

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
July 10, 2017 7:30 p.m.

PRESENT: Members Maloney, Jolly, Weisel, Rachlin; Counsel Zalantis; Village Engineer Pennella; Secretary Meszaros

Absent: Chairwoman Lawrence

This meeting and the 6-12-17 ZBA meeting have been transcribed by a court stenographer and the transcripts will become part of the record.

Mr. Maloney chaired the meeting in Chairwoman Lawrence's absence and called the meeting to order at 7:34 pm.

APPROVAL OF THE MINUTES – June 12, 2017

Mr. Jolly moved, seconded by Ms. Weisel, that the minutes of June 12, 2017 meeting be approved as submitted. All in favor. Motion carried.

CONTINUATION OF PUBLIC HEARING – Peter Bartolacci – 67 Miller Avenue

Suzanne Bartolacci, 67 Miller Avenue, is continuing her presentation from the last meeting. She is here for a variance required to construct a retaining wall to restore the backyard and repair a retaining wall. She would like to address 3 key items that were discussed at the June 12, 2017 meeting:

1. The height of the original wall.
2. An alternative design that would require a lesser variance.
3. Examples of other walls in Tarrytown similar in height to what they're proposing.

In addition, she will also address statements made by Ms. Baldwin's Attorney at the last meeting.

Mrs. Bartolacci went through the same presentation that was given to the Planning Board in April of 2017 so that each Board has the same information. She was concerned that Chairwoman Lawrence expressed doubt as to the original height of the wall and she was hopeful that this information will be as helpful to the Zoning Board as it was to the Planning Board.

Before starting, Mike McGuire, (present at the property site visit in June) came up and spoke about his recollection of the wall on their property. Mike McGuire, 80 Miller Avenue, said that he has lived next door to 67 Miller Avenue his entire life (born in 1962). He remembers, as an 8 year old, that there was a swing set in the backyard and they climbed on a big wall with a staircase on the side. The backyard went straight out. He said that over time, the previous owner grew old and was no longer able to maintain the wall.

Mr. Bartolacci, (sitting next to the podium), asked if the Board had any questions for Mr. McGuire and if they doubted that a wall was there. Mr. Maloney said they do not doubt that there was a wall. Ms. Rachlin said they are concerned about the height of the wall. Mr. McGuire said the only way he can describe it is that the yard went out level.

Mrs. Bartolacci began her presentation, which is attached as **“Exhibit A”**, and made reference to statements from the Planning Board minutes of 6/24/13 and 8/26/13 from individuals who remember the wall and how the backyard was flat, and that significant erosion has occurred and is still occurring. She read the quotes from:

1. John Burkhardt, 47 Miller Avenue, 2 houses to the north of 67 Miller. He grew up in this house and stated at a 6/24/13 PB meeting that he thought it was great news that they were rebuilding the wall. He moved into 47 Miller Avenue in 1954. The wall was there then and it hasn't been touched since. Half of it is down on the ground.
2. Brian Tompkins, 63 Miller Avenue, who lived at 63 Miller from 1954-1976. Mrs. Bartolacci said that this 8-26-13 statement is consistent with Mr. McGuire's statement.
3. Despina Katsaris, who lived at 68 Miller Avenue from 1974 to 2010.
4. Mike McGuire's statement of 4/24/2017 Planning Board meeting and his letter which is included as **“Exhibit B”**.
5. Thomas Nugent, who lived at 63 Miller Avenue from 1993 - 2006, submitted an email for the 4/24/17 Planning Board meeting.

She referenced a timeline of the people who made statements in terms of when they moved in the neighborhood. She said based on the timeline and testimony from neighbors and Mrs. Baldwin's statement that the wall had never been higher than 5 feet since 1986, the wall collapse must have occurred between 1977 and 1985 with little or no further decay since then.

She presented aerial photographs from Mapping Westchester, of the current backyard in 2013 (scaled 1 to 30 feet) and an older 1976 map (same scale) showing the retaining

wall and hedgerow indicating that a significant amount of backyard was lost and gone down the hill. The hedge has been in the same position since 2009.

