

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
June 12, 2017 7:30 p.m.

PRESENT: Chairwoman Lawrence, Members Maloney, Jolly, Weisel, Rachlin,
Counsel Addona; Village Engineer Pennella; Secretary Meszaros

Chairwoman Lawrence called the meeting to order at 7:32 pm.

APPROVAL OF THE MINUTES – May 8, 2017

Ms. Jolly moved, seconded by Ms. Lawrence, that the minutes of May 8, 2017 be approved as submitted. All in favor. Motion carried.

NEW PUBLIC HEARING – Thomas Bottiglieri -16 White Street

Counsel Addona read the Public Hearing notice:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 7:30 p.m. on **Monday, June 12, 2017**, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Thomas Bottiglieri
14 Skyview Drive
Armonk, NY 10504

For variances from Chapter 305 of the Village of Tarrytown Code ("Zoning Code") to restore an existing structure due to fire damage. The property is located at 16 White Street, Tarrytown, NY and is shown on the tax maps as Sheet 1.70, Block 32, Lot 13 and is in the M1 Zoning District. The variances sought are as follows:

Code Section & Description	Permitted (Required)	Existing	Proposed	Variance Required
305-33 A(3)d Attachment 6 (Column 7) Principal Building Coverage	15% 785S.F.	23.2% 1,214 S.F.	23.2% 1,214 S.F.	8.2% 429 S.F.
305-33 A(3)d Attachment 6 (Column 11) Front Yard Setback	25 Feet	.40 Ft.	.40 Ft.	24.60 Ft.
305-33 A(3)d Attachment 6 (Column 12) Side Yard Setback	20 Feet	.80 Ft.	.80 Ft.	19.20 Ft.

305-33 A(3)d Attachment 6 (Column 13) Two Sides Yard Setback	40 Feet	25.50 Ft.	25.50 Ft.	14.50 Ft.
305-33 A(3)d Attachment 6 (Column 14) Rear Yard Setback	45 Feet	40.40 Ft.	40.40 Ft.	4.60 Ft.
305-33 A(3)d Attachment 6 (Column 20) Minumum Floor Area per dwelling unit	600 S.F	Unit B: 300S.F. Unit C: 677S.F.	Unit B: 480S.F. Unit C: 497S.F.	Unit B: 120S.F. Unit C: 103S.F.
305-63D Off Street Parking & Loading 2.5 spaces per dwelling unit	2.5 x 4 = 10 spaces	0	0	10 Spaces

Additional approvals are required from the Village of Tarrytown Planning Board and Architectural Review Board. Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly

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By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: June 2, 2017

The mailing receipts were received and the signs were posted. Board members visited the property.

Jennifer L. Gray, Attorney, of Keane & Beane, P.C. appeared on behalf of the applicant to seek variances for an existing four family structure in the M1 multifamily zone. The applicant is seeking a number of variances to restore the existing structure due to fire damage. It is a four family home and will continue as a four- family. The owner is also making interior improvements and site improvements including landscaping and constructing a trash enclosure. Ms. Gray went over each of the variances and explained

that most of the variances have not changed except for the minimum floor area per dwelling. That are just restoring the structure to its pre-fire condition. She noted that changes are proposed to the face of the building and introduced Lou DeMasi, Architect, of DeMasi Architects, PC. She also noted that the front of the building will be improved and beautified so it will look much better than before. With respect to the criteria for area variances, Ms. Gray said that she does not feel that any of the changes will result in any undesirable change in the neighborhood since the impact of the variances are not substantial. The continued use of this lot cannot be achieved without granting the variances since this is a pre-existing non-conforming lot and, therefore, the non-conformities were not self-created.

Ms. Gray introduced Lou DeMasi, Architect, who presented the plan and indicated the changes to the interior and the landscaping plan.

Ms. Lawrence asked about the rationale for the interior changes. Mr. DeMasi said the changes were made to make more desirable living space than what was there before.

Ms. Lawrence asked about the layout. Mr. DeMasi said the top floor has 3 bedrooms, dining, kitchen and living space; the first floor has a one bedroom apartment and a two bedroom apartment; and the ground floor has mechanical space with a 2 bedroom apartment, dining, kitchen and living area.

Ms. Lawrence asked about the parking. Mr. DeMasi said there was never any parking; there is only street parking.

Ms. Lawrence asked about the proposed siding. Mr. DeMasi said it will be vinyl and will be determined by the Architectural Review Board.

Mr. Jolly asked about the fire damage and Mr. DeMasi said it was mostly water interior damage. Ms. Lawrence commented that if the insurance company had stepped up to the plate earlier, you would not be before this Board.

Mr. Jolly asked if any of the tenants rent the parking spaces adjacent to the structure. Mr. DeMasi said that they do not; they will have street parking.

Ms. Lawrence asked if anyone in the public had any questions. No one appeared.

Mr. Jolly asked about the heating system. Mr. DeMasi said it is hot water with a gas boiler.

Mr. Maloney asked if a sprinkler system need to be provided. Mr. Pennella confirmed that it would be required. He added that the fire occurred in June of 2016 and the six (6)

month period of time lapsed without filing a building permit. If the permit was filed in a timely manner, they would not be in front of this Board.

Counsel Addona stated that this is a Type II action and no further action is required for SEQRA.

Mr. Jolly moved, seconded by Ms. Lawrence, to close the Public Hearing. All in favor. Motion carried.

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

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. *Ms. Lawrence said it has been determined that home is a four family and will continue to be. The interior and exterior will be upgraded so this is an improvement, not a detriment.*
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Ms. Lawrence stated that this is a pre-existing non-conforming property so there are no other methods that can be pursued.*
3. That the requested area variance is not substantial. *Ms. Lawrence said that most of the variances requested are not substantial since this is a non-conforming property so it does not weigh heavily on this application.*
4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence stated that the variances will not have any adverse effect on the neighborhood.*
5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Ms. Lawrence stated that the variances have not been self-created; this is a non-conforming property and there was fire damage.*

Mr. Jolly moved, seconded by Ms. Weisel, that these variances be granted and Counsel Addona be directed to draft a resolution memorializing the discussion. All in favor. Motion carried.

NEW PUBLIC HEARING – James and Theresa Flynn - 91 Midland Avenue

Counsel Addona read the Public Hearing Notice:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 7:30 p.m. on **Monday, June 12, 2017**, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

James and Theresa Flynn
91 Midland Avenue
Tarrytown, NY 10591

For a variance from Chapter 305 of the Village of Tarrytown Code ("Zoning Code") for the construction of a deck in the rear yard. The property is located at 91 Midland Avenue, Tarrytown, NY and is shown on the tax maps as Sheet 1.120, Block 84, Lot 3 and is in the R 10 Zoning District. The variances sought are as follows:

Zoning Code Section	Permitted by Zoning Code	Existing	Proposed by Applicant	Variance Required
305-47B(5) – Yards; Setbacks Attachment 5: Column [14]	22 ft.	n/a	17.56 ft.	4.44 ft.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. 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 Zoning Board of Appeals

Dated: June 2, 2017

Lizabeth Meszaros, Secretary to the Zoning Board

The mailing receipts were received and the signs were posted. Board members visited the property.

Mr. James Flynn, owner of 91 Midland Avenue, appeared before the Board to seek a 4.44 foot variance to install a small 8 ft. x 8.8 ft. deck in the rear yard of his home to fit a table and chairs. The variance setback is needed for the landing area for the stairs. He said he will be removing 3.5 feet of existing patio to make room for the stairs, so they are not extending past the house. Ms. Lawrence confirmed with Mr. Flynn that the deck extends off the kitchen. She said there is so much foliage in the backyard that you can't even see the deck.

Ms. Lawrence asked if anyone in the public had any questions. No one appeared.

Mr. Maloney moved, seconded by Ms. Weisel, to close the Public Hearing. All in favor. Motion carried.

Counsel Addona stated that this is a Type II action and no further action is required for SEQRA.

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

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. *Ms. Lawrence said you will not be able to see the deck and most homes have decks or patios in the back.*
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Ms. Lawrence said there is no other place to put the proposed deck.*
3. That the requested area variance is not substantial. *Ms. Lawrence said that the variance requested is not substantial at all. It is only a 4.44 ft. variance.*
4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Lawrence does not think this deck will have any adverse impact on the physical or environmental conditions in the neighborhood.*
5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Ms. Lawrence said it was self-created, but there is minimal impact.*

Ms. Maloney moved, seconded by Ms. Lawrence, that this variance be granted and Counsel Addona be directed to draft a resolution memorializing the discussion. All in favor. Motion carried.

New Public Hearing – Barbara Young - 61 John Street

Counsel Addona read the Public Hearing Notice:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 7:30 p.m. on Monday, June 12, 2017, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Barbara Young
61 John Street, Tarrytown, NY

For variances from Chapter 305 of the Village of Tarrytown Code ("Zoning Code") for the legalization of a two-family dwelling. The property is located at 61 John Street, Tarrytown, NY and is shown on the tax maps as Sheet 1.70, Block 36, Lot 2 and is in the M2 Zoning District.

The variances sought are as follows:

Code Description	Permitted	Existing	Proposed	Variance Requested
305-31A.(3) Attachment 6: Column [6] Minimum Lot Size	12,500 S.F.	3,668.5 S.F.	3,668.5 S.F.	8,831.5 S.F.
Column [11] front Yard Setback	25 Ft.	5 Ft.	5 Ft.	15 Ft.
Column [12] Side Yard Setback	8 Ft.	2.45 Ft.	2.45 Ft.	5.55 Ft.
Column [13] Two Side Yard Setback	18 Ft.	14.61 Ft.	14.61 Ft.	3.39 Ft.
305-63C(3)c. Parking Side Lot Line	10 Ft.	2 Ft.	2 Ft.	8 Ft.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. 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 Zoning Board of Appeals

Dated: June 2, 2017

Lizabeth Meszaros

Secretary to the Zoning Board

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

Oscar Valle, Architect, representing the applicant, is before the Board to seek variances for the legalization of a two-family home. He explained that it was an undocumented four-family and is being converted back to a two-family. They are proposing interior alterations to the basement and attic. A fire sprinkler system is required and the only exterior change is a fire escape stair on the rear of the home to make the attic egress compliant.

Ms. Lawrence asked if this is a legal four-family. Mr. Pennella said the four-family is not documented. The applicant is converting it back to a two-family.

Ms. Lawrence asked how many bedrooms will be in each apartment. Mr. Valle said two bedrooms each.

Counsel Addona stated that the front yard setback variance in the published public hearing notice is correct; it is 15 feet, which was confirmed by Mr. Pennella.

Counsel Addona stated that this is a Type II action and no further action is required for SEQRA.

Chairwoman Lawrence asked if anyone would like to speak. No one appeared.

Ms. Lawrence was pleased that this home will be returning to a two-family. She asked if there are there other two-family homes on John Street. Mr. Valle said that there were.

