. They are out of time to build the project that was originally approved at the site.

Dr. Friedlander said that in this situation, most applicants would request a 2-year extension for all the reasons Mr. Ferraro enumerated. He is perfectly willing to give the applicant a 2-year extension given the impacts of the pandemic. He feels bad that they pushed the applicant down this path. He just wants to see whether this new project or any other project they come up with will fly. Mr. Ferraro said that he just doesn't know what the project is going to be yet.



Mr. Birgy said what threw the wrench into this was that it was decided at the work session that they were no longer doing self-storage and they were going to increase the number of residential units and if that is true, then the Board should know what the direction is. Mr. Birgy feels that they should wait until they have a concrete plan. Mr. Ferraro said the point is that when the plan is presented, every change the Board requests may affect the financing of the project and they won't be able to do it. Whether he decides to put the storage there, or whatever else they are thinking about, should have nothing to do with the approvals that are in place. Mr. Birgy said he just seems a little out of sync. He can guarantee, from his perspective, that Mr. Ferraro will get the extension. The only question is the timing. If Mr. Collins had not come into a work session and said I am no longer doing self-storage, he doesn't think they would be having this conversation right now.

Mr. Ferraro said he was not at the work session but maybe Mr. Collins was trying to get a flavor of what was on everyone's mind and he doesn't think there is anything wrong with that. This project has been going on for at least 4 years or more and he keeps spending money. He is just asking for a 1-year extension on what was approved. Mr. Birgy said we will give you a 2-year extension. Mr. Ferraro asked if they would give him a 2-year extension tonight. Mr. Birgy said he won't because what they had anticipated is not what is being proposed. Removing the self-storage and putting in another building on the property is a major change. Also, he heard that the existing foundation is not going to be used now, and for the past three years, all he heard was that they had to use the existing foundation. Mr. Ferraro said that he needs to know because of the timetable that he is up against for the reasons he mentioned earlier whether or not they can get the extension. If they can't get this extension, then they will have to rethink the whole project in its entirety. He is not threatening anybody, he is just putting the facts on the table.

Dr. Friedlander advised Mr. Ferraro that the village has given him increased value on that piece of land with the zoning change. If he is willing to wait two months to see the reaction to the proposal, then he is ahead of the game. Mr. Ferraro said that those are the exact words that Dr. Friedlander said when they came in originally with the project and here we are four years later. He also does not think that Dr. Friedlander should be counting his money. He is a businessman and he is allowed to ask. Dr. Friedlander said he is willing to give a 2-year extension, when it comes close to that time, independent of what is going on right here. That takes care of the problems that may have come up from the pandemic in the supply chain. The applicant should not be punished for that. The issue of what happens to the property, whether Mr. Collins or Mr. Ferraro develops it, doesn't matter because Mr. Ferraro still gets that benefit of the text change so he is not losing anything. Mr. Ferraro said he is losing time. Dr. Friedlander said we are willing to give you more time.

Mr. Tedesco again suggested that the Board spend the next couple of months with Mr. Collins plan to get a sense about whether they are going in the right direction, which is critical. After that process, a 2-year extension can be considered. There will be no

vote tonight but the Board will take care of Mr. Ferraro in a decent way throughout this process.

Mr. Tedesco asked if anyone in the public had any comment on the granting of the extension only.

**PUBLIC COMMENT PERIOD:**

Dolf Beil, submitted his presentation for the record, attached as "Exhibit A" . He confirmed his attendance at the 7/15/21 work session. He strongly feels that the Planning Board work sessions should be taped specifically to avoid the situation that has occurred with this project. If there is no record of what was said, it is just a, "he said, she said" situation. His jaw dropped when a Board Member asked why they are considering this extension because they didn't want self-storage. Mr. Beil would like the self-storage to still be considered and feels it is a good idea because: it complies with the legacy zoning that has existed since the 60's'; it works with the American Paper industrial condition; it reduces the environmental impact compared to any alternatives, specifically in terms of traffic and tidal water impact; it conforms to the LWRP; it preserves the views of the RiverWalk, Franklin Street and the entire river area in general; it increases the net property tax; it improves the area appearance; it gives time for a holistic view of development in Tarrytown and we need to consider the impact of the Edge, the Boatel and the WIBC. Finally, it is not irreversible. If 48 feet of residential by 300 feet is put down there, we are going to have it in the village forever. He noted that Franklin Courts has issued an RFP for 140 units, which also came out of the work session. The brewery or the annex is going to add 15 units which is on the proposed 7/15/21 Collins Plan. The South Depot Plaza project, which the Board thought was for 66 units, has gone to 79 units plus 15 on lot 37. With regard to the American Paper property, he believes that they too will come up with a project similar to 29 S. Depot Plaza. All of this additional development will result in a net increase of 267 units down by the train station which is a 6% increase in the total number of units in Tarrytown (4,760). Tarrytown's population has only increased by 1.74% over the course of 61 years. The annual compounded growth rate in population is .03%. A 6% increase in units is a horrendously large number of units and he feels that the Planning Board should be considering this as part of their planning function. The Village has applied for a \$30 million dollar grant to link the 2 RiverWalks. He showed a picture of the view from the RiverWalk looking at the proposed building and noted that when built, this 48-foot building will be the view from a \$30 million project, and eventually, that will be extended from 300 feet to 600 feet if the American Independent paper property is developed. He compared this height to the new Edge development in Sleepy Hollow and showed the picture. He asked the Planning Board to approve this extension for the self-storage.

Katie Kreider, who lives in the village, said she was not at the work session but is sharing some of the concerns about not knowing what is going on. She remembers Ms. Raiselis' past concern that if the mixed use is not approved, they will go and build the

storage. She thanked the Chairman for giving them additional time to get a better understanding of the feeling of the Board.

Mark Fry, of Ossining, NY, feels that everyone in the room wants a good outcome for the Village. He understands Mr. Ferraro's position and looked at the June, 2017 Planning Board video. It seems to him that the compromise is acceptable. He reviewed the stamped plans. What is now proposed is 79 units, instead of 66 in lot 38, and another 15 units in the other lot 37. It is worth taking a deep breath and looking at the implications of the zoning changes to see what is proposed. Dolf Beil made some good comments. He thinks we all have learned a lot since March of last year including the Board of Trustees. It is a good time to look at the holistic view, the other projects coming, the Boatel (if even allowed under the law). He is here to support the extension of the self-storage site plan. It is an attractive use in the ID Zone and doesn't obliterate any views. He agrees with allowing the Board to consider an alternative plan while still allowing Mr. Ferraro his extension at a date that makes sense to the Planning Board.

Mr. Collins, of Collins Enterprises, thanked the Board for their consideration. The plans they have submitted to the Village Engineer are consistent and conform with the new mixed-use rezoning that was approved in March of this year. They intend to discuss all the points and every aspect of the project and they are looking to come before the Board as soon as possible. Part of what you are hearing is that it has taken a long time to get this project underway due to Covid and other things. He first got involved back in 2019. He suggested that the Board possibly grant the same extension to them that was granted by the ZBA on July 12<sup>th</sup>. The Board granted an extension to December of 2022. Perhaps he can talk to the Ferraro's about agreeing that you could take it from March of 22 to December and make it coterminous. Hopefully, that will give them enough time to get this project underway, get financed, and so forth. That is just a suggestion but he thinks it is basically a compromise that he hopes the Board will consider. Mr. Ferraro is very worked up about protecting his approvals. Mr. Collins advised that he is the contract vendee and one of the reasons they are before the Board now rather than 3 or 4 months ago is because they were negotiating new terms in the contract based on the new zoning and other things. That took more time than he thought. The Board has been supportive with every aspect of this process and they want to work to build a consensus that is right for the Village and for them. The plan will not include self-storage. Concealed parking will conform with the new mixed zone. He hopes that this project can be a win-win for the village as well for the private sector and private investment. He looks forward to presenting the plan which is a little different than what the Board saw last year, but reminded the Board that that have put a number of different plans together. He thanked the Board for their time.

Mr. Tedesco advised Mr. Collins that if the Board agrees, he will be invited to present at the next Planning Board meeting in August to start the process of really looking seriously at the proposal. After that initial period a month or two, they will make a decision on a sizable extension for Mr. Ferraro. Mr. Galvin said the first step is to review and get the Denial Letter to get it to the Planning Board.

Mr. Birgy asked if the lease agreement between the applicant and Metro North would be altered. Mr. Pennella said that this is something that we need to wait and see when the applicant makes the presentation. There have been a lot of comments this evening and ironically, he has not even had the chance to review the plans. He will do the review and issue a Denial Letter and move forward from there. Mr. Tedesco thanked everyone for their input.

After a brief discussion, the Board unanimously agreed, to adjourn this public hearing to September 27, 2021.

The secretary recorded the vote:

Member Friedlander: Yes

Member Raiselis: Yes

Member Birgy: Yes

Chairman Tedesco: Yes

All in favor. Motion carried. 4-0

NEW PUBLIC HEARING – Peter and Suzanne Bartolacci – 67 Miller Avenue

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, July 26, 2021 at 6:00 p.m.** at the Municipal Building, One Depot Plaza, Tarrytown, New York, to hear and consider an application by:

Peter and Suzanne Bartolacci

67 Miller Avenue

Tarrytown, NY 10591

For site plan approval to construct two-tiered retaining walls in the rear and side yards of the property.

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.

Documents are available for inspection in the Planning and Zoning Office. All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing-impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

By order of the Planning Board.

Dated: July 16, 2021

Lizabeth Meszaros

Secretary to the Planning Board

The mailing receipts were received and the property sign was posted.

Paul Berté, P.E, from ARQ, PC, formerly with Fusion Engineering, appeared on behalf of the applicant. They are presenting a tiered wall, very similar to what the Board has seen previously. This wall has a face height of 9 feet on the west face and a maximum height of 11 feet on the south face. The wall is proposed to be a modular block placed 7.5 feet from the westerly property line. The distance between the two walls is 7.5 ft., so the top wall would be 15 feet from the westerly property line. The plan is the exact same layout that was previously approved by this Board. The wall height has shifted a little bit along with the type of construction. They are proposing approximately 475 cubic yards of fill to reconstruct the existing wall to what is proposed. They have an updated landscape plan showing some evergreens along both tiers that would visually hide a portion of the wall, on the west base, and on the north base, where there is a step in that wall. He confirmed with Dr. Friedlander that there are 21 Arborvitae trees on the top and 15 Arborvitae on the existing elevation, for a total of 36 trees.