She presented another aerial photo comparing the house next door, 63 Miller Avenue, from 2013 to 1976 photos, which show that the backyard extended far beyond the s/w corner of 63 Miller Avenue in 1976. She indicated where the base of the wall was and is now. The traced lines across form the s/w corner to show how much space there is between the line and the hedge. Mr. Maloney asked about how much. Mr. Bartolacci said about 4 or 5 feet and the hedgerow doesn't extend much more beyond the s/w corner of the house. Mr. Bartolacci pointed out that the retaining wall starts a couple of feet more past the red line and looking at the proportion of distances between the two left and right lines, much more yard used to be there.

Next, she compared a 2000 and 2017 photo showed 2 photos side by side pointing to the redline which shows a significantly larger yard that was there in 1976.

Mr. Bartolacci asked the Board if this information demonstrates to them that there used to be more backyard on their property.

Mr. Jolly asked them if the previous owner had advised them of the wall condition. Mrs. Bartolacci said we knew it would have to be replaced. Ms. Weisel asked what was there when they moved in. Mr. Bartolacci said what is there now. Ms. Weisel asked if the hedge is still there and if there is anything left up against the hedge.

Mrs. Bartolacci said the actual size of the yard has not changed since they moved in. Mr. Bartolacci said if you look at the hedgerow from present to 1976, it is totally clear that there has been a huge amount of erosion, which is consistent with the testimony from the neighbors that she went through in her presentation.

Mr. Bartolacci said the root structure of the hedge is exposed and gets worse with each storm. He showed the 1976 picture and compared it to the side of the property which is very steep today. In the past, the hedgerow was far beyond that. The neighbors have all given testimony and have said that the backyard was flat and it went straight out to the wall.

Mr. Maloney asked how high the wall is now. Mr. Bartolacci said 8.5 feet in the n/w corner and about 5 feet in s/w corner. Mrs. Bartolacci said it is hard to measure since there is a lot of dirt on top of it now.

Next she showed a photo of a retaining wall at 93 Miller Avenue from Riverview Avenue, 4 houses down on the same side, in the vicinity of her property. It is over 14

feet high and built right on the property line. She referenced the aerial photograph and said that they are proposing a wall 15 feet in from property line. Ms. Weisel asked what was on top of the wall at 93 Miller. Mrs. Bartolacci said it was a chain link fence.

The next photo was provided by Mr. Nugent, a neighbor at 63 Miller Avenue, which shows a woman with a child with the wall in the background. She made reference to the stack of railroad ties that fell off the wall and showed another picture of the number of ties demonstrating that the wall was higher. The next photo shows the hedgerow at top of the retaining wall and the backyard extending beyond the hedges. Today the roots of the hedge are exposed.

Mr. Bartolacci asked the Board if it was clear to them.

Mr. Maloney asked if he was saying that the back of the house lined up with the hedgerow. Mr. Bartolacci said no, when you stand in our backyard, and you are even with the corner of the house, you are about 3 feet away from the hedgerow. In other pictures, it was significantly farther out. Mr. Maloney asked Mr. Bartolacci if they should then add another 5 feet from the current picture. Mr. Bartolacci said yes.

Mr. Bartolacci showed the position of the hedgerow in the 90's and superimposed it into the January 2017 photo illustrating that the hedgerow has not moved, but beyond that there is no flat surface and all the soil is gone sitting below the wall, clearly showing a huge amount of erosion from 1990. The angle is 52 degrees which is a 128 percent slope above the retaining wall. Mr. Bartolacci said it would seem crazy to build a railroad tie wall and have a 128 percent slope above it.

Ms. Weisel asked where the property line is. Mr. Bartolacci pointed and said about 15 feet from the corner. He said that the retaining wall was partially on the neighbor's property but our design will move it onto our property.

The next picture shows a significant amount of dirt piled up at the base, which was pointed out at the site visit. If you flip it, you can see that it represents 12 railroad ties which is consistent with the testimony of neighbors. The next photo was from Mr. Bollenbacher's property looking north, taken around January of this year, showing less vegetation, compared to when the Board visited the site.

Mr. Jolly asked what the applicant can do as of right. Mr. Pennella said they are in front of the Board to seek relief for a variance for a 20 foot high wall. The previous application before this Board was for a code interpretation for steep slope.