Mr. Jolly asked if they have a certificate of occupancy for a four-family. Mr. Pennella explained at one point, it was a legal two-family, which was converted to a four-family, and is now going back to a two-family. They are expanding the attic space.

Ms. Lawrence asked why it is necessary to include the attic. She asked why they need to use the attic and the basement. He said the attic is being used now. The basement would like to be finished which will have the bedrooms.

Ms. Weisel asked about the roof raising and is concerned about the attic height. Mr. Pennella confirmed it is a mansard type roof.

Ms. Lawrence confirmed with Mr. Valle that the basement apartment would have a walkout in the back. Mr. Pennella said that when they submitted a requirement is that the basement has to be connected to the first floor so it is treated as a whole unit. There can't be two kitchens. It is treated as one unit.

Mr. Maloney confirmed that the bedrooms are on the basement floor and the common space is on the first floor.

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

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

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. *Ms. Lawrence said there are several existing two-family homes and they are going from a four-family to a two-family.*
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Ms. Lawrence said by using the attic and basement it appears to be most logical and feasible way.*
3. That the requested area variance is not substantial. *Ms. Lawrence said that the variances requested are not substantial.*
4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms.*

Lawrence said there will be no adverse effects since there are many multi-family homes on the block.

5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Ms. Lawrence said it was self-created but this does not preclude granting this variance.*

Ms. Weisel moved, seconded by Mr. Jolly, that the variances be granted and Counsel Addona be directed to draft a resolution memorializing the discussion. All in favor. Motion carried.

New Public Hearing – Peter Bartolacci -67 Miller Avenue

Counsel Addona read the Public Hearing notice:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 7:30 p.m. on Monday, June 12, 2017, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Peter Bartolacci
67 Miller Avenue
Tarrytown, NY 10591

For variances from Chapter 305 of the Village of Tarrytown Code ("Zoning Code") for a height variance to construct one retaining wall in the rear yard. 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-10 Zone.

The variance sought is as follows:

Zoning Code Section	Description of Section	Required by Zoning Code	Existing on Property	Proposed	Variance Required
§305-47B; §305-47B(7)	Yards; setbacks	6 feet maximum height	n/a	20 feet	14 feet

Additional approvals related to the above referenced project will be needed from the Planning Board.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. 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 Zoning Board of Appeals

Lizabeth Meszaros

Dated: June 2, 2017

Secretary to the Zoning Board

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

Suzanne Bartolacci, of 67 Miller Avenue, introduced herself and said they have been before the Planning Board for some time to restore the backyard of their property. Originally, back in 2013, they presented a single wall plan, but the Planning Board had asked them for a two tiered wall as an alternative. After sharing several different design options, listening to the Planning Board very carefully, having significant deliberation on their part and extensive discussions with their engineer and adjoining neighbors, they feel that the single wall plan is the best solution for them, the neighbors and the village.

Mrs. Bartolacci said the Planning Board focused on the amount of fill each plan would require, how to minimize steep slopes, and the best design for screening so the neighbors would not have to see the wall. She will defer the engineering aspects of the plan to their engineer, Paul Berté, P.E., of Fusion Engineering.

Mrs. Bartolacci would like to make the Board aware of the tiered design which requires 3 additional tiers to get the elevation of the current back yard. None of the walls exceed 6 feet in height. They presented this design and 4-24-17 Planning Board meeting and the Planning Board members said they were concerned about the amount of fill and also had concerns about the landscaping which limit the types of plantings between the tiers prohibiting the planting of large trees. This was also a concern of the village landscape architect, who visited the property. At the last Planning Board meeting of May 22, 2017, Chairman Friedlander felt that perhaps the Board would accept the tiered wall if changes were made to the lower tier. He suggested they move forward to developing plans and landscape plans. On their prior advice, they suggested they wait until a design was acceptable to them in principle before spending any additional monies. At that same meeting, Mrs. Bartolacci said they shared the pros and cons of a tiered wall plan vs. a one wall plan because the Village Planner suggested they come up with renderings to visualize what it would look like. They feel that the single tiered wall addresses the key concerns of the Planning Board the best.

Mrs. Bartolacci referred back to a statement made by Chairman Friedlander at the 6-24-13 Planning Board meeting. In summary, Mrs. Bartolacci said that the Planning Board members did not settle on a definitive design; they just wanted options, and Mr. Friedlander was concerned about how the wall would look from the neighbor's perspective, in terms of the aesthetics, screening and privacy. He said he would be open to one wall or two walls, whichever looks better with the appropriate screening. He

also said that Paul Birgy feels the wall has to be replaced for safety reasons because it is not aesthetically pleasing.

Mrs. Bartolacci said the area has deteriorated significantly since 3 years ago. The only question at this point is what the wall will look like and the type of landscaping.

Chairman Friedlander's main concern was the screening.

Mrs. Bartolacci introduced Paul Berté, P.E., of Fusion Engineering, to explain the different designs.

Paul Berté P.E., presented the single wall and referred to the elevations of 172 at the lowest up to 202. The first floor of the house is at 206 and the basement is at 198. He said the applicant is trying to replace existing retaining wall that is deteriorated. It is 19 feet off the property line and 14 feet off at westerly portion of the wall. The proposal is to reconstruct the wall within the property line and address any transition issues that will arise during construction of the new wall.

One alternative was a zoning compliant 6 foot high two tiered walls to be offset with soil. That modular type of wall would require a mesh system with tie backs. He noted that both a modular block or reinforced concrete wall will have foundation and disturbance behind the wall. The modular wall is less costly and has a better visual appearance. This construction allows us to push the wall further east allow a 15 foot wide planting area. The 6 foot high wall limits the type of landscaping to screen the wall. The single wall would allow the planting of tall trees to cover the height of the wall. The three tiered wall would not allow for this.

In addition, with a single tiered wall, the amount of fill is reduced and it would be easier to manage stormwater runoff during construction. It also allows the applicant to re-capture a yard that existed when the house was built. The wall is located at the approximate location to where the existing wall was. Alternatively, a tiered system would eliminate the use of the yard and prohibit any meaningful screening for the wall. The single wall design will allow us to maintain existing stone wall and restore it to its original condition, leaving a 15 foot area for plantings.

In terms of the amount of fill to restore the backyard, the landscaping to screen the walls and the ability to save the trees to the west, they feel that this is the best plan.

Ms. Lawrence asked if they considered if the wall could be lower since it is a substantial variance.

Mr. Berté said the existing rear yard is at a 202 elevation and the basement is 198 so they are maintaining the flat yard at the basement. With the proper planting and

screening, the wall will not be seen. Mrs. Bartolacci distributed photos of the wall and Mr. Bartolacci submitted a letter dated May 24, 2107 which was previously distributed to the board on June 12, 2017, attached as "Exhibit A". Mr. Berté said whether it is tiered or a one wall, the tiers go away as you are looking up. Ms. Lawrence said she is not sure she agrees with that and it appears the wall is not going to be the same wall that had been there before; it is not the same footprint that was there. Mr. Berté said the plan was skewed a bit to make it straight from an engineering prospective. Ms. Lawrence said you are really not replacing it in the same place.

Mrs. Bartolacci came up and said although we are not replacing it in the exact footprint, they are correcting it for the shape of the property. Mrs. Bartolacci explained the renderings showing what it would like to the neighbors and how it would screen. She said that the tiered design is the alternative option, they don't think the screening is going to look as good and the neighbors would see two additional tiers that were never there before. The one wall would be the closest to the property.

Ms. Lawrence asked if the walls before were tiered.

Mrs. Bartolacci referred to the testimony of those who remember the wall (included it the application). Mr. Pennella said most of these walls are slightly battered back for engineering stability, which is how the old wall was. This new wall also has a batter of 1 foot 10 inches.

Mr. Peter Bartolacci, applicant, 67 Miller Avenue, came up and explained that each railroad tie is an inch further in than the one below. His referred to his neighbor's statement (Mr. McGuire) that it was just enough so that he could climb the wall.

Mrs. Bartolacci referred to the letters from the neighbors and Ms. Lawrence said she will read them into the record before the hearing is over, they are attached as "Exhibit B".

Ms. Lawrence asked if anyone had any questions.

Mrs. Bartolacci asked to go through her responses to the zoning criteria:

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. *Mrs. Bartolacci said it is not possible to restore to the original condition without this variance. If we create a tiered wall, we will lose lower level of the backyard. The existence of the original wall has been corroborated with the neighbors and aerial photos. It was a single wall. The Planning Board said it was helpful and compelling in terms of what was there. A neighbor, Mike McGuire, who attended the site visit, recalls*

that there was a swing set on the property years ago and the yard was flat. She would like her children to have a swing set as well.

2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Mrs. Bartolacci said their intention is to restore the wall so there is no undesirable change since they are restoring it to what it was and bring the property back to its original condition. The wall is set back 15 feet from the west property line unlike many of the walls along the Avenue, which allows very little opportunity for screening. The wall at 93 Miller Avenue has a 16 foot high wall right on the property line, but ours will be set back 15 feet with tiers in front of it. She feels the wall can be screened with landscaping.*

3. That the requested area variance is not substantial. *Mrs. Bartolacci feels that that it is not substantial since they are restoring what was there. A structure was failing and they are trying to restore it, which is in need of repair.*

4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Mrs. Bartolacci said the construction and design materials will improve drainage and will prevent further erosion of the soil. The existing view from neighboring properties (now and eyesore) will be much better to the neighbors. Restoring the wall will stabilize the slope. The existing wall will be removed and replaced with environmentally friendly blocks.*

5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Mrs. Bartolacci does not believe it was self-created. The current condition poses a safety hazard. The wall was not properly maintained resulting in its collapse.*

Mrs. Bartolacci said there was talk about setting a precedent should the Board approve this variance. She does not think so since the wall was there and they are restoring what was there originally on the property. The Village attorney said they had a right to restore their property. The question back then was what was there. There were no records to prove the wall so we came up with eyewitness testimony and aerial photographs.

Mrs. Lawrence said she could not ascertain the size of the wall from the aerial photographs. She said there is no proof of what the wall looked like. She has questions whether you are replacing in kind, the wall that had been there.

Mr. Bartolacci came up and said that he is hearing from Ms. Lawrence that there is no definitive proof. He said, in a murder trial there is evidence and there is a lot of evidence out there. People do get convicted based on circumstantial evidence. In this situation, we have aerial photos obtained from the Westchester County website. Mr. Maloney said it is hard to tell in the photos if the backyard was larger. Mr. Bartolacci said he will do a better job with that. Mr. Bartolacci referenced the testimony from the Planning Board meeting referring to a large single retaining wall. He said if you draw a vertical line from the base of the house out with a little slope for drainage, you will come to a point where the 2 lines meet which is pretty close to the height of the wall. What we don't know is the pitch of the backyard. Each change in percentage changes the height of the wall by 4.5 inches. So even if we are off, we are coming pretty close to what the height of the wall was. We need to think about this logically. The people who came to you told you what they remember and if you take that in combination with aerial photos. Ms. Lawrence said the aerial photos were unclear to her. Mr. Bartolacci said the Planning Board was convinced.