Dr. Friedlander asked Mr. Berté to summarize what the essential changes are to the plan that was approved. Mr. Berté said the previous approval had an 8-foot-high face and they are requesting 9 feet. The reason for the difference is the design of the wall. They previously had a reinforced concrete wall, and now they are proposing a modular block wall which changes the grade in the backyard.

Mr. Tedesco confirmed that the applicant has been granted the ZBA variances at the July 12, 2021 meeting. The Village Engineer had provided a list of 3 items that needed to be addressed in 3 areas relating to the building permit application, site plan information that was not included with the submission, including a construction management plan, and the modular block wall plans. Mr. Berté confirmed that he is working on this. Mr. Tedesco said that the landscape plan will be sent to the Village Landscape consultant for review. He asked for comment from the Board.

Village Engineer Pennella advised that he has received the plans, and had provided some initial comments. He is still reviewing the plans. In addition, they have provided a stability analysis that will be forwarded to Hahn Engineering for their review. Once he receives the Hahn comments, he will report back to this Board if there are any concerns or issues that need to be addressed.

Ms. Raiselis emphasized the need for the landscape consultant to review the landscape plan.

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

#### PUBLIC COMMENT

**Bob Fedigan, of Woodrow Drive, Yonkers, NY**, the brother-in-law to Geraldine Baldwin, who lives at 66 Riverview Avenue, read a letter into the record on her behalf since she could not be present. He also presented photographs. He is here to respond to the application and specifically Mr. Berté's July 6<sup>th</sup> letter. His submission is attached as "Exhibit B" of these minutes.

**James Fedigan**, resides with his Aunt, Geraldine Baldwin, at 66 Riverview Avenue. He is here tonight to read and submit a petition signed by the neighbor's objection to the huge walls. Before reading the petition, he showed the pictures of what the neighbors along Riverview Avenue will be forced to see, should the huge walls be approved. The first photo is the view of his Aunt's yard which can be seen from Riverview Avenue on the north and south side of the house. The second photo is an artist's rendition of the two concrete block walls, totaling 18 feet high, rendered by a licensed Architect Luigi DiMasi. The rendition is based on the applicant's site plan with the wall superimposed according to the plan on a photograph of the slope as seen from his backyard. The third is a rendition of the proposed walls with landscaping. As explained in his statement he will read this evening, the non-native green Arborvitae can grow up to 50 to 60 feet high and 20 feet wide, if planted into a small space between the walls and in the geogrids holding up the walls, the stability of the walls will be compromised. The fourth is copy of the applicant's rendition with the Green Giant Arborvitae removed which shows how huge the walls will be seen from Riverview Avenue and from the yards of the downslope neighbors. He read the petition into the record from 8 neighbors on Riverview Avenue, and submitted it with 2 photos, attached as "Exhibit C".

**Kristen Wilson, ESQ**, also representing Geraldine Baldwin, referred to the site plan dated 3/25/21 and submitted a letter for the record, attached as "Exhibit D". She asked the applicant's engineer or Mr. Pennella why the walls are interconnected and link together. She wanted to know if this design impacts the slope analysis. Mr. Pennella advised that the design is supposed to include the worse-case scenario, which is the area that she is referring to, where the walls interconnect. That analysis will be sent for review by Hahn Engineering, for that worse-case condition. Ms. Wilson said there have been many iterations over the years and the best way she can describe this particular proposal is simply as the 2021 application. There are a few concerns that have remained throughout this process, that currently exist. First, the village is relying on a 2009 survey. Her client is disputing where their property lines are and she would encourage this Board to insist that the applicant update the survey. Second, on the Environmental Clearance Form, the applicant has checked off specifying trees to be removed, replacing them with Cedars. She would like to see a plan that reflects the type of trees and how many will be removed and replaced and how the removal may impact the property with regard to the fill and construction. With regard to SEQRA, she submits that this is not a Type II action and it is more properly classified as an Unlisted action. She would like the Board to take a closer look at SEQRA requirements and the steep slope analysis to see whether or not the applicant has truly met the requirements to obtain a waiver from this Board, and whether there are any other ways to mitigate the impacts that her client and the neighbors, not just visual, but the actual environmental damage to the area. Despite the applicant showing several different walls that have been constructed throughout Tarrytown and in Westchester County, the most relevant example is the wall that failed next door. They are asking this Board take a really hard look at whether or not this plan is the best plan for this property. She also suggested that part of the SEQRA analysis should acknowledge the 2013 McGarvey letter saying that prior wall appeared to be about 6 to 7 feet high.

The applicant's engineer indicated that the design of the wall is higher now because of the geogrid wall. Does that mean that the design has to be that high, or that size? Does it have to be that significant of that invasive of a wall on the downgradient properties? Why can't the applicant design something similar to what was there before based on the record? She respectfully submits to this Board that this wall is designed to fail. That this is not sufficient to meet the steep slope waiver and more due diligence is needed under SEQRA before the environment is preserved and the downgradient properties are not in harm's way.

**Lin Snider, of 64 Riverview Avenue**, appeared. Her property abuts the applicants at the northwest corner. She has lived here since 1997 and remembers the entire hillside as one big slope until the owner behind them destroyed the slope and put in a wall. This wall recently fell into her backyard which she described as incredibly terrifying. Her husband was home and had just been in the garden 10 minutes before the blocks fell as close as 5 feet from her house. It took a while to clean up and costs were reimbursed by the neighbor. The neighbors have since rebuilt the wall and some of the trees they planted are dying which she now looks at. She thinks there seems to be some dishonesty or confusion with this project. The initial proposal was to just to shore up the steep slope and make sure that it is safe. This proposal seems to have gone way beyond that. They loved the natural hillside behind them and throughout the neighborhood and maintaining it ecologically is important to them. She urged the Board to look this plan over carefully and not approve anything that is going to fall on them.

#### END OF PUBLIC COMMENT

Mr. Tedesco advised that what is being proposed is an amended site plan approval for an application that has already been approved by this Board. He believes it remains a Type II action. Obviously, there will be a thorough review from our Village Engineer and Hahn Engineering. Safety is the main concern of this Board and they will rely heavily on these reviews. This Board will also require a response from the Village Landscape Consultant in order for the Board to begin to prepare any approval of this amended site plan. As we continue the public hearing and gather the input from the engineer and landscape consultant, he suggested that the Board invite the Village Landscape Consultant to be present at the next public hearing to answer any questions about the nature of the trees, whether they are native or not, whether they are the best trees to be planted, and any information about trees to be removed. She will address those issues and give us a very critical look at what it will look like with the trees in place.

Mr. Berté came back and made a correction to his earlier statement and said that the distance between the two walls is 6 feet, not 7.5 feet, so the upper tier is 13.5 feet from the westerly property line. He also clarified that the height of the wall has nothing to do with the geogrid.

Peter Bartolacci, 67 Miller Avenue, the applicant, advised that he will not address all of the information heard tonight. He will submit a document addressing each and every item brought up by the opponents. With regard to the survey mentioned, if the company holds to their deadline, they will have a new survey soon. With regard to the Cedar trees mentioned, that have been removed. The trees were along their southern property line, butting up against the existing rail railroad tie wall. They were growing and pushing the railroad ties up and causing a failure on that railroad tie wall. Since they knew it was going to be a while before they would have a plan approved, they needed to keep what they have and prevent any further damage to the wall. The Tree Warden looked at the trees and confirmed they were in danger of undermining the railroad tie retaining wall and issued permits for their removal. The Environmental Clearance Form he completed was from the Zoning Board application and, at that time, the trees were still there. He believes the trees were removed in April or early May. There are a lot of other things to address. He will reply in writing and submit for the record to make sure that the record is accurate. There are issues with information being shared and the validity of information is not good. They have been before this Board many times in the past and they have heard a lot of things. They have had to provide a lot of evidence to discount what was said. They are going to do it again because it is important that the record be accurate.

There was no further comment from the Board. Mr. Tedesco would like to continue the public hearing to allow input from the engineer and the Village Landscape Consultant and give Mr. Bartolacci a chance to respond.

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

Mr. Tedesco asked for a roll call vote:

Member Friedlander: Yes  
Member Birgy: Yes  
Member Raiselis: Yes  
Chair Tedesco: Yes

All in favor. Motion carried. 4-0

Adjournment:

Mr. Tedesco moved, seconded by Mr. Birgy, to adjourn the meeting at 8:15 p.m.

The secretary recorded the vote:

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

All in favor. Motion carried: 4-0

Liz Meszaros – Secretary



**EXHIBIT A**

**29 S. Depot Plaza - Site Plan Extension Application  
Dolf Beil- Public Comment Presentation**

# Why Self Storage?

Complies w Legacy Zoning – 1960s

Works with Am. Paper “Industrial”