Counsel Zalantis said they are not disputing the Planning Board's authority for steep slope; they are seeking a height variance for the wall and will return to the Planning Board for site-plan approval.

Mrs. Bartolacci said we are not building the wall in the exact footprint because a piece of the wall may be onto the Robert's property. If this is not an issue, we will replace it in the same place. We would rather do the right thing than put it on the property line.

Ms. Weisel asked if they could talk about the alternative design.

In the next photo, Mrs. Bartolacci showed 7 visible ties and the tiebacks that indicate that a higher wall was once in place, consistent with neighbor testimony. Mr. Bartolacci asked what the ties are doing there if there wasn't a higher wall.

Mrs. Baldwin ended the presentation and wanted to address a statement with respect to a statement made by Mrs. Baldwin's attorney at the last meeting which requires a little history. She referred to a Planning Board meeting back in August of 2013. Former Village Engineer McGarvey was asked by the Planning Board to estimate the height of the wall to establish what the retaining wall was like so they could restore the backyard to its original condition. She read portions of a statement made by Dr. Friedlander, indicating that the wall needs to be replaced for safety reasons and the Board's request for the former Village Engineer to determine the height of the wall. Mr. McGarvey said that he would figure out the existing slope from the backyard, the back of the house, out to the row of shrubs he has there, and if it's three, four, five percent, it's not very steep and extend that straight out to determine and extrapolate it out to figure out that height.

Mrs. Bartolacci said that Mr. McGarvey revisited the site and shared his findings with the Planning Board, but did not with them. She read Mr. McGarvey's letter into the record, which is attached as "**Exhibit C**". When they found out about this letter, they were astounded since that felt the letter was not accurate in terms of the testimony that everyone said there was only one wall. They wrote to Mr. McGarvey in a letter dated 10-21-13, attached as "**Exhibit D**", which Mrs. Bartolacci read into the record.

Ms. Weisel asked Counsel Zalantis if it is appropriate to go over the past. Counsel Zalantis said if it was raised and they are responding to what was addressed at the last meeting; then they can put it in the record.

Mrs. Bartolacci said that she feels that 850 cubic yards of fill to replace what was there, as stated by Mr. McGarvey in his letter, is grossly exaggerated since the current one wall design requires 260 cubic yards. With regard to the 3 tiered walls he suggested, this also contradicts the testimony of all of the neighbors. Mrs. Bartolacci said that they

are confused and the letter does not make sense. At the 2/27/17 Planning Board meeting, Ms. Baldwin referenced this letter and Mr. Tedesco said that it was not an established fact that those walls were 7 feet; it was only the opinion of the former village engineer, so it is not a fact. Mrs. Bartolacci feels that the history of this letter and the factual inaccuracies are important to understand which is why she presented it. Mrs. Bartolacci said they never got a response from Mr. McGarvey.

Mrs. Bartolacci asked if anyone has any doubts of what the original wall was like on our property. She said she would be happy to answer any questions.

Ms. Rachlin said clearly there was a tall wall there. Whether it was tiered or how much it was tiered is hard to say because people remember climbing up on it.

Mr. Bartolacci said there was no tiering. It was one wall. There were insteps to climb the wall as Mike McGuire explained. They went in only enough to climb the wall. The wall was canted back into the slope to help support the load.

Ms. Weisel said that they clearly need a wall to stop the erosion and she appreciates all of the work they have done. Her problem is to bend the code for every pre-existing property will get murky. What struck her in the last presentation was the amount of soil needed. At first, we thought the tiered walls would be better, but they require more fill than a single wall. She said that when you are starting from scratch you are caught by current code. She believes they had a wall. She asked if they can give the Board an alternate design to compromise. She is hoping that plan will be better for everyone.

Mr. Bartolacci said it is not setting a dangerous precedent. He agrees that if someone were building a brand new wall when there had been no wall ever there, then that would set a precedent. This is a situation where the wall was on the property and because of neglect, the man became elderly, the wall collapsed and rotted. When we moved in, we were not able to deal with repairing the wall since we had premature twins and they were our only concern. We were pretty busy for the first 3 years we lived here. Getting back to precedent, this is restoring the property to its original condition. I challenge any one of the neighbors, that, if their wall collapsed, they would want to replace it as well.