Mrs. Lawrence asked if anyone had any questions.

Mr. Jolly asked Mr. Pennella what the next steps are with this application. Mr. Pennella said the applicant will need to go back to the Planning Board for site plan approval for landscaping and other requirements. Tonight they are here for the height variance only.

Mr. Maloney asked the difference between the square footage of the tiered wall vs. single wall. Mr. Pennella said the usable area is the same. Mr. Berté said so is the visual impact of the wall.

Ms. Weisel how far apart the walls are and the impact. Mrs. Bartolacci said they are 5 feet apart and the single wall would be 15 feet from this wall.

If we do a tiered wall, the stone wall on the property line will need to be replaced with a different kind of wall. Mr. Berté said it would not have an impact. Mrs. Bartolacci also pointed out that they would protect the cherry tree on Mrs. Baldwin's property. She said that the neighbors did not want a hedge row of Arborvitae if they were to go with the tiered wall plan.

Ms. Rachlin asked about the type of wall. Mr. Berté said it is a modular block wall. There are many options for the color. They are very common walls. A brochure was given to the Planning Board. Mrs. Bartolacci said there was a similar wall at 65 Castle Heights, but if you screen it properly there is no need.

Ms. Lawrence asked for measurements of the walls they submitted since their wall seems much higher than others in the area. She went by most of them.

Mrs. Bartolacci said the wall at 93 Miller Avenue is 16.5 feet high. Ms. Lawrence said she is not nit picking.

She asked if anyone had any comments in the public.

Kristen K. Wilson, Partner, at Blanchard & Wilson LLP, representing Geraldine Baldwin, of 66 Riverview Avenue, came up and presented a letter outlining her position for the proposed variance. She addressed the Board first with a housekeeping issue with respect to the second retaining wall on the property line. She said this wall is on the property line and the ownership may be questionable as far as if the applicant can modify it.

Second, whether or not this is a replacement of a wall. This is not a pre-existing non-conforming structure. She referred to Section 305-62 A (5) which discusses the continuance of a non-conforming pre-existing structure. It is interesting to look at this as if it was not ever there. The applicant has no right to what the backyard may have been in the 1950's. Everyone has to abide by the rules. They are asking for this Board to have a zoning compliant plan. This is a 230% variance. She is asking this Board to ask the applicant what is needed to stabilize the slope, not what they want. The applicant has not indicated what the minimum need is to stabilize the slope. Perhaps a 6 foot wall would stabilize the slope. The applicant has not explored what the minimum variance is to stabilize the slope. This is the question the Board needs to ask. She referred to Mike McGarvey's (the former Village Engineer) letter saying the wall was not near as tall; it was plus or minus 7 feet tall.

Ms. Wilson went on to respond to the zoning criteria which is detailed in her letter, attached as "Exhibit C"

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance;

Ms. Wilson submitted pictures of existing walls that are code compliant along Riverview and Miller Avenue. The wall at 93 Miller Avenue is 17 feet. She would like to know when it was built. The applicant has not shown any recently built walls that required a variance. This would set an undesirable precedent for this property and the village. She said that neighboring properties may want to do the same exact thing.

2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance;

Yes, Ms. Wilson feels that there are other methods and they should try to get a code compliant structure or a plan that does not require such a significant variance and stabilizes the slope. The applicant needs to present alternatives at the very least.

3. That the requested area variance is not substantial;

Ms. Wilson feels that 262 cubic yards of fill is 26 truckloads to put in fill on an unstable slope and very substantial to fill in an unstable slope. She asked why they are creating this type of precedent in the village.

4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

Ms. Wilson said this has been entirely self-created, applicant did not maintain the property since 2009 when he purchased the property. The wall height requirement was there. They bought a piece of property on a hill with a minimal backyard. This is a fortress type wall as she referred to the rendering. This is not an image the village should promote. The applicant has not met the criteria. There is no proof it was 20 feet to begin with. Ms. Wilson respectfully asked the Board to deny or adjourn the public hearing and have the applicant to come back with something much more reasonable.

Geraldine Baldwin, of 66 Riverview Avenue, came up and said she bought her property in 1986. She is asking Board to require the applicant to come up with an alternative plan. A 20 foot wall looks awful and three - 6 foot walls do too.

Lin Snider, of 64 Riverview Avenue, just north of Ms. Baldwin's property, came up and read a statement into the record, which is attached as "Exhibit D".

She was concerned about protecting plantings and controlling runoff. The permission she had previously given to allow access to her property in the past is rescinded and she will not allow anyone on their property to do any work. She read the petition that was submitted to the Planning Board which she signed and gave to the secretary.

Counsel Addona said whatever is before the Planning Board is not part of the Zoning Board, unless they have been provided it, it is not a part of the record.

Mark Fry, 191 Revolutionary Road, Briarcliff Manor, said he would like to submit his letter which he gave to the Planning Board (which he never gave to the secretary). He visited the wall last Friday night and he is here to give his observations. Originally, he was convinced it was a land grab but as he studied the drawing and went to the site, he found two things in question. He referred to the existing wall and there is no question where the wall was. The yard will be the same size regardless of whether it is a single wall or a 2 or 3 tiered wall system. He said he has always been a proponent of the village code and referred to the steep slope ordinance which is to prevent undo disturbance of the slope. This ordinance is written not to bring in soil. So the question is the fill. 54 trucks of fill are required for the 3 walls and 24 trucks are required for the single wall. He asked, are we saying we want to bring in 543 of fill and mesa block to protect the steep slope? How did we get to this point? The 3 walls will not allow for planting of trees. If you have the single wall you will be able to plant large deciduous trees of different heights.

Mr. Pennella asked Mr. Berté to break down the wall relative to height and length.

Mr. Berté said the major height of the wall is 20 feet and goes down to 14 feet.

Mr. Pennella asked the approximate length of the 14 feet.

Mr. Berté said, of the 70 foot length, 50 feet is between 15 and 20 feet and the rest is between 20 and 14 feet. The grade goes up as you travel to the south.

Ms. Lawrence said typically this Board will ask the applicant to provide us with an alternative plan that will lessen the variance required so that you can show us in good faith that you have considered other options rather than just presenting an application with a massive variance. She said when she looked at the aerial views, she was not convinced. She also would like to know the height of the various walls in the comparable residential area and she is hoping they can provide this information at the next meeting. Mr. Berté asked what would be reasonable variance. Ms. Lawrence said to the applicant that they are asking for 20 foot high wall which is extremely high in a residential neighborhood or any other neighborhood. She just wants alternatives that don't have the height variance you are asking for.

Mr. Berte said in terms of what is reasonable, if we come in with a 15 foot wall, there is a 26 foot grade change. We need a wall and need to replace what was there.

Ms. Weisel said she looked at the neighbors' yards and they all have a steep slope worked in and your plan does not match anything close by. Ms. Weisel said the erosion

is significant. She is asking for a wall with a gentler integration into the slope to create a similar look.

Mrs. Bartolacci said the 2 tiered walls which we presented to the Planning Board would require a variance. We only found out in January that we would need a variance for walls higher than 6 feet. So we came up with a plan of one 8 foot wall and one ten foot wall. After listening to the Planning Board, we felt the single wall was the better plan, which is why we are here for the variance. She feels badly that they are being accused of being bullies and intimidating. Our neighbor's on each side are supporting us. All I want to do is re-create the backyard for my children which I feel they deserve. It is important to recognize the rights of property owners and their right to restore the property to its original condition.

Mrs. Baldwin came back and gave a brief history of the application and said it has been a long process of over 4 years. The applicants did not think they should have to go to the Planning Board for site plan approval. So they filed an appeal with the Zoning Board, who agreed with the Planning Board. Then an Article 78 was filed, which upheld the Zoning Board's decision. Finally, the appellate court affirmed this decision. We are just trying to have the village uphold the code that was written to protect properties. There are laws in place that say you can't do certain things. What is being proposed will change the character of the neighborhood. Whether it is 3 or 4 - six foot walls or a 20 foot wall, which is like the Great Wall of China, it will change the character.

Mr. Berté asked in the interest of compromise what would be acceptable. He asked if the Board ever granted a variance for this.

Ms. Lawrence asked has the board ever given a variance for height. Counsel Addona said that is not information she has right now.

Ms. Lawrence said they would have to look it up. Mr. Berte said that would be helpful; there are a lot of walls in the village that are higher than 6 feet.

Ms. Lawrence said there are a lot of walls, but they are not being rebuilt, and probably not 20 feet high. She asked Counsel if it is the applicant's job to get this information.

Counsel Addona said if you have information on that point, you can present it to the Zoning Board. It might be useful. This information would be needed to be submitted to this Board to be considered so if you have other walls or situations submit them.

Mrs. Bartolacci said they will share this information with the Board. We met with the Village Administrator and the Village Engineer and gave them a list of walls, some old

and some new. We did not know when the height code came into effect, but they said for many years.

Mr. Baldwin said it the code came into effect on 8-17-87 and was amended in 2008.

Mrs. Bartolacci is asking for guidance of what would be a reasonable variance since we have nothing to really go on. Any guidance would be helpful in order to move forward.

Kristen Wilson came back and said one suggestion for the Board is an alternative where they do not need to bring in soil. What do they need to do to stabilize the slope? Let's find out what the absolute minimum height is without any fill. With respect to Mr. Fry's presentation, it does not make a difference. Let's get a wall that stabilized to what is there.

Ms. Lawrence said this is why we are asking for alternatives.

Mr. Bartolacci came up and urged Ms. Wilson to get her facts straight before she speaks in front of this Board.

Mark Fry returned and offered an alternative proposal of minor steps, very much like the ones existing in the railroad wall that will step it back enough and break it up creating ledges for plantings but also keeping the 15 feet of depth to plant the large trees.

Mr. Berté said this wall is 20 feet tall and he thinks they can compromise and come back with a wall that is more of a compromise in height. The height of the house is 20 feet. There is also the ability to screen to mask what is on the property. He just wants some consideration that the applicant has the ability and right to develop the backyard.

Ms. Lawrence said this is why we have zoning codes.

Ms. Lawrence read the letters from George Bollenbacher, of 71 Riverview Avenue and Alexander Roberts, of 63 Miller Avenue into the record, which are attached as "Exhibit B."

Mr. Maloney moved, seconded by Ms. Lawrence to continue Public Hearing. All in favor. Motion carried.

New Public Hearing – Joseph Denardo – 1 Emerald Woods

Counsel Addona read the Public Hearing notice:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 7:30 p.m. on Monday, June 12, 2017, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Joseph Denardo

85 Harriman Road

Irvington, NY 10533

For variances from Chapter 305 of the Village of Tarrytown Code ("Zoning Code") for the construction of a single family residence on a vacant lot. The property is located at 1 Emerald Woods, Tarrytown, NY and is shown on the tax maps as Sheet 1.90, Block 112, Lot 15 and is in the R-60 Zoning District.