Reduces Environmental Impact

Traffic / Tidal Water

Conforms to LWRP

Preserves Views

Riverwalk & Franklin Street

Increases Net Property Tax

Improves Area Appearance

Gives Time for Holistic Assessment

Edge / Botel / WIBC

Not Irreversible

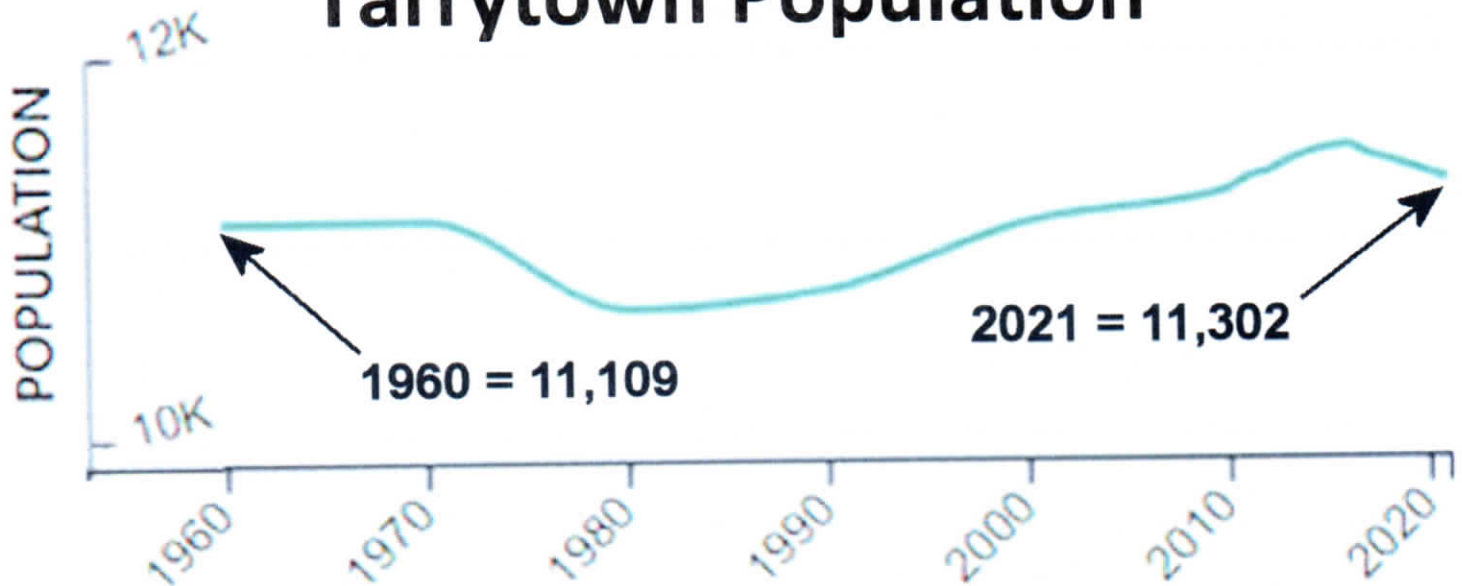
# Responsible Planning?

<u>#</u>	<u>Name</u>	<u>Acres</u>	<u>Likely Units</u>
32	Franklin Court	6.7	140
37	"Brewery"	0.2	15
38	29 South Depot Plz.	1.2	79
39	American Paper	<u>1.5</u>	<u>103</u>
<b>TOTAL</b>		9.6	337
Current Units			<u>-70</u>
<b>NET INCREASE</b>			267
Tarrytown Units			<u>4,760</u>
<b>% INCREASE</b>			6%



# 6% Compared

## Tarrytown Population



1960	11,109
2021	<u>11,302</u>
Difference	193

% Diff.	1.74%
---------	-------

Annual Rate	0.03%
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# Riverwalk Visual Impact

## \$30 Million Project!



**EXHIBIT B**

**67 Miller Avenue Site Plan Application  
Robert Fedigan – o/b/o Geraldine Baldwin**



Statement of Geraldine F Baldwin re: Application of 67 Miller Ave before the Planning Board of the  
Village of Tarrytown dated July 7, 2021

It is noted that, as an essential Part of the Application before the Planning Board, Applicants have submitted a Letter by their Engineer as part of and in support of the Application and the Required Waiver of the Steep Slope Law of the Village Code.

This Statement is submitted to correct the false and misleading statements in that Letter.

Rebuttal to Letter of Applicants' Engineer Paul Berte of July 6, 2021 in Support of a Waiver of the  
Village Code Restricting Disturbance of a Steep Slope ("Letter")

The Letter, attached as Exhibit 1, is filled with egregiously false statements of fact and misleading and inaccurate representations of facts. The most egregious are refuted by actual facts below:

1. Origin and Status of the Steep Slope

- A. Berte's False Statement: the steep slope was "created from ongoing deterioration of the existing wall" (Letter, p. 1 ¶4)
- B. Actual Fact: This false statement is refuted by Applicants' own previous submission to this Planning Board in 2020. The steep Slope is actually the result of topography and the building of the house last century.

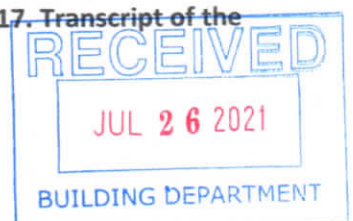
As explained in the Report of February 26, 2019 by Tectonic Engineering & Surveying Consultants PC submitted by Applicants ("Tectonic Report"), the Steep Slope at 67 Miller Ave is the result of the topography and grading resulting from building the house in the 1950's or 1960's. Tectonic Report, pp1-3 attached as Exhibit 2

On page 3, the Tectonic Report 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"

From personal experience, I know that the hedge at the top of the steep slope on Applicants' property above the railroad tie wall has been in the same position since I purchased my property in December 1986.

While the wall has deteriorated from lack of maintenance, the steep slope is stable except for wall— as also stated by the current Village Engineer at the Zoning Board of Appeals in 2017. Transcript of the ZBA meeting August 14, 2017, p. 330 attached as Exhibit 3.



*Read into record @ PB. Mtg.  
67 Miller Ave Bob Fodigan 7-26-21*

## 2. Similar Walls on Steep Slopes in the Neighborhood

- A. Berte's False Statement: Applicants have shown numerous examples of similar sized, similarly constructed and similarly finished retaining walls in the Immediate neighborhood (Letter, p.2¶4, part 1)
- B. Actual Fact: This false statement is refuted by careful consideration of all the walls submitted by Applicants---

Despite the myriad walls for which Applicants have scoured the Village and surrounding communities, Applicants have shown no two-tiered 9 or 9.5 ft-high walls on a single steep slope in the 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. See the pictures of walls representative of those between Miller and Riverview Avenues attached as Exhibit 4.

To best information, only one wall about 7-8 ft high was built in this century in the Miller/ Benedict Park neighborhood—not on a steep slope, i.e., at 63 Miller Ave. IN FACT, THIS WALL COLLAPSED IN DEC 2019 INTO MY NEIGHBOR'S YARD AT 64 RIVERVIEW AVE—with significant physical damage to the yard and, but more importantly with significant psychological damage to my neighbors.

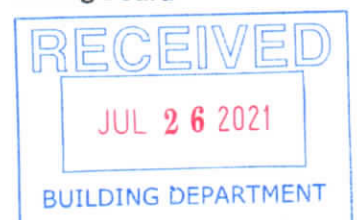
Moreover, the retired Tarrytown Village Engineer, Michael J. Mc Garvey specifically made a site visit and established that Applicants' railroad tie wall was never more than 7-8 feet-high. As he stated in his Letter to the Planning Board of September 26, 2013, it was his professional opinion as an engineer: "I do not believe that a railroad tie 20' high was ever constructed on the site; instead, I believe there were three walls approximately 7' (+) high" [that is one wall on the north one on the west and one on the south]. See Letter of M. Mc Garvey to the Planning Board of Sept 26, 2013 attached as Exhibit 5.

Mr. Mc Garvey additionally opined: "If there ever was a retaining wall 20' high in the rear of this property and the rear of the property was flat (around 5% slope) approximately 850 cubic yards of soil would have had to have been washed down onto the neighbor's property below." There is no such debris below the wall even today and only a few fallen railroad ties—not the huge pile necessary if Berte's statement were true.

Further Applicants' own Tectonic Report clearly states: "There is an existing railroad tie wall up to 8 feet in height around the perimeter" of the lot. Tectonic Report p. 1, ¶2

## 3. Nature of the Proposed Project

- A. Berte's False Statement: The Planning Board and the Village Engineer indicated that Applicants' project is repair or restoration citing the minutes of the Planning Board Preliminary Presentation on April 22, 2013. (Letter, p3, ¶3)





- B. **Actual Fact:** Although at this initial meeting for the Preliminary Presentation of the project Mr. Mc Garvey indicated it would be repair of a non-conforming wall, he clearly stated that at that time, he did not know what was the original height. Additionally, as explained above, when he made a specific site visit in September 2013, Mr. Mc Garvey determined that the original wall was no more than 7± feet-high.

Most importantly, on June 5, 2014 affirming a ZBA's decision that Applicants' project requires Planning Board approval, the Hon Barry Warhit, AJSC of the Supreme Court of NY determined very clearly that Applicants' project "does not merely constitute repair of the prior retaining wall". Further the Court indicated that there was a lack of evidence of intention to repair the wall – but ample evidence that Applicants intended to replace it with NEW CONSTRUCTION--- not of equivalent size to the original wall. *Decision and Order In the Matter of Peter Bartolacci v. Village of Tarrytown Zoning Board of Appeals*, June 5, 2014, aff'd 144 A.D. 3d 903 (2016) attached as Exhibit 6.

Thus, the Judge in the Supreme Ct of NY held: "project is NOT REPAIR OR RESTORATION—IT'S NEW CONSTRUCTION OF A TALLER WALL". Id.

#### 4. Village Code Objectives and Spirit

- A. **Berte's False Statement:** Grant of a Waiver of the Steep Slope Restriction on Building is consistent with Village Objectives (Letter, p3, ¶1)
- B. **Actual Fact:** Grant of a Waiver of the Steep Slope for the huge walls requiring variances almost two times the Village Code limit of 6 feet high for walls is the direct opposite or complete antithesis of the objectives and spirit of the Village Code.

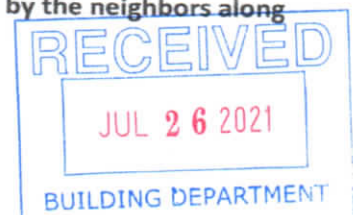
Village Code §305-67, is intended to preserve particular sensitive characteristic feature of the Village landscapes. This Planning Board is required to restrict new construction on steep slopes to preserve the character of the Village.

Grant of the requested waiver for new construction of four excessively large walls to permit Applicants simply to enlarge the flat portion of the rear yard by 15 feet or more is completely contrary to the objectives of the Code to preserve and safeguard features of our landscapes including steep slopes.

Since with or without landscaping the huge walls will be readily seen from Riverview Avenue--- a very significant negative change will be created in the neighborhood.

Erection of the huge walls on a steep slope not in need of stabilization and as explained below with landscape that will endanger the downslope people and properties will not accord with the objectives of the Village Code to preserve steep slopes.

Additionally, grant of the request waiver may well encourage others to copy the walls and further erode the Village's landscapes. In fact, as demonstrated by the Petition signed by the neighbors along



Riverview Ave to be submitted to the Planning Board this evening, the neighbors DO NOT want their neighborhood to be so significantly negatively changed.