Paul Berté, PE, of Fusion Engineering, the applicant's engineer came up and said they have looked at several alternatives. Another alternative is two walls 9.5 feet each, about a 50% variance with an elevation of 198 at top, preserving the flat backyard that existed.

The tier between the 2 walls could not provide landscaping but at the base, the landscaping could screen most of the first wall. A sketch of the two 9.5 walls was submitted for the record. (Exhibit H-1)

Mr. Jolly asked if they can do this without using the neighbor's property. Mr. Berté said it will be a self-contained retaining wall with a staircase to maintain it. The grading is lower on the south side. Ms. Weisel and Mr. Maloney both confirmed that there was just one staircase on the side which will give access to the lower level for maintenance. Mr. Berté said you could only plant smaller bushes in this area which is why they have a preference for a single wall to allow for the planting of larger trees for better screening.

Ms. Weisel asked about how much fill would be needed for this plan. Mr. Berté said about 475 cubic yards would be needed which includes a stone and drainage layer.

Ms. Weisel asked how much fill was needed for the 3 tier plan. He said about 560 cubic yards. Ms. Weisel asked how much fill for the single wall. Mr. Berté said about 260 cubic yards. Ms. Weisel asked if they had a rendering of the plan. They said they did not bring it.

Ms. Rachlin confirmed that the 3 tier plan wall heights were all 6 feet. Mr. Jolly asked about the landscaping. Mr. Berté said that the landscape consultant will review the plan when it goes back to the Planning Board. Mr. Berté said depending upon where the walls end up the yard could extend 35 to 40 feet from the house.

Mr. Maloney asked if anyone had any more questions.

Kristen Wilson, Attorney, Blanchard and Wilson, LLP, representing Ms. Geraldine Baldwin, 66 Riverview Avenue, came up and referred to the variance criteria she went through at the last meeting. With regard to the new plan presented this evening, she is not sure if the overall impact is less or even more significant. She will hand in a written letter to the Board which will become "**Exhibit E**". Her question to the Board is whether or not this is the minimum area necessary to stabilize the slope. She said this is not an application to re-establish a pre-existing non-conforming use. It is a request for an area variance for a new wall. Previous litigation addresses this issue, which is included in the letter she submitted. Ms. Wilson said that this issue has been litigated and the applicant lost non-conforming status decades ago. She would like the Board to consider the impact to her client. Mrs. Baldwin is right below the wall. She will see the wall. Her impact will be the most significant compared to the other neighbors.

She said that the applicant submitted various walls, but they do not know of one wall that a variance was granted. More importantly, the walls that do exist, they abut roads, parking lots, or other public ways and do not appear in residential areas.

She referenced the fill and said it is an impact to the area. She is curious to know how the fill, about 26 trucks or so, will be brought in. These are impacts significant to the

neighborhood. She questioned what the minimum variance necessary would be. With regard to the question of the wall height in the McGarvey letter, she said it is a reasonable interpretation that there were 3 sides to a plus or minus 7 foot wall, not 3 tiered walls. She has not seen any rebuttal from a Professional Engineer that it was a 7 foot wall. She said that perhaps a 7 foot wall could do it. She feels it is the Board's job to determine what the minimal variance is to stabilize the slope.

Ms. Wilson stated, at the very least, since the alternative plan was just submitted, they would like an opportunity to review and consider it.

Mr. Berté returned and said the application before the Board is for a retaining wall and it is possible and certainly feasible to bring fill in and materials out. We are balancing the view with landscaping. There is no reason why Mrs. Baldwin also can't plant trees on her property. We are talking about the benefit of the use of a backyard.

Mr. Maloney said he does not think they should put the burden on another property owner for their benefit. It is not neighborly.

Mr. Berté said each design has allowed for landscaping and this is not the only area in the village that has a 70 foot grade change with retaining walls.

Ms. Weisel said these walls still exist. This wall does not.

Mrs. Bartolacci came up and read through portions of a Planning Board meeting back in June of 2013. In summary, Dr. Friedlander said that he was trying to find a way to minimize the impact to the neighbors and at the same time was concerned about safety. He asked Mrs. Baldwin if she would be agreeable to a wall if it was properly screened with trees so she couldn't see it and Mrs. Baldwin said she would be.