Zoning Code Description	Required/Permitted	Existing	Proposed	Variance Required
§305-15 Residential R-60(corner lot): Attachment 5: Column [6] Minimum Lot Size	60,000 S.F.	20,226 S.F.	20,226 S.F.	39,774 S.F.
Column [7a] Required Minimum Street Frontage	150 ft.	144.48 ft.	144.48 ft.	5.52 ft.
§305-49 - Impervious Coverage	19.25% (permitted) (3,893 S.F.)	9.76% (1,975 S.F.)	22.9% (4,623 S.F.)	3.65% (730 S.F.)

The variances sought are as follows:

Additional approvals are required from the Village of Tarrytown Planning Board and Architectural Review Board.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. 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 Zoning Board of Appeals.

Lizabeth Meszaros

Secretary to the Zoning Board

Dated: June 2, 2017

Jim Annicchiarico, of Cronin Engineering, representing Mr. Denardo said this lot is not part of the Emerald Woods subdivision. It was always a standalone lot. The Emerald Woods subdivision allowed for cluster zoning and the minimum lot size allowed was decreased from 60 S.F. to 40 S.F. Mr. Annicchiarico set that this residence meets all of the setback requirements for the R-60 district. They are here to seek a frontage variance of 5.5 feet for the Sheldon Avenue side of the property and a coverage

variance of 3.25%. The area variance is more substantial but this was a pre-existing non-conforming lot. There was a house removed on 2010 and there was more coverage with this house and it did not meet the setback requirements.

Mr. Annicchiarico went through the zoning criteria:

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance;

Mr. Annicchiarico feels that the house is similar to the homes in the Emerald Woods neighborhood. The adjacent lots do not meet minimum lot size.

2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance;

Mr. Annicchiarico does not believe the benefit can be achieved by any other means. They cannot increase the size of the lot or change the width.

3. That the requested area variance is not substantial;

Mr. Annicchiarico said the variance for street frontage is 5.5 feet, 3.25% for coverage. The lots within the Emerald Woods subdivision were allowed to go down to 40 S.F. If this property were allowed that, then they would only need a 20 S.F. variance. Many of the other lots along Sheldon Avenue are smaller.

4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

Mr. Annicchiarico said he does not feel that there will be any adverse impacts.

5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

Mr. Annicchiarico said the lot was pre-existing, non-conforming so it was not self-created.

Mr. Annicchiarico showed the elevation and a streetscape of some of the houses along Emerald Woods and the house directly behind it.

Ms. Lawrence asked about the size of surrounding lots. Mr. Annicchiarico said Lot 7, directly behind our lot is 40,132 S.F., Lot 8 is 40,891 S.F. and Lot 9, to the far right is 41,257 S.F.

Ms. Weisel asked how many bedrooms. Mr. Denardo, the applicant, came up and said there are 4 bedrooms.

Ms. Lawrence asked how many square feet are the houses in the Emerald Woods subdivision. She said the houses on Sheldon are half the size and more modest. Most

of them are about 1,500 to 2,000 S.F., and the house across the street is the same size as this house? Mr. Annicchiarico agreed.

Mr. Annicchiarico showed the front of the proposed house and an aerial map of the lots surrounding the proposed house. He said that in 2009, the applicant received site-plan approval for the same exact home. The variances never came up back then. He showed lots 5 and 6, 7, 8 and 9 and said they are all similar in size.

Mr. Annicchiarico said after Mr. Denardo received approval, the house was demolished.

Mr. Jolly asked if they got the frontage issue resolved and Mr. Pennella confirmed that the variances are correct.

Ms. Weisel asked if there is any way to reduce the impervious coverage.

Mr. Annicchiarico said the driveway is small and the patio is modest. He would have to confer with his client. Mr. Maloney said if you did not have a turnaround in the driveway, you could. Mr. Pennella said you could cut the full length on the left hand side and you would still have the ability to turn around and maybe reduce it a bit.

Mr. Denardo said he could also remove the walkway in the back.

Ms. Lawrence asked if anyone would like to speak.

Shirley Ecklund, of 3 Emerald Woods, whose home is behind the proposed home, said they are concerned about the aesthetics and impact of the home to the street. Her overall concern is that the house looks disproportionate and too big for the lot size. She has a flag lot and since the property is right in front of hers, she wants to make sure it does not negatively reflect her home.

Mr. Annicchiarico said the liveable area of the home is 4600 S.F. This home was not part of the original subdivision. During the planning process, it was always thought it would be sited on Emerald woods and the driveway cut is on Emerald Woods .

Ms. Lawrence said this house is not in conformance with the neighborhood. Mr. Annicchiarico said if you compare lot 3 to the proposed home, it looks like there is more property on our lot than on lot 3.

Mr. Jolly asked the square footage of the home that was torn down. Mr. Annicchiarico said the impervious area was under 4,900 sf. The driveway was just under 2,000 S.F. so the footprint was about 2,800 S.F., which is similar to the footprint of the proposed house.

James Im, of 8 Emerald Woods, (Lot 3) bought house in October of 2014. He is here to voice the concerns of individuals of each lot. He said the old house was similar to the house on Sheldon Avenue. His house is a larger lot, an acre of land and does not have a flag lot behind it. He thinks the house would be disproportionate to the other homes. He feels that this lot should be required to be a part of the Homeowners' association.

Ms. Lawrence asked if Emerald Woods was a private road. Mr. Im confirmed that it was.

Mr. Im said they all pay for maintenance of the traffic light by Montefiore and this property coming into our neighborhood and not becoming a part of the Homeowners' Association is a concern of ours. He is requesting an adjournment after hearing from the HOA representative.

Ms. Lawrence asked Counsel her opinion.

Counsel Addona said this is a private matter. They do need driveway access. They are going to the Planning Board for site plan approval. If it turns out that access is no longer feasible in the location then they would have to seek an amended approval.

Mr. Annicchiarico said the house that was taken down always had access from Emerald Woods; access from Sheldon would not be a good idea. We are not here for a FAR variance. He said he was the original engineer for the original subdivision. Aesthetically, Mr. Denardo builds a beautiful house and it is one of the nicest subdivisions in Town.

Mr. Denardo said he was never asked to be a part of the Homeowner's Association, and anything that is part of the HOA should not be discussed here tonight.

Rich Stassa, 2 Emerald Woods, came up and said he will not get into the Homeowners' Association issue, but has a concern with regard to the construction phase and about the runoff onto his property. Ms. Lawrence said when your home was built, there were construction.

Mr. Pennella clarified for the Board that the original driveways were all gravel, which became a problem. The gravel was replaced with permeable pavers which allows the water to infiltrate into the ground. Mr. Stassa said it is better than the gravel. Mr. Pennella said the paved driveway doesn't affect the impervious area.

Mr. Annicchiarico said he has no problem addressing these concerns at the Planning Board. Counsel Addona said you are requesting a variance for the impervious coverage. The criteria include any adverse impacts on the environment.

Mr. Annicchiarico was referring to construction, not the drainage issues and water infiltration. Some runoff will go right into the catch basin. There will be minimal impact.

Mr. Pennella said this is a carved out lot stand alone and is providing its own system for stormwater. All of the other lots have a common pond that the water collects into. This house will not be connected into this system.

Ms. Lawrence suggested a meeting among the applicant and homeowners?

Counsel Addona said if you feel like you need more time to think about the issues raised this evening than you can ask the applicant to modify the plan slightly to limit the impervious coverage. The issue of the Homeowner's Association is a private matter and this should not be a basis of your decision.

Mr. Stassa asked if he is not part of the Homeowners' Association, why is he using "1 Emerald Woods" as an address. Mr. Denardo said you didn't ask me to be part of it.

Counsel Addona interrupted and said it was a private matter not involving the Board.

Mr. Im returned and said the pond is behind his house. He is addressing the aesthetics. We are close to Emerald Woods. He does not feel that this home will fit it with the rest of the neighborhood.

Mr. Annicchiarico said that house is close to the road because the lot dropped off too fast.

Ms. Lawrence asked them to improve the landscaping in the back which will be addressed at Planning.

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

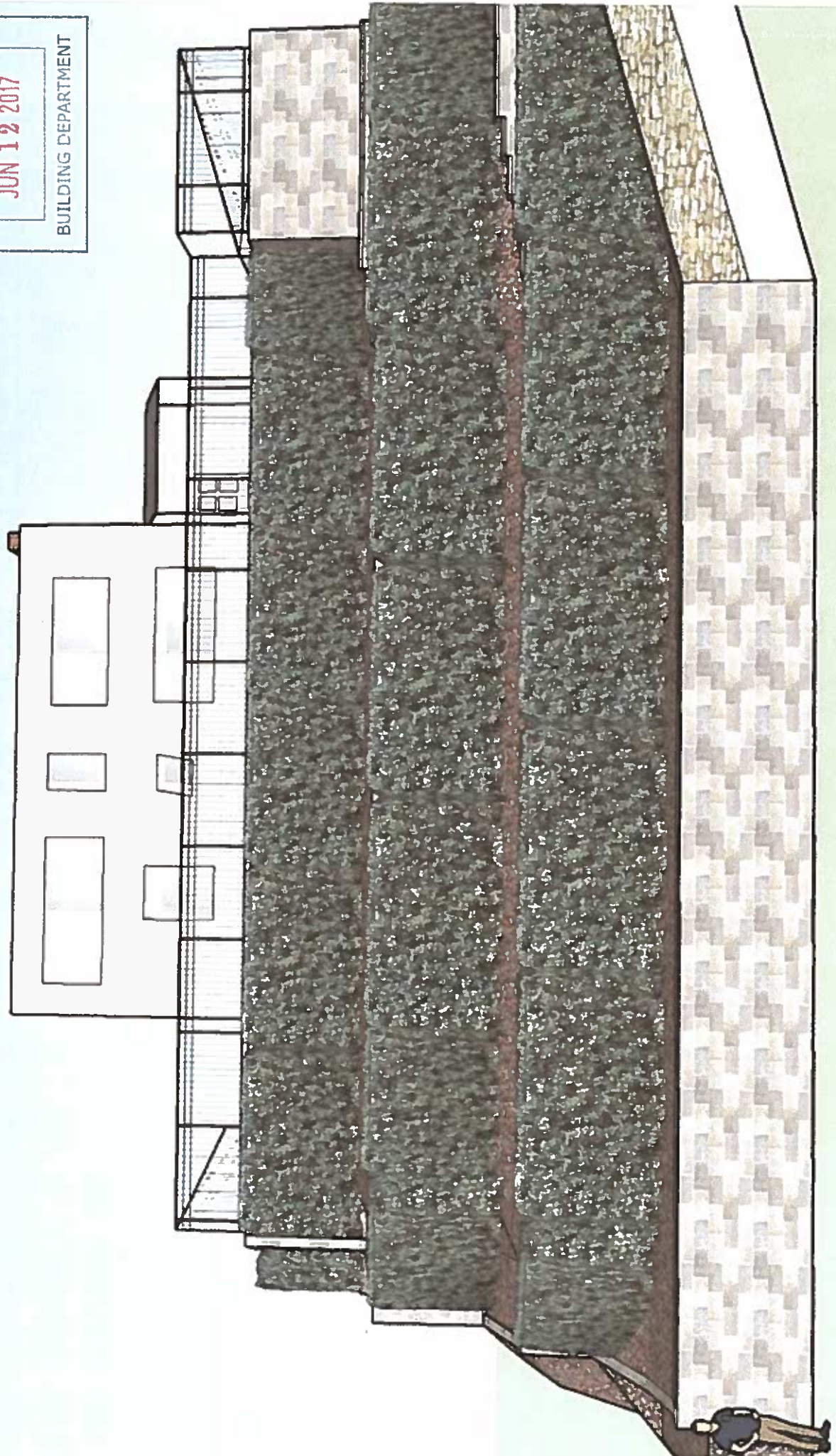
ADJOURNMENT

Mr. Maloney moved, seconded by Ms. Lawrence, and unanimously carried, that the meeting be adjourned – 10:55 p.m.