5. Proposed Landscaping with two Huge Closely- Spaced Walls on the Steep Slope

- A. Berte's False Statement: Applicants' Plan allows "screening" with robust sized plantings between the walls (Letter, p.2, ¶6)
- B. Actual Fact: Applicants' Landscape plan Demonstrates a Complete Lack of Concern for the Safety of Downslope People and Properties

The Landscape "plan" is for a monoculture of 17 huge non-native Green Giant Arborvitae [ a hybrid of *Thuja plicata* or Western Red cedar and *T. standishii*, a Japanese cedar] in the 6 feet between the lower and upper walls along the westerly part of the property.

If Arborvitae plants larger than small shrubs were planted between the two walls, they would have root balls large enough to require cutting holes in the geogrid fabric intended to hold up the lower wall.

Should the trees live, the roots would not stay in one place. Rather the roots would expand in all directions to support the increasing above-ground growth. Green Giant Arborvitae plants are known to grow to 50 or 70 feet -high and 20 feet in width-- to do so they need to have seriously expanded root structures that will surely compromise any geogrids needed to stabilize the walls not already compromised by the process of planting.

Contrary to Applicants' "plan", block manufacturers recommend a minimum distance of 5 feet from a wall for small trees and 10 feet from a wall for large trees like Green Giant Arborvitae. Given the fact that the "plan" has only 6 feet between the two walls on the westerly slope, it is impossible to see how such recommended distance could be met.

In sum, for all the above reasons, it is respectfully submitted that the proposed WALLS DO NOT MEET THE REQUIREMENTS FOR A WAIVER OF THE STEEP SLOPE LAW.

Obviously, the Planning Board has to rely on the accuracy and truthfulness of representations made by applicants and their representatives including Mr. Berte. Based on the outright false statements and misrepresentations contained in the Planning Board Application, it is respectfully requested that the Planning Board reject Applicants' four excessively huge walls and monoculture of non-native plants and require a revised plan of a single reasonably sized wall to replace the single original wall on the steep slope along the westerly portion of the property and along the north and south sides of the property.

Submitted by:

Geraldine F Baldwin  
66 Riverview Avenue  
Tarrytown, NY 10591

July 26, 2021



### List of Exhibits

1. Exhibit 1: Letter of Berte to the Planning Board of the Village of Tarrytown re Application of 67 Miller Ave July 6, 2021
2. Exhibit 2: Report of Tectonic Engineering & Survey Consultants PC to Berte of Fusion Engineering re Project at 67 Miller Ave February 26, 2019, pp 1-3
3. Exhibit 3: Transcript of the Meeting of the Zoning Board of Appeals of the Village of Tarrytown on August 14, 2017 re Application of 67 Miller Ave for variances, p 330
4. Exhibit 4: Pictures of Current Walls along rear yards of Riverview and Miller Aves
5. Exhibit 5: Letter of Michael J McGarvey, Village Engineer to the Planning Board of the Village of Tarrytown re Application of 67 Miller Ave September 26, 2013
6. Exhibit 6: *In the Matter of Peter Bartolacci v. the Village of Tarrytown Zoning Board of Appeals*, Decision and Order of Judge Warhit, AJCS, June 5, 2014, *aff'd* 144 AD3d (2016)  
July 26, 2021





Exhibit 1



July 6, 2021

Tarrytown Planning Board  
Village of Tarrytown  
Village Hall  
One Depot Plaza  
Tarrytown, NY 10591

Re: 67 Miller Avenue Application for Site Plan Approval – Retaining Wall

Members of the Planning Board,

On behalf of Peter and Suzanne Bartolacci, the owners of the above referenced property, I submit the enclosed site plan for the repair/replacement of a collapsed and dilapidated railroad tie retaining wall. It shall be noted a previous Steep Slopes waiver was previously approved by the Planning Board for a Site Plan with the same horizontal layout, however, this application has been modified with slight changes to wall heights and construction materials. Also included in this submission are the site plan application form, the denial letter issued by the Building Department, completed Environmental Assessment, Zoning Compliance, and Environmental Clearance Forms, as well as the proposed structural plans prepared by Souhegan Valley Engineering.

The existing railroad tie retaining wall is failing and poses a significant hazard to the property owners and their neighbors. If left in its current state, the wood railroad ties will continue to deteriorate resulting in a total retaining wall failure and collapse of the backyard down the slope. A total failure may undermine the foundation of the Bartolacci's house and the slope may erode further downhill toward the adjacent property to the west.

The proposed plan modifies the existing single wall with a two tiered engineered concrete block retaining wall system to stabilize the existing failed slope and restore the rear yard. Engineered concrete block retaining walls are engineered to provide longevity and a structurally stable solution to replace the failing railroad tie construction. It shall be noted the Planning Board previously approved a waiver for a development plan having the same retaining wall(s) horizontal alignment which was previously specified to be constructed with cast in place concrete. This modular block design minimizes the volume of earthwork required for installation with reduced footing depths.

It shall be noted that the slope which is being regulated today was created from ongoing deterioration of the existing wall and subsequent erosion of the previously retained soil within the rear yard of 67 Miller Avenue. Incremental fill will be required to be installed behind the additional tier requested by the Planning and Zoning Boards and to replace what has been lost to erosion over the years. Landscaping will be incorporated to help screen the retaining walls, improving the neighbor's views from their backyards. The proposed tiered retaining wall has been designed to minimize the impact on (previously disturbed) steep slopes, of which the property contains approximately 2,512 square feet.

RECEIVED

JUL 26 2021

BUILDING DEPARTMENT

Note that most, if not all, of this steep slope area would not exist had the existing retaining wall not partially failed.

The applicant is requesting a steep slope waiver since the project will be fully compliant with §305-67F 1b of the Tarrytown Zoning Code as follows:

The benefit to the applicant far outweighs any detriment to the health, safety and welfare of the neighborhood because without a steep slopes waiver to allow the property to be stabilized, the land supporting the applicant's house could eventually collapse, potentially resulting in complete destruction of the dwelling.

In making its determination, the board must also consider the following:

1. 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 6 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.
2. 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.
3. 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 it 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

ARQ PC – Planning & Engineering





67 Miller Avenue – Steep Slope Waiver  
July 6, 2021

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.

4. The waiver is consistent with the purposes, objectives, or general spirit and intent of this chapter as the proposed tiered retaining wall will:
- Improve drainage and reduce the velocity of storm water runoff by allowing water to percolate through the soil behind the proposed retaining wall;
  - Increase slope stability and protect against future slope failure;
  - 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.

The Planning Board Attorney will likely ask for comment on the consideration contained in 305-67 F2c - "The waiver is the minimum relief necessary to relieve the extraordinary hardship established by the applicant." As noted in the record under a prior but substantially identical application, the Planning Board and Village Engineer characterized applicant's project as a "restoration or repair" (4/22/13 PB Minutes and Video @ 1:03:53 – 1:04:50). As such, a tiered retaining wall design is the only way applicant can restore the property to its approximate original dimensions while satisfying the Planning and Zoning Boards' requests to minimize retaining wall heights.

Thank you for your consideration of this matter. Should you have any questions, feel free to contact me at (914) 263-7565.

Sincerely,  
ARQ PC – Planning & Engineering



Paul Berté, PE



Exhibit 2

**Tectonic**

Fusion Engineering P.C.  
600 N Broadway, Suite 215  
White Plains, New York 10603

Attention: Mr. Stephen Berté  
Via Email: [stephen@fusionepc.com](mailto:stephen@fusionepc.com)

February 26, 2019

RE: W.O. 9675.01  
GEOTECHNICAL ENGINEERING SERVICES  
PROPOSED RESIDENTIAL PROPERTY SITE IMPROVEMENTS  
67 MILLER AVENUE  
TARRYTOWN, WESTCHESTER COUNTY, NEW YORK

Dear Mr. Berté:

Tectonic Engineering & Surveying Consultants P.C. (Tectonic) has performed a subsurface investigation and geotechnical engineering analyses for the proposed retaining wall to be located at the above referenced address. The purpose of this investigation was to evaluate the subsurface conditions at the proposed retaining wall site, and to develop lateral loading parameters for the geotechnical aspects of retaining wall design, which will supplement a slope stability analysis performed by ERS Materials, dated August 2018. This report presents our findings and recommendations.

#### 1.0 SITE DESCRIPTION

The project site is located at 67 Miller Avenue (Section 1.70, Block 40, Lot 4), in the Village of Tarrytown, Westchester County, New York. The site is a 7,500 square foot (sf) lot, with a 1 ½-story frame residential building located on the east end of the lot, with an asphalt driveway, concrete walkways, and landscaped areas. The backyard of the residential building consists of a concrete patio adjacent to the residence, and a hedgerow located approximately 25 feet west of the existing building. There is an existing railroad tie retaining wall up to 8 feet in height around the perimeter of the lot. Based on the topographic survey provided by Riley Land Surveyors, LLP, dated April 1, 2009, the backyard slopes downwards from east to west, with site elevations ranging from approximately +201.80 to +176 feet, as per the North American Vertical Datum of 1988 (NAVD88).

Investment Office

100 Broadway, Suite 215  
White Plains, NY 10603  
Tel: 914.941.1234 Fax: 914.941.1235

[tectonicengineering.com](http://tectonicengineering.com)  
Equal Opportunity Employer



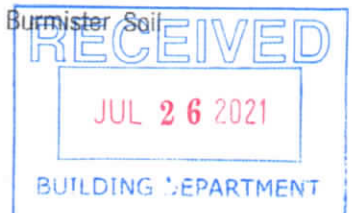
According to project documents provided by Fusion Engineering, P.C., the proposed construction will consist of a stepped reinforced cast-in-place concrete retaining wall to be constructed along the slope on the western end of the property. The upper and lower walls are proposed to bear at elevations of +188.50 feet and +177.50 feet, respectively. The two walls will be approximately 9.5 feet in height, and 70 feet in width. The upper wall will extend approximately 13.5 feet from the western property line, while the lower wall will extend approximately 7.5 feet from the property line. A new staircase is proposed along the south side of the new walls. According to the Site Plan, dated January 24, 2017, the existing 50-foot stone retaining wall, bearing at an elevation +172 feet, located at the western property line will remain in place. Grade changes for construction of the wall will consist of leveling out the slope on the western end of the property to construct the retaining walls.