Mrs. Bartolacci said that they will work to accommodate and screen the wall. The Planning Board said very clearly that screening was their major concern so the wall would be less visible. The point Mr. Berté was making is that you don't buy a property assuming that things are not going to change around you. They will do their best to mitigate any impact down the hill to the Baldwin and Schneider properties.

Mrs. Bartolacci said, back in 2013, Mrs. Baldwin agreed to a retaining wall that was screened, but as recently as April of this year, Mrs. Baldwin made a statement at a Planning Board meeting with regard to the steep slope provision that she feels the benefit can be achieved by installing a code compliant fence at the top of the slope and building a wall similar to the original one at the same height and location. It was only when Mrs. Baldwin found out that the wall was higher that she got an attorney. They

feel that they are not being unreasonable to restore their backyard as long as they mitigate impact to the neighbors. With reference to Ms. Baldwin's statement regarding ownership of the wall, the plans they submitted do not impact the wall on Mrs. Baldwin's property. Mrs. Bartolacci showed a picture indicating the survey stakes on the Baldwin property, which she feels concludes that the retaining wall is on the Bartolacci property. (Exhibit H-2 - 67 Miller Avenue survey with Baldwin property stakes)

With regard to Ms. Wilson's statement saying that this matter is entirely self-created since the applicant purchased the home in 2009 and they have not maintained the wall, Mrs. Bartolacci said that they did attempt to restore the property, but they had premature twin babies which took up a significant amount of time taking care of them. They prioritized since the health and safety of children was more important at that time and were unable to move forward then. In the meantime, Mrs. Bartolacci said that her husband has spent a significant amount of time planting vegetation to stabilize the slope. She doesn't think there is anything they could have done to stabilize the wall; it was just too far gone.

Ms. Weisel asked, in terms of continuity, if they ever looked at designs similar to what is in other yards in the area.

Mr. Bartolacci said that creating a slope you are creating drainage issue which is why we haven't considered this. By building a tiered wall, you are significantly reducing the stormwater runoff which is more important.

Ms. Weisel asked if there is a way to make the wall look like others in the area.

Mr. Bartolacci said we have a 7 foot elevation change which is why the n/w corner will be 7 feet higher. The change continues along to the other properties. They have much less of a drop than us. The property at 93 Miller Avenue has a similar elevation to ours and they built a huge wall on their property line.

Mrs. Bartolacci presented other walls in the neighborhood over 6 feet. She stated that they do not think that there have been any variances granted since 2002 and have a FOIL into the village for this information. They have not received a response as of yet, but Counsel Zalantis said, at a Planning Board meeting, that this information could be helpful to the Zoning Board since these walls could fall into the character of the neighborhood. Mrs. Bartolacci said many of these walls exceed six feet in height and were built prior to the zoning law being enacted.

Mrs. Bartolacci began her presentation which is attached as "**Exhibit F**", along with a list of the walls sorted by height. (53 Walls)

Mrs. Bartolacci went through her presentation showing a number of walls in the area that were over 6 feet.

Mr. George Bollenbacher, of 71 Miller Avenue, made reference to a letter he sent to the Zoning Board, which he has not received a response.

He asked the Board if these walls presented by Mrs. Bartolacci were all built without a variance. Mr. Jolly said they may be pre-existing. Mr. Bollenbacher said several of them were built in the last ten years and he asked if the Board knows of any walls that had been built since the law that got a variance. Mr. Jolly said he didn't know. Mr. Bollenbacher concluded that it is very possible that people have been building walls higher than 6 feet without getting a variance.

Counsel Zalantis said we can only speak about recent applications. There have been several applications where someone has come before the Planning Board asking for more than a 6 foot wall. We had a recent application before the Planning Board, but they re-designed the plan, so they wouldn't need a variance.

Mr. Bollenbacher said it seems eminently clear that people have been building walls without getting variances and the Board has done nothing about it.

Counsel Zalantis said the purview of this Board is to grant variances not do enforcement; that is done by Building Inspector.