Liz Meszaros- Secretary

Exhibit A

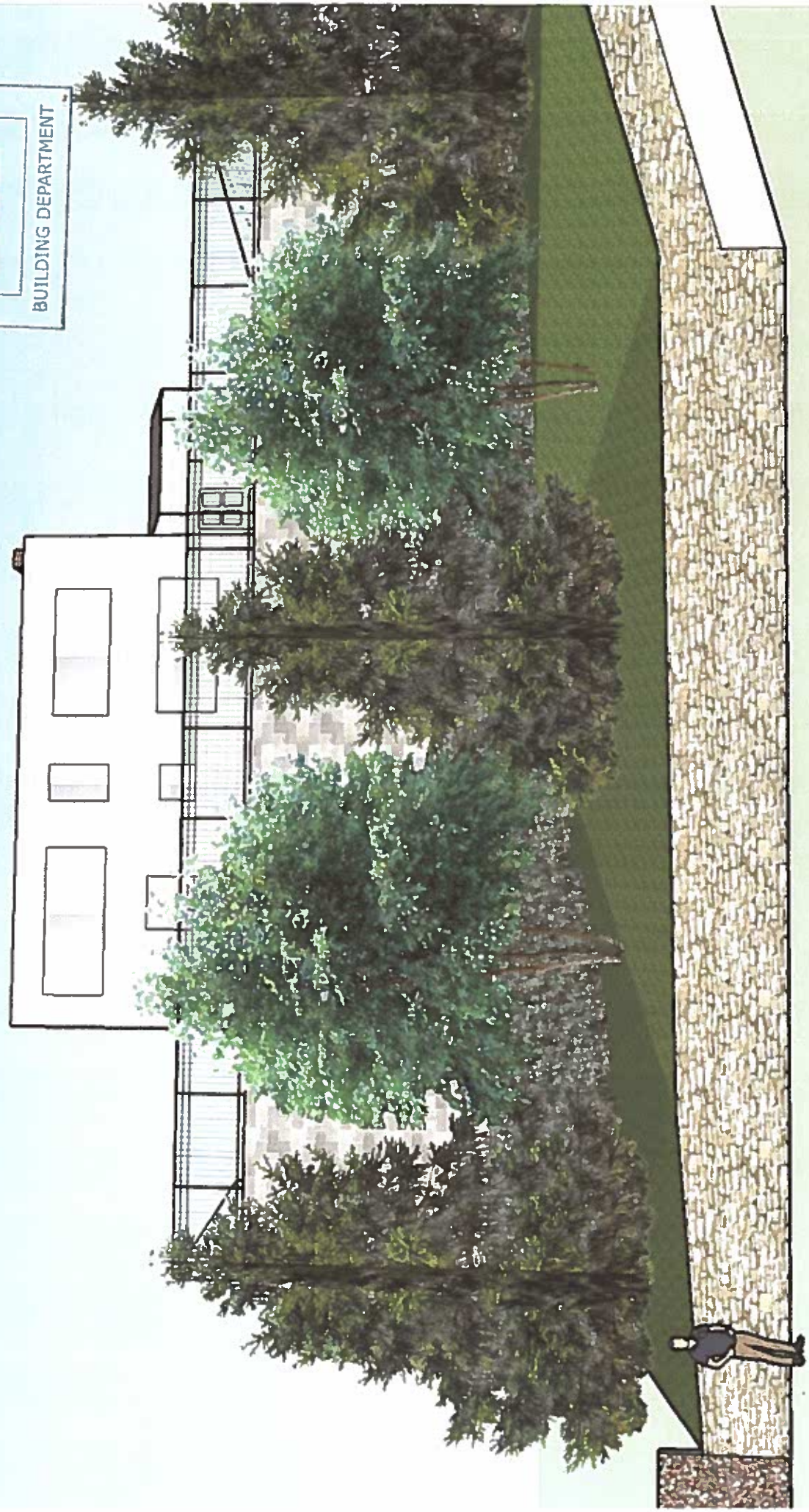
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BUILDING DEPARTMENT



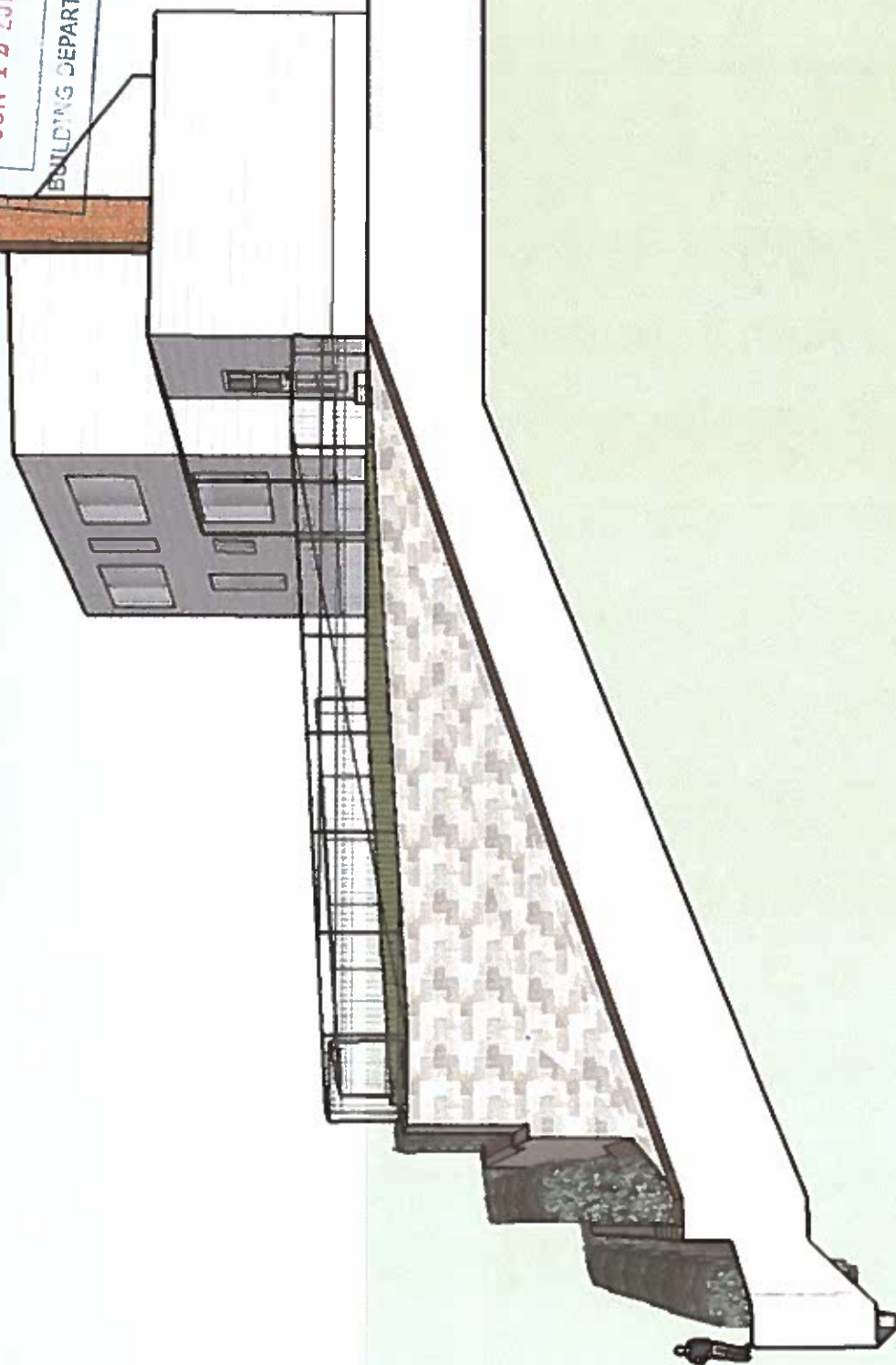
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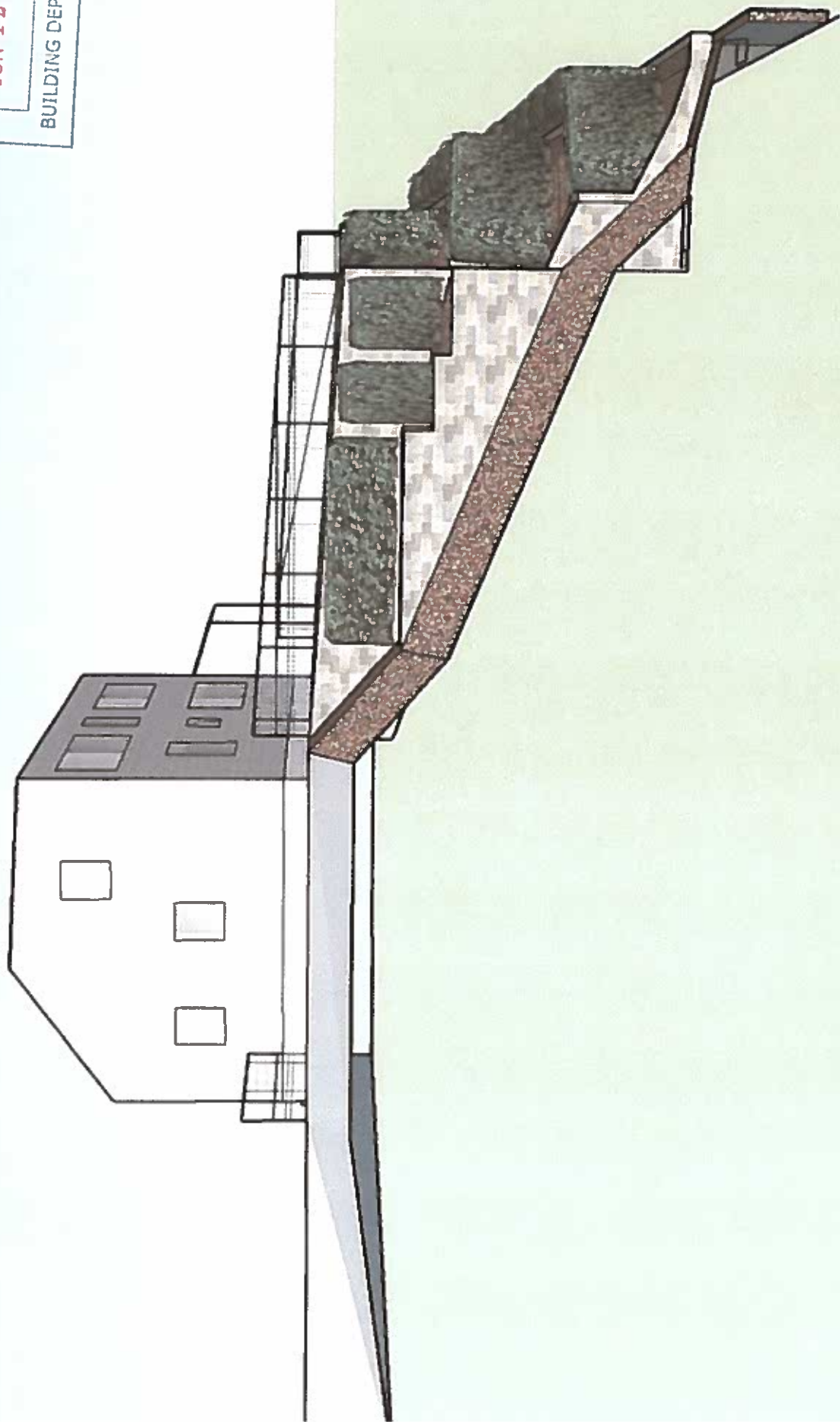
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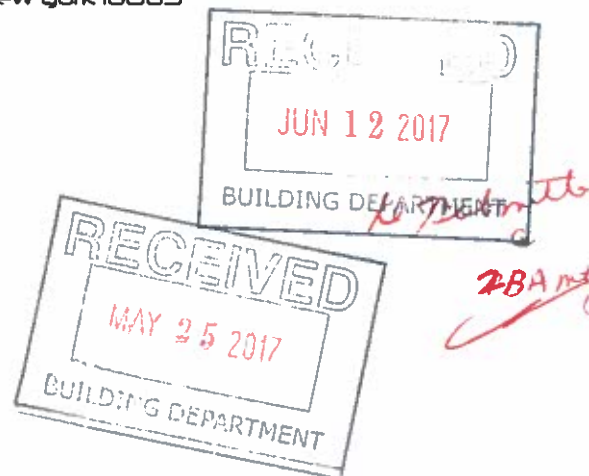
fusion engineering pc