## **2.0 SUBSURFACE INVESTIGATION**

The subsurface investigation consisted of the drilling, sampling, and logging of one (1) test boring, designated as boring B-1. Boring B-1 was performed adjacent to the hedgerow, approximately 20 feet west of the existing building. The boring location is shown on the Boring Location Plan, Figure 1.

The boring was performed by Craig Test Borings, Inc. on January 11, 2019, using an ATV-mounted CME-55 drill rig. The boring was advanced to a depth of 30 feet below existing grade using 3-7/8-inch diameter mud rotary drilling methods, and 4-inch inside diameter casing. Standard Penetration Testing (SPT) and split-spoon sampling was generally performed continuously to a depth of approximately 20.7 feet, using an automatic hammer. SPT sampling was performed in general accordance with the requirements of ASTM Standard D1586 "Standard Test Method for Penetration Test and Split-Barrel Sampling of Soils". The field SPT N-values were recorded for each penetration test and samples of the soils obtained during the investigation were collected and retained in glass jars. These samples are currently stored at our material testing laboratory. Upon completion, the boring was backfilled with drill cuttings to match existing conditions.

A geotechnical engineer observed the subsurface investigation and prepared logs of the subsurface conditions under the direction of a Professional Engineer licensed in the State of New York. The materials encountered were classified in accordance with the Unified Soil Classification System (USCS) and the ~~Burmister Soil~~ Classification System. A copy of the boring log is attached.





### **3.0 LABORATORY TESTING**

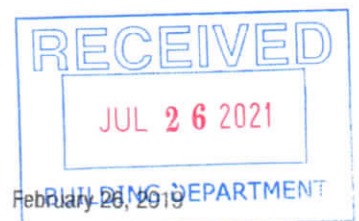
Laboratory testing was conducted on samples selected to assist in identifying the engineering properties of the soil. The laboratory testing included two (2) soil gradations, performed in general accordance with ASTM D6913. The results of the laboratory testing are attached, and are included in the soil descriptions presented below.

### **4.0 SUBSURFACE CONDITIONS**

The conditions encountered during the subsurface investigation generally consisted of uncontrolled fill, overlying glacial till soils, and bedrock. The following provide generalized descriptions of the encountered soil and groundwater conditions. More detailed descriptions of the subsurface conditions are provided in the boring log, attached to the report.

Fill was encountered beneath approximately 3 inches of top-soil like material. The fill can be described as variably colored coarse-to-fine sand with up to 20 percent silt and up to 20 percent gravel, or brown-white coarse-to-fine gravel, with up to 20 percent silt, and up to 20 percent coarse-to-fine sand. The fill extends to an approximate depth of 14 feet below ground surface (bgs), corresponding to an elevations ranging between approximately +200 to +186 feet. Based on historic topographic maps of the area provided by the United States Geological Survey (USGS), 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 constructed.

Field SPT N-values within the fill ranged from 2 to 58 blows per foot (bpf). It should be noted, however, that an energy correction is typically applied to convert field N-values measured within the automatic hammer used by the drillers to those of a safety hammer ( $N_{60}$ ) – the standard used for most geotechnical engineering analyses. Subsequently, a correction factor of 1.3 is applied to the field N-values to calculate the  $N_{60}$ -values. When corrected, the  $N_{60}$ -values within the fill range from 3 to 75 bpf, indicating that the fill was encountered in a very loose to very dense condition. The fill was generally encountered in a loose condition. However, it should be noted that cobbles and boulders were encountered interbedded within the fill between 10 and 14 feet bgs, which may obstruct the advancement of the split-spoon sampler, increasing the field N-values. The fill soils have USCS classifications of SM and GP.



1 PETER BARTOLACCI - PUBLIC HEARING

2 maintaining the wall in case some --

3 MR. BERTE: Has to maintain, yes.

4 MS. LAWRENCE: Okay.

5 MR. BERTE: But to bring up Mesa blocks  
6 aren't used in residential neighborhoods is not  
7 accurate, at all.

8 MS. LAWRENCE: Okay. The other question I  
9 have is -- I'm sure we've gone over this  
10 before. I hope anyway. Do we have any -- how  
11 high, actually, must a wall be in this backyard  
12 to stabilize the slope or, you know, to  
13 stabilize a backyard? Is there any specific  
14 height?

15 MR. PENNELLA: Well, the slope, as it  
16 stands right now, is somewhat stabilized with  
17 the exception of the wall that's falling over.

18 MS. LAWRENCE: Okay.

19 MR. PENNELLA: And that's very -- it's not  
20 an easy --

21 MS. LAWRENCE: Yeah.

22 MR. PENNELLA: -- to answer what height  
23 will stabilize the backyard. That's an  
24 analysis that has to be done. Let me just make  
25 a comment on the plans that were submitted.

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800.DAL.8779  
dalcoreporting.com



DALCO

Exhibit 4

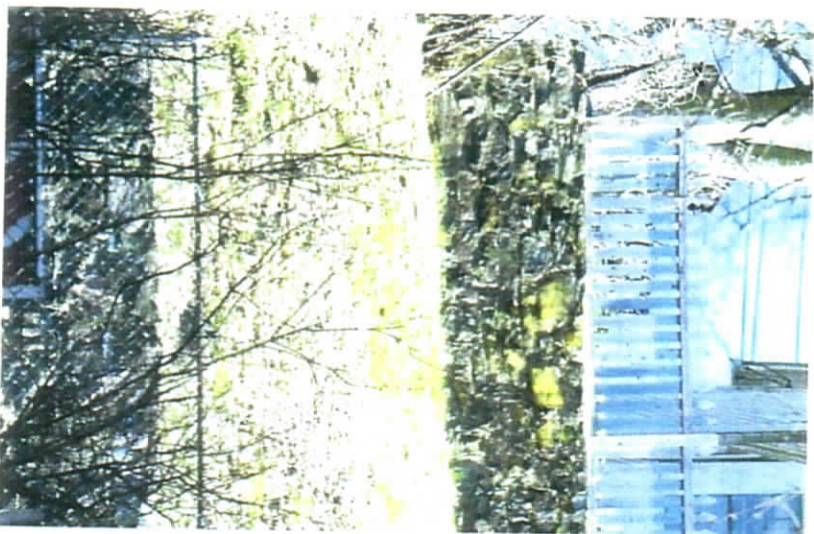
APPENDIX B

PICTURES: REAR PROPERTIES OF MILLER AVE VIEWED FROM RIVERVIEW AVE





APPENDIX B2



APPENDIX B3

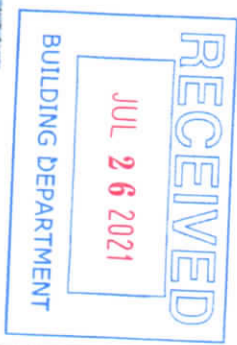


Exhibit 5

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## TARRYTOWN-ON-HUDSON

One Depot Plaza, Tarrytown, New York 10591-3199

Mayor  
DREW FIXELL  
Deputy Mayor  
THOMAS T. BASHIR

Trustees  
THOMAS BUTLER  
ROBERT HOYT  
MARY McGEE  
REBECCA MCGOVERN  
DOUGLAS ZOLLO

VILLAGE ADMINISTRATOR  
914-631-1885  
VILLAGE TREASURER  
914-631-7873  
VILLAGE CLERK  
914-631-1652  
VILLAGE ENGINEER  
914-631-3658  
DEPT. OF PUBLIC WORKS  
914-631-0356

FAX NO. 914-631-1571

September 26, 2013

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

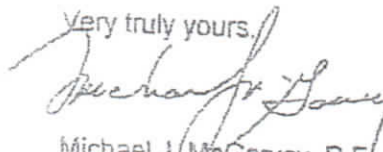
RE: 67 Miller Avenue

Dear Chairman and Board Members:

Pursuant to your request, I visited the rear yard of the above-referenced property to determine the required height of a retaining wall if we were to start at the rear building line and extend out 5% to the area of the old wood retaining wall. The applicant's engineer performed these calculations previously and determined that the required retaining wall would need to be 20' high on the left side and 14' high on the right side (looking at the wall from the rear property line). It should be noted that if a previous railroad tie retaining wall extended to this height, there should be some evidence of such on both sides of the property. If there ever was a retaining wall 20' high in the rear of this property and the rear property was flat (around 5% slope), approximately 850 cubic yards of soil would have had to be washed down onto the neighbor's property below. As a professional engineer, I do not believe that a railroad tie wall 20' high was ever constructed on the site; instead, I believe there were three walls approximately 7' ( $\pm$ ) high.

Should you have any questions regarding this letter, please do not hesitate to contact me.

Very truly yours,

  
Michael J. McGarvey, P.E.  
Village Engineer

MJM:dsb

cc: Michael Blau, Village Administrator  
Jeffrey Shumejda, Village Attorney

Tarrytown Uses Recycled Paper

BU



Exhibit 6

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

In the matter of the Application of:

PETER BARTOLACCI, Petitioner,

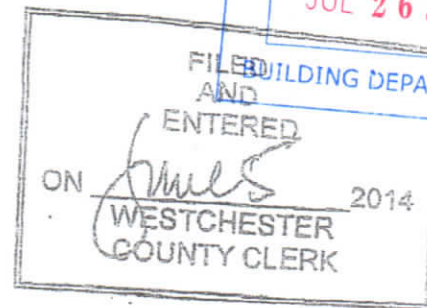
For a Judgement Pursuant to Article 78 of  
the CPLR,

-against-

VILLAGE OF TARRYTOWN, ZONING  
BOARD OF APPEALS

Respondent.

WARHIT, A.J.S.C.



DECISION AND ORDER  
Index No.: 1326-14

Petitioner Peter Bartolacci commenced the within proceeding, pursuant to Article 78 of the New York State Civil Practice Law and Rules ("CPLR") to seek an order of this court annulling and setting aside the determination of the Zoning Board of Appeals of the Village of Tarrytown ("Respondent ZBA" or "ZBA"), that the Village Planning Board is possessed of jurisdiction to consider and require a site plan review in connection with Petitioner's application for a building permit in relation to construction of a three-sided retaining wall in the rear lot of his residence. Petitioner contends the Respondent ZBA determination constitutes a misapplication of governing law and, moreover, is arbitrary and capricious on grounds that the Respondent ZBA is applying the law disparately to Petitioner. The Respondent ZBA seeks an order denying the relief sought as it maintains



its determination is lawful, reasonable and rational.