Mr. Bollenbacher asked what is the point of having a requirement if no one knows who's done it.

Ms. Weisel said this is what we are working with now. In terms of what we do here, we follow the code. We try to find ways to tweak it so it works for all involved.

Counsel Zalantis said to the applicant that what they are presenting to the Board is relevant to the character of the neighborhood and the Board could consider the walls.

Mr. Bollenbacher said that he never got answers to his questions. Counsel Zalantis said if you are asking for a policy or enforcement issue, you should go to the Board of Trustees. Mr. Bollenbacher would like to know if these walls were built in violation of the code without a variance. Mr. Bollenbacher said the 6 foot requirement was put in the 1980s. Counsel Zalantis said this is not the purview of this Board to determine if a wall is in violation.

Mrs. Bartolacci continued showing the walls. Mr. Bartolacci said that in each of these pictures, we show a stake six feet high, to indicate that the walls are over 6 feet. He

made reference to BOT minutes and said that the law talks about fences not walls, and it talks about intersections. He does not think it applies to retaining walls. He said that never in the history of Tarrytown has anyone been required to get a variance for a retaining wall.

Mrs. Bartolacci then played an audio of the former village engineer at a Planning Board meeting in 2013 saying that there is no wall height restriction. She said this is what we went by and now they are here. She said maybe that is why there are so many retaining walls in the village because the former Village Engineer did not know the code or enforce the code.

Ms. Weisel said she thinks we have the picture. Mr. Bartolacci requested that the Board look at all the pictures. Mrs. Bartolacci quickly flipped through them.

The last two pictures Mrs. Bartolacci showed were of 63 Miller Avenue, next door to them. The wall was built around 2005-2006, and the fence on 64 Riverview Avenue, which is greater than 6 feet. She said that there is ample evidence of walls greater than 6 feet surrounding us. Mrs. Bartolacci said that Ms. Zalantis, at a Planning Board meeting, said the fact that they exist can be considered.

Mr. Maloney said he doesn't think that excoriating Mr. McGarvey as the previous building inspector is germane here at all. Mr. Bartolacci said we were raising this because our course of action would have been different if we had known about the height variance in the first place. We went before the ZBA for a code interpretation and filed an Article 78. He asked the Board if they thought that they would have gone through the process knowing that, even if we had won that lawsuit, they would still have to go to the zoning Board to build a wall greater than 6 feet? He said they would not have gone down that road if they had been told there was a wall height restriction, which is why it is relevant. They did not bring it up to excoriate, they were given bad information and, if it was corrected, their course of action would have been very different.

Mrs. Baldwin, 66 Riverview Avenue, asked to speak. She came up and distributed a list of walls to the Board along with a summary, which is attached as "**Exhibit G**". Mrs. Baldwin said she was not aware of the new walls submitted this evening but none of the walls discussed at the last meeting are mesa block walls using the grid design. Ten of the walls are old stone and predated the code of 8-17-87. None of the walls are located in a single family neighborhood. With respect to the September letter to the Planning Board from Michael McGarvey, he was charged by the Planning Board to go out and

make his best effort to determine the height of the original wall. He said there were 3 walls, plus or minus 7 feet, but he did not say they were tiered.

Ms. Wilson, Attorney for Mrs. Baldwin returned and said with respect to her client's property line, a legal issue needs to be clarified. She read the last sentence from Ward Carpenter engineers, who provided the most recent survey of her client's property. "From the wall location, we find entire wall to be on line... meaning property line. Either party can remove the wall without permission of the other." Ms. Wilson submitted a stamped survey for the record.

Mrs. Bartolacci said we do not plan on doing anything with this wall in question in either of the designs that were presented. Also, not to keep going about the height of the wall but Mr. McGarvey was not asked to give his opinion of the height of the wall, he was asked to extrapolate out with a flat backyard going up from the base, which is why we questioned his letter and the fill number. She was not trying to excoriate Mr. McGarvey; she just feels that there is a lot of history and some misinformation and/or misunderstanding that needed to be explained. We want to move forward and build this wall. She thanked the Board.

Mr. Maloney asked if the Board had any more questions.