914 358 5009 600 north broadway suite 215 white plains, new york 10603

May 24, 2017

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

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



Dear Chairperson Lawrence,

On behalf of the applicant, Peter and Suzanne Bartolacci, this office respectfully requests the opportunity to present our application for consideration of an area variance to the Village Code §304 47b (7), which the Village has interpreted so as to define the allowable maximum retaining wall height as six (6) feet. The proposal is made to replace an existing failing railroad tie retaining wall, which was constructed at the time of original house construction in 1950 as is evident by review of historical records (submitted with this application), as well as testimony by residents.

We have presented several alternative wall designs to the Planning Board (for approval of Steep Slopes disturbance) to replace the failed retaining wall and restore our property to its original condition. Although it appears that a zoning compliant retaining wall design could be achieved, we are requesting relief from the Building Inspector's interpretation of the code and proceed with seeking a variance to (re)construct a single wall with a maximum height of 20 feet for the following reasons:

- This proposed design closely follows the original retaining wall profile and footprint
- The base of wall would be ~15ft from western property line
 - Less visually intrusive to neighbors on all adjoining properties
- Greater screening options in terms of variety and size of plantings resulting in a more aesthetically pleasing viewscape for all neighbors
- Significantly less fill required (~262 cubic yards) vs. an estimated 450+ cubic yards for a code compliant retaining wall design.
- Allows the existing stone retaining wall on western property line to remain in place (this would need to be replaced with a 2' taller engineered concrete block retaining wall in a code compliant design)

67 Miller Avenue
May 25, 2017

- Far less complex from an engineering and construction perspective as compared to a code compliant design
- Easier to maintain landscaping (significantly easier access to plantings)

Less expensive (materials, fill and labor) than a code compliant design We transmit herewith 12 copies of the following:

- Drawings
 1. Site Plan, sheets 1-3
- Documents
 1. Letter to PB Chairman dated May 24, 2017
 2. Existing survey
 3. Zoning Application
 4. Short EAF
 5. Environmental Clearance Form
 6. Zoning Compliance Form

Statement of Principal Points

- (1) Whether an undesirable change will be produced in the character of the neighborhood or whether a detriment to nearby properties will be created by the granting of the variance.

This proposal is not a detriment to nearby properties but rather an improvement over the existing conditions caused by the failed railroad tie retaining wall. The proposed retaining wall simply restores the neighborhood to its original appearance as it was for 25+ years until the gradual deterioration and collapse of the original railroad tie retaining wall. The proposed single retaining wall will stabilize the slope and rear yard while providing a mitigating measure for storm water runoff that doesn't currently exist. The run-off and soil erosion is currently unhindered by the existing structure creating a negative impact on the surrounding properties. This proposal will improve those conditions and stabilize the property.

- (2) Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

A large retaining wall system is the only method suitable to stabilize the rear yard and re-create what was originally constructed. While it appears that it may be possible to design a code compliant retaining wall system, the footprint would be significantly more intrusive to neighbors and the visual impact of such a design would deviate significantly from what was originally on the property. Further, screening options as to size and species would be much more limited in a code compliant design, likely reducing the effectiveness and negatively impacting the aesthetic for neighbors.

67 Miller Avenue
May 25, 2017

(3) Whether the requested variance is substantial.

The requested variance is based on the existing slope of the land and is not substantial in relation to the existing conditions (26 foot elevation change between rear of house and property line). The entire neighborhood is constructed on steep slopes and many rear yards along the Miller Avenue block appear to utilize retaining walls exceeding the allowable height. For example, the 93 Miller Avenue, five house away from 67 Miller Avenue property contains a 16 foot high retaining wall. Further, this variance is being requested solely for the purpose of restoring the property to its original condition which existed at the time the house was built and for many subsequent years until neglect by previous owners caused the existing wall to fail and collapse.

(4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

As previously stated, this proposal will improve the environmental conditions of the surrounding properties since no run-off or erosion mitigation is currently in use. The proposed abundant large scale natural plantings will provide screening as well as vastly improve the water absorption and environmental conditions on the slope below the retaining wall in comparison to what currently exists – mud, overgrown poisonous vegetation, parasitic vines, large rusted nails, and rotting creosote soaked railroad ties.

(5) Whether the alleged difficulty was self-created (this will not necessarily preclude the granting of the area variance)

The need for a retaining wall on this property and others along Miller Avenue is created by the natural slopes of the land that are prevalent throughout the Village of Tarrytown. The houses along the west side of Miller Avenue and those directly below on the east side of Riverview Avenue would not have been able to be constructed without retaining walls in their rear yards. This proposal is merely to replace an existing, previously approved retaining wall, which has failed as a direct result of neglect by the previous owners of the property.

Thank you for your consideration, please do not hesitate to call with any questions.

Thank you.

Sincerely,

FUSION ENGINEERING P.C.

Paul Berté, PE
Principal



Fusion engineering pc

Exhibit B

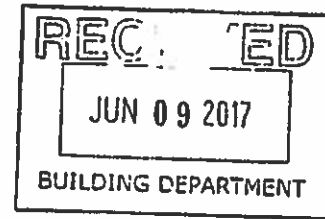
Alexander H. Roberts
63 Miller Avenue
Tarrytown, NY 10591

Date: Thursday, June 8, 2017

Memo to: Members of the Zoning Board of Appeals

From: Alexander H. Roberts

Re: Application for Retaining Wall at 67 Miller Avenue

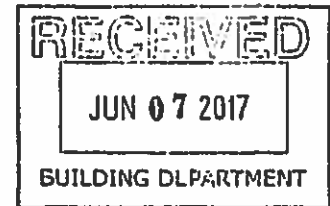


My wife and I live at 63 Miller Avenue, the property directly north of the Bartolacci property at 67 Miller Avenue. We fully supported, and continue to support the Bartolacci's application before the Planning Board to build a 3 tiered retaining wall to stabilize the slope and restore the Bartolacci's backyard. This plan is certainly a viable option.

Peter and Suzanne recently asked to speak with us about another design option – a single retaining wall – for which the Bartolacci's are before your Board to request a variance. Based on our discussion of the details and the 3D renderings we were provided of each design, we believe that a single retaining wall would be a better option for all affected parties for the following reasons:

- This design would provide 15 feet of plantable area between the Bartolacci's western property line and the base of the retaining wall. Multiple large species of trees could be planted, in addition to shrubs and ground cover, providing effective screening and a natural looking westerly viewscape for the neighbors. It is also our understanding that larger screening species could be planted on the North side of the single retaining wall as there would be no geogrid in this area that could be compromised by roots. The three tiered design will only provide a 5 foot swath of plantable area between the western property line and the base of the retaining wall. The plantings for this west facing area, along with any plantings on the north side of the structure and the higher tiers will be limited in size and species so as not to compromise the structural integrity of the lower tiers of the retaining walls and the geogrid. The ability to plant larger and more diverse species for screening is a big plus for us in endorsing the single wall design.
- A single wall is far less visually imposing and intrusive than the 3 tier design when viewed from all directions. As previously noted, this design allows the retaining wall base to be 15 feet from the western property line vs. 5 feet for the 3 tier design. For our viewscape, looking from North to South towards the Bartolacci's property, with a single retaining wall we would not see the 2 additional tiers protruding out towards the western property line. For this reason, the single wall is far more desirable from our perspective.
- It is our understanding that the single retaining wall design requires approximately 260 cubic yards of fill instead of over 550 cubic yards for the 3 tier design. Importing more than double the amount of soil in order to fill in behind two additional tiers that we understand never

George M. Bollenbacher
71 Miller Avenue
Tarrytown, NY 10591



June 4, 2017

Village of Tarrytown
Zoning Board of Appeals
One Depot Plaza
Tarrytown, NY 10591

Gentlemen:

I am writing in regard to the meeting notice I received (attached) for a meeting on June 12, 2017 regarding an application by Peter Bartolacci. I will be out of town on June 12, so I am communicating by letter.