In consideration of the within application, this court read and considered the following numbered documents:

Notice of Petition, Petition with annexed Exhibit A	1-2
Verified Answer, Affidavit of Sally Lawrence in Opposition to Petition, Memorandum of Law	3-5
Certified Record containing Exhibits 1 through 238, Packet of Copies of Plans Furnished to Petitioner in accordance with the Freedom of Information Law, Full Size Copies of Plans,	6-8
Affidavit of Peter Bartolacci with Annexed Exhibits A through K, Petitioner's Reply Memorandum of Law	9-10
Sur Reply Affidavit in Opposition to Petition, Respondent's Sur Reply Memorandum of Law	11-12 <sup>1</sup>

#### RELEVANT PROCEDURAL HISTORY

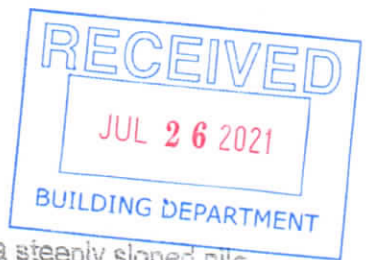
Since 2009, Petitioner Peter Bartolacci is the owner and a resident of a single family dwelling located at 67 Miller Avenue in the Village of Tarrytown. The rear lot of the home slopes downward.

Prior to Petitioner taking ownership of the residence, a three-sided retaining wall, constructed of railroad ties had been erected in the rear lot of the property. This wall is

---

<sup>1</sup> Respondents were given a limited right of Sur reply and were directed, in the event same was filed, to address issues not previously raised or provide necessary clarification. To the extent the Sur reply exceeded this court's clear Order, filed March 12, 2014, the arguments raised have not been considered.





presently in disrepair and, according to Petitioner, has resulted in "a steeply sloped pile of earth and railroad ties in a collapsed heap at the rear and side of the property, encroaching onto neighbors' properties and rendering the back yard [sic] essentially unusable . . ." (Verified Petition, ¶ 14).

Petitioner filed for a permit from the Village of Tarrytown to rebuild the retaining wall. By letter dated January 8, 2013, Petitioner's engineer advised the Village Engineer that Petitioner intended to completely remove the existing railroad tie wall and replace it with a "Mesa" concrete wall of "the height we believe was the original height" (*Id.*). It was indicated that new wall was to be constructed in "substantially the same location of the old wall except that it will be parallel to the rear property line and be installed 16.5 feet south east of the property line." (Certified Record, p. 30 (emphasis added)). The need for the wall was explained as such, "over the years, the wall collapsed, the surrounding earth slid downhill creating a steep slope southeast of the wall" (*Id.*).

On or about May 22, 2012, the Village's Building Inspector/Engineer declined to approve Petitioner's plan on grounds that it required site plan approval by the Planning Board (Verified Petition, ¶ 4). Petitioner contends this determination was rendered upon the Village Building Inspector/Engineer's misapplication and/or misunderstanding of the Tarrytown Code.

Petitioner did file an Application for Site Plan Review (Certified Record, p. 134). Petitioner went before the Planning Board on a number of occasions. During the August 26, 2013 Planning Board meeting, Petitioner was advised he could replace the existing railroad tie wall, at a height determined by the Village Engineer, or construct a

two-tiered and terraced retaining wall. Petitioner was not satisfied with the direction his appearance before the Planning Board was taking.

On or about September 23, 2013, Petitioner filed an appeal to the Respondent ZBA wherein he alleged that the Village Building Inspector/Engineer had improperly referred the within matter to the Planning Board and the Planning Board was proceeding in excess of its jurisdiction (Verified Petition, ¶ 5). In short, Petitioner maintains that section 305-67 of the Tarrytown Village Code ("Tarrytown Code"), which is commonly referred to as the "Steep Slopes Law", lacks application to his "simple application to replace and refurbish the [existing] retaining wall" (Id.).

The Respondent ZBA held a public hearing in relation to Petitioner's appeal. On January 13, 2014, the ZBA issued a Resolution which affirmed the Village Building Inspector/Engineer's decision to refer the matter for a full site review and the Planning Board's authority to consider same (Certified Record, p. 4). Specifically, the ZBA determined that the "Steep Slopes Law" does apply to Petitioner's application and, therefore, the Planning Board had correctly asserted jurisdiction over the matter and conducted a site plan review (Id.).

Through the within proceeding, Petitioner challenges the Respondent ZBA's determination as unlawful, arbitrary and capricious. Specifically, Petitioner asserts that in rendering its decision, the Respondent ZBA has misunderstood and misapplied governing regulations. Petitioner also contends the Respondent ZBA's decision must be set aside as arbitrary and capricious because the Respondent ZBA and Planning Board have not required full site review for similar requests for permits to construct retaining walls.



The Respondent ZBA maintains its January 13, 2014 determination is lawful and represents a proper and consistent application of applicable governing law.

#### Legal Analysis

An Article 78 proceeding is a mechanism by which an aggrieved party may challenge the determination of a municipal entity as being arbitrary, capricious or an abuse of discretion (Johnson v. Village of Westhampton Beach, 244 AD2d 335 (2d Dept. 1997)).

Upon reviewing an agency determination, a court is entitled to annul an entity's decision only if it is shown to be arbitrary, capricious, taken without sound reason or without regard to the facts (Matter of Pell v. Bd. of Education, 34 NY2d 222 (1974); Matter of Ferraris v. Zoning Bd. of Appeals of Vill. of South Hampton, 7 AD3d 710, 711 [2004], citing Matter of Ibrah v. Utschig, 98 NY2d 304, 308 [2002]; Matter of Falco Realty v. Town of Roughkeepsie Zoning Bd. of Appeals, 40 AD3d 635 [2d Dept. 2007], lv. denied 9 NY3d 807 [2007]; Matter of Action Redi-Mix Corp. v. Cianciulli, 309 AD2d 742 [2d Dept. 2003]; Matter of Mejias v. Town of Shelter Is Zoning Bd. of Appeals, 298 AD2d 466 [2d Dept. 2002]).

It is well settled that determinations of zoning boards are entitled to "great weight and judicial deference, so long as the interpretation is neither irrational, unreasonable nor inconsistent with the governing statute" (Matter of 151 Rte. 17M Assoc. v. Zoning Bd. of Appeals of Vill. of Harriman, 19 AD3d 422, 424 [2d Dept. 2005], lv. denied 8 NY3d 709 [2006], quoting Matter of Toys "R" Us v. Silva, 89 NY2d 411, 418-419 [1996] [internal quotation omitted]; Matter of Dudvshyn v. Zoning Bd. of Appeals of Town of



Mount Pleasant, 255 AD2d 445 [2d Dept. 1998]; Matter of Spasato v. Zoning Bd. of Appeals of Vil. of Pelham, 287 AD2d 639 [2d Dept. 2001]; Matter of Lee v. Zoning Bd. of Appeals of Town of Putnam Valley, 1 AD3d 600 [2d Dept. 2003]; see also, Matter of Pecoraro v. Board of Appeals of Town of Hempstead, 2 NY3d 608, 613 [2004].

Applying the law to the present case, this court is required to determine whether the Respondent ZBA's decision, that the Village Planning Board has jurisdiction to conduct a site plan review in relation to the within Petitioner's application to erect a three-walled retaining wall in his backyard, is a rational, reasonable and consistent application of law (see, Matter of 151 Rte. 17M Assoc., 19 AD3d at 424; see also, Matter of Pecoraro v. Board of Appeals of Town of Hempstead, 2 NY3d at 613 [2004]).

New York State Village Law ("Village Law") § 7-725-a(2) explicitly empowers a village's Board of Trustees to enact legislation intended to require site plan approval for "screening, . . . landscaping, architectural features . . . adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements" (Village Law § 7-725-a(2)). The Village Law also authorizes a planning board to review site plans.

Tarrytown Code § 305-67(A) was implemented for the purpose of defining and quantifying "particular environmental and aesthetically sensitive characteristics of the Village of Tarrytown in order to preserve and safeguard those features that identify its landscape: steep slopes, areas of high ground, hilltops and vegetation" (Tarrytown Code § 305-67(A)). This section of the Tarrytown Code explicitly authorizes the Planning Board to impose restrictions to protect against "'possible slope failure and landslides", to "minimiz[e] erosion and sedimentation, including the loss of topsoil"





(Tarrytown Code § 305-67(A)(i)(a) and (c). The Tarrytown Code does not differentiate as to "steep slopes" which occur naturally or as a result of a manmade condition.

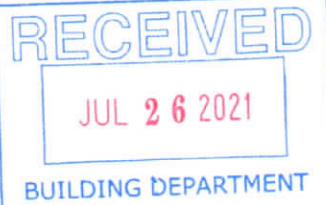
Further, at § 306-67(A)(2), the Tarrytown Code sets forth that, in particular, restrictions are encouraged in relation to steep slopes having a grade of more than 25% (Tarrytown Code § 306-67(A)(2)). In order to enforce this requirement, and to determine the amount and location of land which may fall within this 25% slope grade requirement, an application for improvement regarding an area with steep slopes must be accompanied by a base topographical map of the site, prepared by a registered civil engineer or land surveyor (Tarrytown Code § 305-67(E)).

Petitioner's assertion that the steep slopes law is inapplicable to his application to construct a concrete retaining wall is belied by section 305-132(A) of the Tarrytown Code, which was enacted in accordance with Village Law § 7-725<sup>2</sup>. This zoning regulation, entitled "Uses subject to site plan review; amendments; exception in RR Zone", mandates, *inter alia*, that "site development plan approval by the Planning Board shall be required for "[a]ll uses of land where no building is proposed", including the proposed use and development of all land within proposed subdivisions" (Tarrytown Code § 305-132(A)(ii))(emphasis added)<sup>3</sup>. Further, Tarrytown Code § 305-66 directs that "[a]ll lots, . . . whether or not proposed for use, reuse, development or redevelopment, shall be subject to review in accordance with the environmental review

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<sup>2</sup>This section of the Tarrytown Code also makes specific reference to § 7-725-a of the Village Law (see, Tarrytown Code § 305-132(A)).