Mr. Pennella asked Mr. Berté about the 2 tier concept wall he is presenting this evening. He asked Mr. Berté why so much more fill is needed compared to his 2/21/17 Planning Board submission for 2 similar walls. Mr. Berté said the February plan did not include stone. He added that this is the worst case scenario fill number needed. There is no site plan yet prepared yet.

With regard to landscaping, Mr. Pennella asked if there is a plan to screen with 2 tiers. Mr. Berté said the section between would be low story and provide no screening.

Mr. Pennella asked if Mr. Berté thought this plan will be sufficient to put plantings. Mr. Berté said all of the screening would have to happen on the lower tiered wall. Mr. Pennella asked if there would be a sufficient area to plant. Mr. Berté said that Arborvitae could grow up to 20 feet tall with a shallow root system, but he would defer that to a landscape architect. Mrs. Bartolacci said the Robertson's have a row of Arborvitae on their property.

Mr. Pennella wants to clarify that a single wall would allow for more larger landscaping. Mr. Berté said the 3 tier option allows for a limited amount of screening on ground level with low story vegetation on the other tiers. The single wall plan is a better design plan for constructability, landscaping, and the amount of fill needed. They are trying to

provide a plan for proper screening for the neighbors, which is the single wall. The space between the tiered walls does not allow for larger vegetation to screen.

Mrs. Bartolacci submitted a list of the walls sorted by height and said that there are 18 walls that exceed the height limit of 9 feet.

Mr. Pennella asked Mr. Berté to clarify if a site plan is ready. Mr. Berté said he would prefer to submit a formal submission with this design.

Mr. Pennella asked if Mr. Berté could maintain the 16 feet from the property line with the 2 tier. Mr. Berté said there is flexibility if the Board would advise what wall height they would like; we can work with a plan, instead of a sketch.

Mr. Maloney said he is not sure if they should go to the 2 tier. He asked the Board members what they thought, or if they wanted to vote on something now.

Counsel Zalantis said before the Board can vote, they need a plan. Mr. Berté said there is flexibility where the wall can start; he just needs a sense from the Board that 9.5 feet is reasonable for this application. Then he could make a formal submission.

Mr. Maloney said he would like to see a 9.5 foot wall plan and move it as far back from the property line as possible taking into consideration the neighbors.

Mr. Berté said it's a balance of the right amount of space for the right amount of landscaping.

Counsel Zalantis advised the applicant to make a formal submission in advance of the meeting so that the public and staff can review.

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

Continuation of Public Hearing – Joseph Denardo – 1 Emerald Woods

Jim Annichiarico, of Cronin Engineering, representing Mr. Denardo is back with a revised plan that reduces impervious coverage as requested. He eliminated the walkway in the back leading from the patio to side entrance door and the width of the turnaround in the driveway. It has been reduced by 1.1% or 274 square feet.

Mr. Annichiarico pointed out that they meet all setback requirements for the R60 zone even though the house is being built on a 20,000 S.F. lot, and they do meet the FAR requirements for a 20,000 S.F. lot. He is asking the Board to consider the minimal variances.

Mr. Pennella confirmed for the record that the variance required for impervious coverage is 2.15 % or 456 square feet. Mr. Annichiarico said that is correct.

Mr. Maloney asked if anyone had any questions.

Mr. Jolly asked what the impervious coverage was of the previous home. Mr. Annichiarico showed the plan and said they have reduced it by 531 S.F. In 2008, it was 4880 sf. Mr. Annichiarico said 19.25% is maximum allowed in R60, the smaller the lots, the larger the coverage.

Mr. Maloney asked if anyone had any questions.

Mr. Jolly asked the applicant if they had any discussion about the Homeowner's association. Mr. Denardo said the neighbors are not here. After he gets his permits, he said they will discuss it.

Mr. Jolly moved, seconded by Ms. Weisel, to close the public hearing. All in favor. Motion carried.

Mr. Maloney read through the 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. Maloney said there will no undesirable change in the neighborhood.*
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. Maloney said the house is within the required setbacks and they have reduced impervious coverage.*
3. That the requested area variance is not substantial. *Mr. Maloney 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. *Mr. Maloney said that the variances will not impact 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. Mr. Maloney said that this is not self-created.