Mr. Bartolacci has shown me renderings of the two options for the retaining wall he needs to build at the west side of his property. I am in support of either choice, although it appears to me that the single wall version will allow for more screening foliage than the tiered wall would, which I would think would be more appealing to the neighbors below.

Frankly, I am appalled that the approval process for this badly needed safety provision has taken so many years. Since I moved next door to 67 Miller Avenue in 1979, I have seen the deterioration of the wooden structure that was apparently built when the house was constructed, have observed the gradual erosion of the slope on his property with some alarm, and I cannot now understand how the village could, in good conscience, delay further approvals for this much needed repair.

The attached document makes reference to a "6 feet maximum height" provision in the zoning ordinances, and I am assuming that the board is applying that provision to this retaining wall. Since there are numerous retaining walls in the village that are more than 6 feet in height, did every landowner who has such a wall obtain the same variance prior to construction? If not, has the village been derelict in its enforcement of that zoning requirement? If it has been, will the board be retroactively enforcing that requirement throughout the village? If not, why is the requirement being applied in this case?

I look forward to receiving your answers to my questions.

Very truly yours,

A handwritten signature in cursive script that reads "George Bollenbacher". The signature is written in dark ink and is positioned above the typed name.

cc: Peter Bartolacci

existed on the property does not seem logical to us. It would also appear that carting in 210% more fill would result in far more disruption for neighbors, and likely a longer construction process for the 3 tier design.

Restoring the property to its original condition with a single retaining wall which provides better and more options for screening, is far less visually imposing, requires less than half of the fill, and for which the construction process will be less disruptive is a far better option in our opinion. Although we will accept a 3 tier design if that's the village's decision, we encourage the Board to grant the Bartolacci's a variance so that they can finally restore their backyard and make their property beautiful again.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexander H. Rutter". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Exhibit C

MARK W. BLANCHARD
PARTNER



ALAN H. ROTHSCHILD
OF COUNSEL

KRISTEN K. WILSON
PARTNER
**Also admitted in CT*

BLANCHARD & WILSON LLP

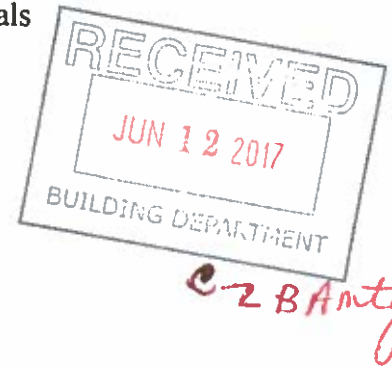
DENNIS E.A. LYNCH
OF COUNSEL

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June 12, 2017

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

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



Dear Honorable Members of the Tarrytown Zoning Board of Appeals,

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

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

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

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

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

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

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

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

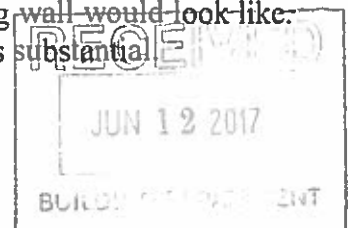
Equally important to the undesirable change that will result if this specific variance is granted is the unwanted precedent that this Board would be setting. There are numerous properties that have steep slopes and it would be deleterious to grant such a significant variances and open the doors to having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

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

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

- c. Whether the requested variance is substantial

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



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

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

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

- e. Whether the need for the variance is self created

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

III. Conclusion

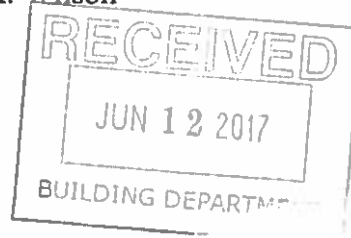
Based on the above analysis, the Applicant's failure to establish that a 230% variance is the minimum variance that is necessary, the incredible precedent that this Board would be setting and the detrimental impact to those property owners immediately abutting 67 Miller Avenue, we respectfully request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

Respectfully submitted,

Kristen K. Wilson

Kristen K. Wilson

cc: Geraldine Baldwin





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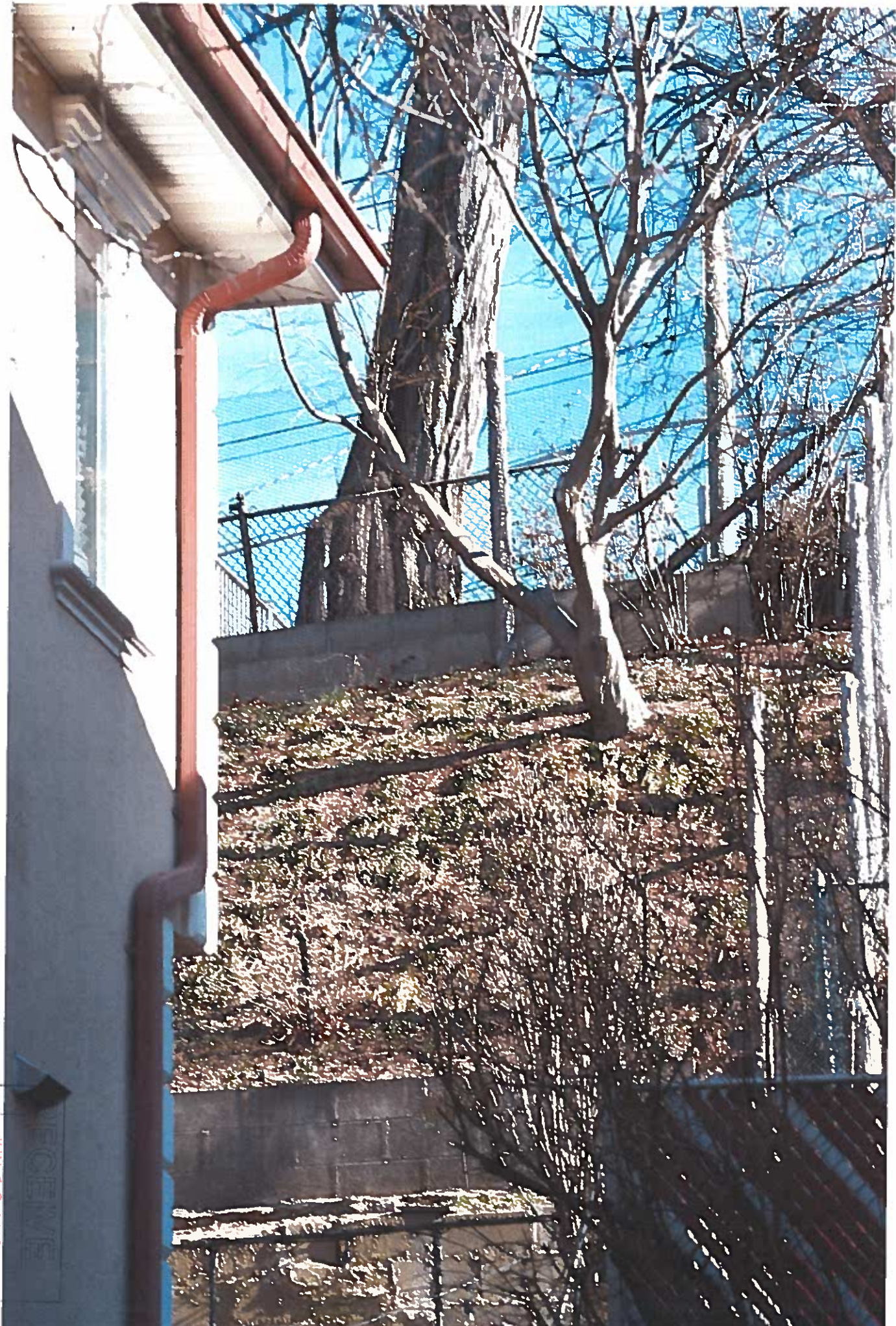
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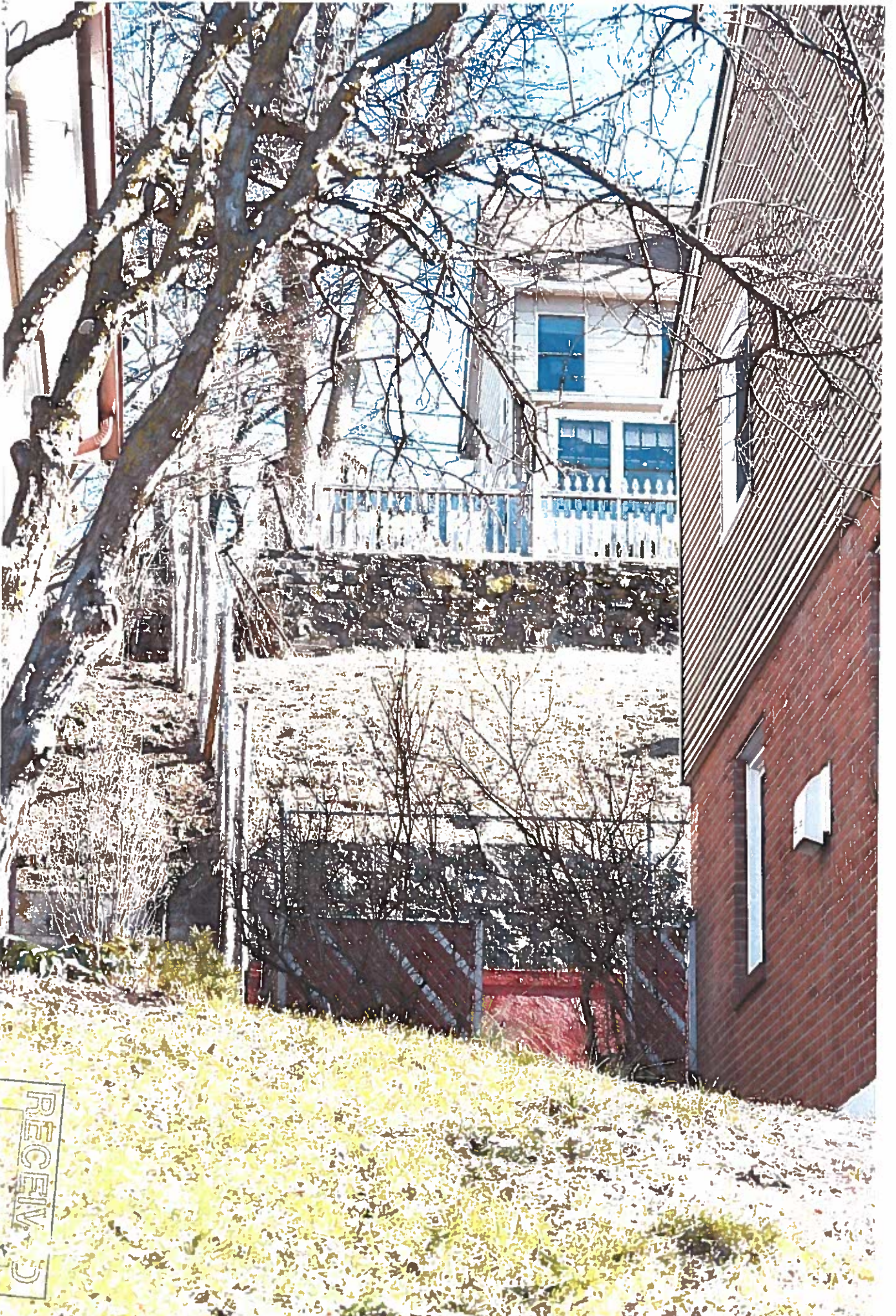
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Exhibit D

Submitted By: Lin Snider

My husband and I live at 64 Riverview Ave., the property just north of 66 Riverview Ave. which is directly behind the Miller property. While the proposed alteration of the steep slope and building of a 20 foot retaining wall will only directly contact our property at the SE corner, the effect it will have on our property's beauty and environmental stability is devastating.