<sup>3</sup>The parties do not contest that the proposed retaining wall does not qualify as a building and that the property is not vested with historic landmark status (see, Tarrytown Code § 305-132(A)(i) and (iii)).



procedures established in the following Village of Tarrytown local laws (Tarrytown Code § 305-66). Further, the Tarrytown Code plainly mandates the application of these regulations to enumerated laws as well as "any other local law relating to matters regulating the natural or built environment which may be presently in effect or placed in effect at some future date" (Tarrytown Code § 305-66).

Section 305-13(E), the Tarrytown Code specifies "... the Planning Board shall require the protection of wetlands and steep slopes" (Tarrytown Code § 305-132(E)). At section 305-67(A), the code directs the restrictions discussed therein shall apply to "site development plan, compatible use permit, or any other regulatory procedure promulgated by this chapter or other local laws, codes or ordinances of the Village of Tarrytown" (emphasis added).

The record contains ample and repeated references to the fact that Petitioner's land is encumbered with a steep slope condition. Petitioner acknowledges the condition of the land to be "a steeply sloped pile of earth and railroad ties in a collapsed heap at the rear and side of the property, encroaching onto neighbors' properties and rendering the back yard [sic] essentially unusable . . ." (Verified Petition, ¶ 14).

Upon the foregoing, this court finds the plain language of applicable regulations refutes Petitioner's claim, that "... the municipal officials put the cart before the horse; they used the steep slopes ordinance to create jurisdiction where none existed" (Petitioner's Memorandum of Law, p. 13).

Additionally, this court does not find the Respondent ZBA reached an irrational or unreasonable conclusion that Petitioner's proposed construction of a Mesa concrete retaining wall did not constitute a repair of the pre-existing wall permitting its exemption

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BUILDING DEPARTMENT

from site plan approval by the Planning Board. While the record clearly establishes the existence of a retaining wall on the site, there is undeniable proof that such retaining wall was constructed of railroad ties as opposed to concrete and that the wall has deteriorated to the point of collapse.

Despite Petitioner's protestations to the contrary, there is more than a minimal distinction between railroad ties and concrete. Leaving aside the obvious differences in aesthetics, there are equally apparent distinctions in the materials' respective weight and absorbency and in the methods of installation required for each. Thus, this court finds the Building Inspector/Engineer and Respondent ZBA were rational and reasonable in their recognition that the site plan approval by the Planning Board was not only required, but advisable, to explore the effects of the intended construction upon the existing steep slope condition and vegetation.

There is insufficient evidence before this court that Petitioner intends to repair the pre-existing retaining wall. There is ample indication that Petitioner intends to wholly replace what is left of the existing structure with a three-sided retaining wall constructed of Mass concrete blocks. Indeed, the proposed wall is not even intended to be constructed in the footprint of the prior wall (Certified Record, p. 30 (explaining the location as "substantially the same . . . except that it will be parallel to the rear property line and be installed 16.5 feet south east of the property line" (emphasis added))).

Moreover, the record is devoid of evidence tending to prove that the proposed retaining wall will be of an equivalent dimension to the prior wall. Petitioner proposes to erect a wall which is at a minimum of 12 feet high and may be as high as 20 feet (see, Certified Record, pp. 11-14; see also, Petitioner's Reply Affidavit, ¶ 17; cf. Sur reply



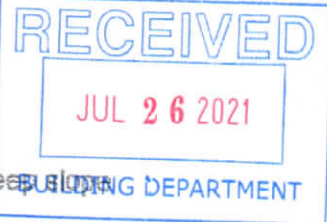
Affidavit in Opposition to Petition, ¶ 4). The pre-existing wall is estimated to have been between seven and ten feet (Certified Record, pp. 176-79).

Consequently, this court finds the Respondent ZBA was reasonable and rational in its determination that the proposed wall does not merely constitute a repair of the prior retaining wall. Further, this court finds no basis to set aside the Respondent ZBA's determination on grounds that the Planning Board lacks jurisdiction to conduct a site plan review (see, Matter of 161 Rte. 17M Assoc., 19 AD3d at 424; see also, Matter of Pecoraro v. Board of Appeals of Town of Hempstead, 2 NY3d at 613 (2004)). Moreover, as it is rational, it is entitled to deference (Matter of Ruffalo Dev. Corp. v. Silva, 91 NY2d 89, 103 (1997); see also, Matter of Baker v. Islip Board of Appeals, 20 Ad3d 522 (2d Dept. 2005)).

Additionally, this court finds the record does not support Petitioner's claim that the Respondent ZBA applied the Tarrytown Code inconsistently with respect to Petitioner herein. In support of his claim that the Planning Board does not typically consider applications for permits to construct retaining walls, Petitioner submitted applications relating to the construction of fifty-six (56) retaining walls in Tarrytown since 2005. However, only three (3) of the applications submitted concern construction of a retaining wall in combination with a steep slope condition (see, Certified Record, p. 196). Moreover, review of the three applicable matters does not support Petitioner's claim of disparate treatment.

In 2005, a retaining wall was erected at 24 Union Avenue without Planning Board approval. However, the record unequivocally demonstrates that this occurred because the building party's engineer's failed to abide by the requirement under the Tarrytown





Code that he submit a topographical map showing the existence of a steep slope condition (Certified Record, p. 164; and see, Tarrytown Code § 305-67(E)). This event lacks precedential value. The present Building Inspector/ Engineer cannot be expected to turn a blind eye in reviewing an application in which a steep slope condition is known to exist.

A retaining wall also was built at a location with a steep slope condition absent a full site review at 95 Main Street (which the record also refers to as Whispering Hill). This application is factually distinct from the matter presently before this court. The retaining wall at Whispering Hill, which had originally been constructed of railroad ties, was permitted to be rebuilt of concrete absent site plan review. However, there was proof in that case that the wall was built to the specifications and dimensions of the pre-existing retaining wall and, importantly, was built in its footprint (Certified Record, p. 165).

Petitioner herein seeks to build a retaining wall distinct from its predecessor. The proposed wall is to be situated merely in the vicinity of the originally existing wall (Certified Record, p. 30 (defining placement of the proposed retaining wall as in "substantially the same location of the old wall except that it will be parallel to the rear property line and be installed 16.5 feet south east of the property line")(emphasis added)). Moreover, as above discussed, the proposed retaining wall is also intended to be taller than the pre-existing structure (see, Certified Record, pp. 11-14, 178-179). Consequently, this court does not find it unreasonable that the Respondent ZBA defined Petitioner's proposal as "new construction" within the meaning of Tarrytown Code § 306-67(A)(a)(restricting new construction and/or vegetation removal in such



designated areas (emphasis added).<sup>4</sup>

As a third example of alleged disparate treatment, Petitioner submitted an application relating to construction of a retaining wall concomitant with a steep slope condition at 416 South Broadway. However, the record demonstrates that the Planning Board actually reviewed and considered this project since it impacted the number of parking spaces at the location (see, Section 306-132(A)(1); Verified Petition, ¶ 63).

The record below addresses an additional application seeking to construct a retaining wall in the presence of a steep slope condition. This involved property located at 66 Castle Heights Avenue. The Building Inspector/Engineer referred this application to the Planning Board due to "slopes on the sides of the existing retaining walls contain steep slopes" (Certified Record, p. 9). The Planning Board conducted a review.

The record before this court does not demonstrate a departure on the part of the Respondent ZBA or the Village's Planning Board from its historical application of the Tarrytown Code. Thus, the Respondent ZBA's determination that Planning Board approval is required is entitled to deference (Matter of 181 Rte. 17M Assoc. 19 AD2d at 424); see also, Matter of Pecoraro, 2 NY3d at 613).

All others claims advanced by Petitioner have been considered and are deemed to be without merit.

Accordingly, it is hereby ORDERED, that the Petitioner is dismissed and the

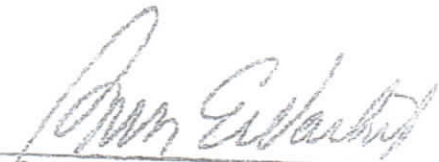
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<sup>4</sup> To the extent the retaining wall at Whispering Hill was rebuilt of concrete, it is notable that the record indicates this location is residential, but zoned for commercial uses (Certified Record, p. 4). There is no indication in the record that Petitioner's dwelling is similarly zoned. Accordingly, in that case, concerns as to the effect on the appearance of the neighborhood required consideration, but to a lesser degree.



relief requested is denied in its entirety.

Dated: White Plains, New York  
June 5, 2014

  
Hon: Barry E. Warhit  
Acting Justice, Supreme Court

TO: FREDERICK LYNCH MacCARTNEY PLLC  
Attorneys for the Petitioner  
96 South Broadway, Suite  
South Nyack, New York 10960

LAW OFFICES OF JEFFREY SHUMEJDA  
Attorney for the Respondent  
P.O. Box 876  
Sleepy Hollow, New York 10591

NANCY BARRY  
Clerk of the Court



In the Matter of PETER BARTOLACCI, Appellant,  
v.  
VILLAGE OF TARRYTOWN ZONING BOARD OF APPEALS, Respondent.

2014-07192, Index No. 1326/14.

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

Decided November 16, 2016.

In a proceeding pursuant to CPLR article 78 to review a determination of the Village of Tarrytown Zoning Board of Appeals dated January 13, 2014, which, after a hearing, determined that the Village of Tarrytown Planning Board had the authority to review the petitioner's application for a building permit, the petitioner appeals from a judgment of the Supreme Court, Westchester County (Warhit, J.), dated June 5, 2014, which, in effect, denied the petition and dismissed the proceeding.

Dillon, J.P., Dickerson, Duffy and Connolly, JJ., concur.

304 1994 Ordered that the judgment is affirmed, with costs.