I fail to understand why this issue continues to come before the Zoning and Planning Board as the variance asked for clearly radically challenges the laws which have so wisely been enacted by the Village of Tarrytown.

Having already lived through the destruction of the slope directly behind us and the fact that we now look at an eight-foot concrete wall rather than a lovely weeping willow tree, I feel very strongly that the fragility and beauty of our backyards must be further protected.

I also have a few questions should this plan be allowed:

- Who will be maintaining and watering the plantings.
- What kind of laws will protect the neighboring properties from overgrowth, erosion, water run-off, etc.

We bought our house assuming our land and the adjacent areas would be protected, while Mr. and Mrs. Bartolucci bought their house assuming they could manipulate the town into destroying our beautiful natural environment to create a plan that only benefits them at the expense of the natural habitat and natural beauty of our surroundings. I think a large part of what has made this so difficult for us neighbors is that there seems to be no interest in the larger community, that the tactics have been aggressive and even hostile toward the neighbors and that it seems that they are willing to break or bend the law to make their property something it is not. I would have loved a flatter backyard but have not attempted to gouge out the hillside to make it happen. We have lovely parks in Tarrytown, the school playground is right across the street from their property and there are laws governing the protection of the land and footprints of the houses. I think the contempt for the Zoning Code and Planning Board are obvious and the assumption that the members of those boards will eventually just give in and move them away from their ethical, environmental and legal responsibilities is unconscionable. It just seems that you bought a home that you do not like and ~~you~~ ^{they} are trying to fit a square peg in a round hole.

I also want to make clear that whatever statement I made in 2012 about giving you access to our backyard for any construction is no longer valid. My husband works tirelessly to create a beautiful garden and we will not allow any persons or machinery on our property in connection with any work on the adjacent hillside.

I feel like we have been dragged into a fourth-grade fight with a bully, something I have never experienced with a neighbor before. While I understand their desire for a flat yard and bigger house, the use of intimidation, manipulation, and tattle-tailing have brought up my desire to fight dirty also, but I really don't want to stoop to that level. There are laws in place that should be followed and which necessarily protect us all from situations as this where the very nature of a community is at stake. Can't we just be good neighbors, find a way to all enjoy the natural beauty and environmental protection so smartly put in place by the village and move on?

I would now like to read a petition that was presented to the Planning Board.

Scott Voth
Quinn Antt Voth

Lin Snider
LIN SNIDER

Planning Board which I should be happy to produce.

I also wrote a prior letter to the
64 Riverview Ave
Tarrytown NY
72541

Planning Board of the Village of Tarrytown
One Depot Plaza
Tarrytown, New York

March 27, 2017



Re: Application of 67 Miller Avenue to Construct new Walls in Rear of Property

Please make the attached Petition, signed by neighbors, with attached 2 pictures, of record in the file of the above-identified Application.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Geraldine F. Baldwin".

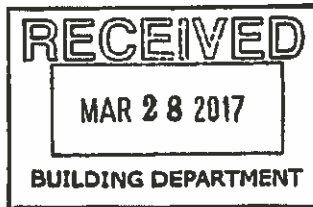
Geraldine F. Baldwin



Handwritten signature in red ink, possibly "C. B. Bump".

Handwritten signature in black ink, possibly "Geraldine Baldwin".

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



Page | 1



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

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

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

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

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

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

1. The proposed walls will result in a significant undesirable change in the neighborhood. None of the walls visible from Riverview Avenue appear as massive as the planned walls which are more suited to industrial or commercial property--- not our residential neighborhood.
2. Permitting construction of the planned walls will not be consistent with the Village's objectives to preserve and protect our natural habitats and landscapes.
3. The neighborhood is hilly and many yards are not level. Construction of the planned walls will set a bad precedent and may well encourage others to demand similar walls.
4. Filling in a slope with 33 truckloads of soil to erect the planned walls is not the minimum necessary to replace a 7 foot high retaining wall.

Name: Scott Vetto Address: 64 Riverview

Name: John Smith Address: 64 Riverview Ave.

Name: _____ Address: _____

Name: _____ Address: _____

To: The Tarrytown Building Dept.

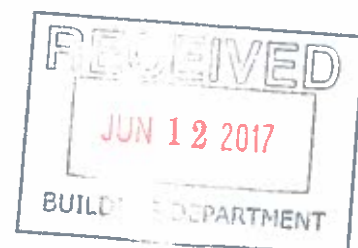
Planning Board and

Zoning and Board of Appeals

Name: Dan Petroski Address: 67 Riverview blv
Tarrytown NY

Name: _____ Address: _____

Name: _____ Address: _____



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my

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

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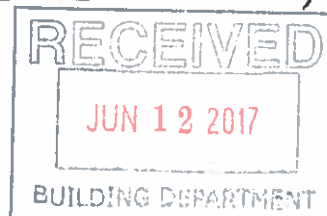
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Name: Geoffrey F. Burt Address: 66 Riverview Ave. Tarrytown NY

Name: Irma Jaster Address: 73 Riverview Ave. Tarrytown NY

Name: Jim Kaganman Address: 80 Riverview Ave. Tarrytown NY

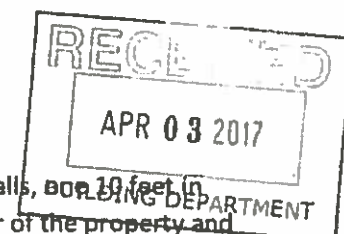
Name: Bruce M. Fuller Address: 67 Riverview Ave, Tarrytown NY



3/24/2017
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my

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

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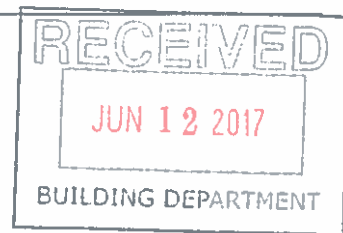
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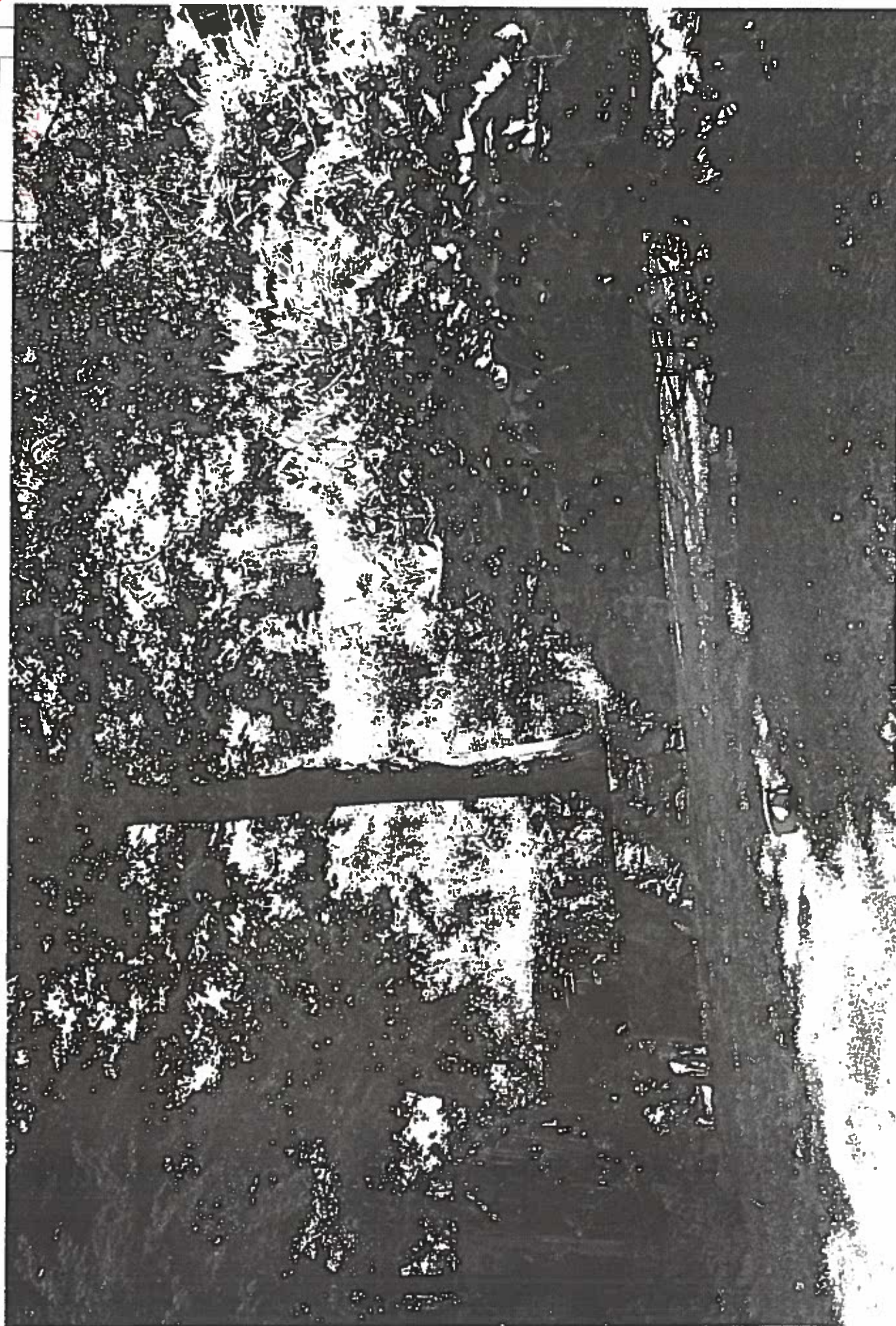
Name: Iman Majidi Address: 62 RIVERVIEW AVE TARRYTOWN NY 10591
 Name: Byrna Majidi Address: 62 Riverview Ave Tarrytown NY 10591
 Name: Cavin Majidi Address: 62 Riverview Ave Tarrytown NY 10591
 Name: _____ Address: _____



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