"In a proceeding pursuant to CPLR article 78 to review a determination of a zoning board of appeals, a zoning board's interpretation of its zoning ordinance is entitled to great deference, and judicial review is generally limited to ascertaining whether the action was illegal, arbitrary and capricious, or an abuse of discretion" (*Matter of Brancato v Zoning Bd. of Appeals of City of Yonkers, N.Y.*, 30 AD3d 515, 515 [2006] [citations omitted]). "However, where the issue involves pure legal interpretation of statutory terms, deference [to the zoning board of appeals] is not required" (*Matter of BBJ Assoc., LLC v Zoning Bd. of Appeals of Town of Kent*, 65 AD3d 154, 160 [2009]; see *Matter of Toys "R" Us v Silva*, 89 NY2d 411, 419 [1996]). "[I]n such circumstances, the judiciary ... is free to ascertain the proper interpretation from the statutory language and legislative intent" (*Matter of Belmonte v Snashall*, 2 NY3d 560, 566 [2004]).

Here, pursuant to our independent review of the law, we conclude that the determination of the respondent Village of Tarrytown Zoning Board of Appeals (hereinafter the ZBA) complied with the applicable legal principles (see *Matter of BBJ Assoc., LLC v Zoning Bd. of Appeals of Town of Kent*, 65 AD3d at 160). Pursuant to the plain language of the Code of the Village of Tarrytown § 305-67, the Village of Tarrytown Planning Board had the authority to review the petitioner's application for a building permit, which sought to construct a retaining wall, given that the proposed construction involved the disturbance of "steep slopes" on the subject property. Contrary to the petitioner's contention, the ZBA either reasonably determined that the circumstances of the prior applications for building permits were distinguishable from those of the instant application, or otherwise provided a valid and rational explanation for its departure from its prior precedent (see *Matter of Chynn v DeChance*, 110 AD3d 993, 994 [2013]; *Matter of Corona Realty Holdings, LLC v Town of N. Hempstead*, 32 AD3d 393, 395 [2006]). Accordingly, the Supreme Court properly denied the petition and dismissed the proceeding.

In light of the foregoing, we need not reach the remaining contentions of the ZBA.

**EXHIBIT C**

**67 Miller Avenue Site Plan Application  
James Fedigan – Petition**



Statement of James C Fedigan to the Planning Board of the Village of Tarrytown Re: 67 Miller Ave

I reside with my Aunt at 66 Riverview Avenue Tarrytown, New York. I am here tonight to submit a Petition signed by the neighbors along Riverview Avenue strongly objecting to the Applicant's at 67 Miller Avenue huge walls.

Before I submit the Petition, I would like the Board to see what the neighbors along Riverview Avenue will be forced to see should you approve the huge walls.

The first photo is a view of my Aunt's yard – which can be seen from Riverview Avenue on the north and south side of the house.

The second picture is an Artist's rendition of the two concrete block walls, totaling 18 feet high, rendered by a Licensed Architect Luigi DeMassi. The rendition is based on Applicant's Site Plan with the walls superimposed, according to the Plan, on a photograph of the slope as seen from my back yard.

The third is a Rendition presented by the Applicants of the proposed walls and "landscaping". As explained in my Aunt's Statement to you this evening, should the non-native Green Giant Arborvitae which can grow to 50-60 feet-high and 20-feet<sup>wide</sup>-high be planted in the small space between the walls and on the geogrids holding up the walls— stability of the walls will surely be compromised.

The fourth is a copy of Applicants' Rendition with the Green Giant Arborvitae removed--- this is actually how the huge walls will be seen from Riverview Avenue and from the yards of the downslope neighbors.

James C Fedigan  
66 Riverview Ave  
Tarrytown, NY 10591



*PB mtg  
J. Fedigan submitted @ 7/26/21*

PETITION TO THE PLANNING BOARD OF THE VILLAGE OF TARRYTOWN NY

Re: Application of 67 Miller Ave with a Plan dated July 2021 to Construct two 9.5-foot-high walls on the Steep Slope at the Rear of the Property and two 11.5- foot and 11- foot- high walls on the North and South of the Property

I have reviewed the attached photograph of the Steep Slope as currently seen from the rear of a yard on Riverview Avenue. As I understand, there is a railroad tie wall, no more than 8 feet high, midway up the slope that is in need of repair or replacement.

I have reviewed the attached artist's rendition of the Steep Slope with "screening" according to the Plan. Without the trees, I understand that the walls will be visible not only to the impacted downslope neighbors but also along Riverview Avenue.

I have been informed and understand that instead of simply replacing the original wall with one of a similar size in the same location, the Plan requires TWO—NOT ONE -- Massive walls across 70 feet of the steep slope so that the owner of 67 Miller Ave can entirely remove the Steep Slope and fill in the yard so that another 15 feet or more is flat.

I have been informed that construction of the walls requires excavation of the entire Steep Slope and 475 cubic yards of fill—to be brought in by at least 34 to 48 large dump trucks or 68 to 96 trucks if only smaller trucks could be used in our neighborhood.

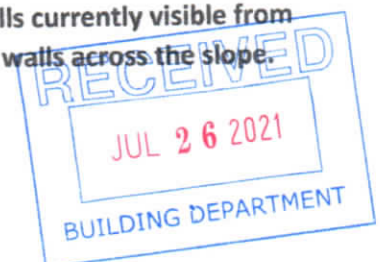
I have been informed that Section 305-67 of the Tarrytown Village Code seeks to safeguard certain characteristic features of our beautiful Village, especially Steep Slopes. The Code restricts elimination of Steep Slopes in order to achieve one of the important objectives of the Code--- preservation of our unique natural habitats and landscapes.

I also understand our Village is currently striving to encourage pollinators – which are extremely important for maintaining our natural ecosystems as well as providing food for us, birds and other native animals.

I am informed that the Plan requires a large number of a single type of huge tree -- non-native Green Giant Arborvitae – between the walls. I have been also informed that such trees may well impact the stability of the geogrids required to maintain the walls on the slope.

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

1. Construction of the proposed walls will definitely significantly negatively impact the residents of Riverview Avenue. Those living along Miller Avenue will never see the walls, much less be impacted should they collapse.
2. There are lots of walls in our neighborhood; however, none of the walls currently visible from the street along Riverview Avenue look anything like the massive two walls across the slope.



*J. Fedigan*  
*Submitted 7/26/21 RB. mfg.*



3. A monoculture of non-native Green Giant Arborvitae is NOT suited to our single-family residential neighborhood. Landscaping with a single plant type which provides nothing for pollinators is NOT consistent with our Village's objectives to preserve and promote our natural habitats and landscapes.
4. Constructing two such massive walls on a Steep Slope that in fact requires elimination of the Steep Slope clearly violates the Village Code and is completely inconsistent with the Village's objectives to preserve our lovely characteristic landscapes.

Name: <u>George F. Brown</u>	Address: <u>66 Riverview Ave</u>	Date: <u>7/17/21</u>
Name: <u>Lori Sander</u>	Address: <u>64 Riverview Ave</u>	Date: <u>7/17/21</u>
Name: <u>Scott Voth</u>	Address: <u>64 Riverview</u>	Date: <u>7/17/21</u>
Name: <u>Kim Casanova</u>	Address: <u>80 Riverview</u>	Date: <u>7/17/21</u>
Name: <u>Julia Conz</u>	Address: <u>100 Riverview Ave</u>	Date: <u>7/18/21</u>
Name: <u>Norm S. G.</u>	Address: <u>100 Riverview Ave</u>	Date: <u>7/18/21</u>
Name: <u>Bruce Edgeman</u>	Address: <u>67 Riverview Ave</u>	Date: <u>7/18/21</u>
Name: <u>Diana Potocki</u>	Address: <u>67 Riverview Ave</u>	Date: <u>7/18/21</u>
Name: <u>James C. Fedigan</u>	Address: <u>66 Riverview Ave</u>	Date: <u>7/25/21</u>
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*J. Fedigan*  
Submitted @ 7/26/21 PB mtg





JUL 26 2024

BUILDING DEPARTMENT

J. Fedegan 7/26/24 P.B. nig



J. Fedigan - 7/26/21 BB.mg.





**EXHIBIT D**

**67 Miller Avenue Site Plan Application  
Kristen Wilson, ESQ, o/b/o Geraldine Baldwin**

# BLANCHARD & WILSON, LLP

235 Main Street, Suite 330  
White Plains, NY 10601  
(914) 844-1909



July 26, 2021

## **By Hand**

Honorable Chairperson Friedlander 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 Members of the Tarrytown Planning Board:

We are back in front of the Planning Board addressing the new application submitted by Peter Bartolacci (the “2021 Application”). Unfortunately, the 2021 Application is fraught with issues related to slope stability and building a series of tall interlocking retaining walls on a steep slope.

In particular, this letter is intended to highlight several reasons this Board is unable to approve the 2021 Application including, but not limited to: 1) the Applicant has failed to submit an updated survey accurately depicting the property line; 2) the Board has not undergone the necessary review under the State Environmental Quality Review Act; and 3) the proposed plans show the four retaining walls interlocking with each other and the slope stability analysis does not appear to reflect this type of design and construction.

## **This Action Should be Classified as an Unlisted Action under SEQRA**

The Board cannot act on the 2021 Application until it undergoes a property review under the State Environmental Quality Review Act (“SEQRA”).

Any suggestion that this Application is properly categorized as a Type II action is simply not logical and conflicts with what SEQRA mandates. The 2021 Application involves trucking in 475 cubic yards of soil, constructing four interlocking geogrid walls of varying heights up to 9.5 feet, and planting mature Arborvitae trees. In addition, the Applicant does not propose any water management plan. In the past, we have raised significant concerns regarding the wall’s risk for failure, the ability of the wall to withstand the hydrostatic pressure, and whether the design incorporates the appropriate drainage. The only other similarly situated wall to the one proposed is the one next door which collapsed a year and a half ago.

As this Board is aware, the types of actions on the Type II list are very minor actions such as repaving of roads, construction of a minor accessory carport or patio, or routine maintenance

*Submitted @ 7-26-21 PB.M*

and repair of existing structures. As mentioned numerous times, and reaffirmed by Judge Warhit, this is an entirely new structure, not a replacement or mere maintenance of an existing wall. Unfortunately, the wall has been designed for failure.

Based on the foregoing reasons, this Board should refuse to render a decision on this 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 of the variances and the Village Code requirements.

Based on all of the above reasons, the Planning Board should deny the current proposal as not meeting the criteria for a steep slope waiver and request that the Applicant propose a single wall of moderate height that would be sufficient to stabilize the slope.

Respectfully submitted,



Kristen K. Wilson

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



*Submitted @ 7/26/21 RB.MJ*