Mr. Jolly moved, seconded by Ms. Weisel, to approve these variances as discussed. All in favor. Motion carried.

Counsel Zalantis advised that she will draft a Resolution memorializing the Board's discussion and decision.

ADJOURNMENT: Mr. Jolly moved, seconded by Ms. Weisel, and unanimously carried, that the meeting be adjourned – 10:20 p.m.

EXHIBIT A

67 Miller Avenue – Retaining Wall and Property Photos

In support of Variance for Retaining
Wall Design Proposal

6/6/17

Introduction:

This presentation was presented to the Planning Board on April 24, 2017, in order to prove that when the property at 67 Miller was developed in the 1950s, a very large single retaining wall was installed which provided a significantly bigger flat backyard area behind the house. This "massive" single retaining wall stood for approximately 30 years before it began to deteriorate and partially collapse, resulting in severe erosion and loss of much of this flat backyard area. According to neighbors, the former owner of the property, Mr. Louis Bartoluzzi, initially took steps to repair the retaining wall, but ultimately, due to his advanced age, was no longer able to properly maintain it. The retaining wall fell into a state of disrepair and partially collapsed resulting in the condition that exists on the property today.

The presentation initially provides the direct testimony from 6 current and former neighbors as to what was originally built on the property. Four of these six neighbors have a combined 179 years of living in the neighborhood. All of the testimony is consistent with and corroborates the fact that a very large single retaining wall existed at 67 Miller Avenue prior to its deterioration and partial collapse and that the backyard used to be much bigger than it is today.

Further corroborating evidence is provided in the form of Westchester County aerial photos of the property from 1976 and 2013, and photos of the retaining wall taken in the 1990's from the adjoining property by a former neighbor. A comparison of the aerial photos shows a significantly larger backyard in 1976 than was present in 2013. The photos taken in the 1990s by the former neighbor prove that the flat surface (backyard) behind the house extended well

beyond where it ends today, and that severe erosion of the flat backyard surface occurred between then and today. It is also evident from the 1976 aerial photo that a single large retaining wall existed on the property at that time, rather than any kind of tiered structure.

The presentation concludes with several photos of the property from January 2017. Among other things, these photos highlight that the amount of eroded soil currently sitting at the base of the collapsed retaining wall is consistent with the amount that would have been needed to fill in behind a much higher retaining wall (than exists today). This much larger retaining wall would be necessary to permit a significantly larger backyard area, as the former neighbors have testified to. The photos also show that tie backs protrude from the soil well above the top of the current retaining wall, corroborating the fact that the retaining wall used to be much higher than it is today. Lastly, these photos show multiple railroad ties randomly scattered at the base of the existing retaining wall, which is consistent with a partial collapse of the upper part of the retaining wall. When we presented this to the Planning Board, they indicated that they found the information extremely useful and compelling in determining how our property should be allowed to be restored.

We trust you will find this presentation useful in your consideration of our application and welcome the opportunity to answer any questions you may have relating to this presentation, either at the site visit scheduled for June 11 or at the Zoning Board of Appeals meeting on June 12.

Peter & Suzanne Bartolacci 6/6/17

6/24/13 Planning Board Meeting:

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

8/26/13 Planning Board Meeting:

Brian Tompkins, of 57 Cedar Lane Ossining, NY, stated: "I lived in the house at 63 Miller Avenue for the first 23 years of my life... He [Peter Bartolacci] asked me if I remembered the retaining wall in the back of Mr. Thompson's or Mr. Brekka's house. And I said "vividly". As a little kid we would constantly climb from the bottom to the top of the railroad ties straight up to the top...**I also asked if I could walk around the backyard of his property and you could see some of the existing railroad ties at the base and that's where it started and it directly went straight up. When I was in his backyard, I was astounded to see how pitched and sloped and tiny his backyard had become. It was significantly smaller. Mr. Brekka had a manicured property and it was completely flat backyard that extended out to the railroad tie wall, and it was just, again, one wall. That's just coming from someone who spent years climbing and playing on it...I was really shocked to see how much property he has lost."** (Mr. Tompkins lived at 63 Miller from 1954 to approximately 1976)

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

Despina Katsaris, of 48 Van Wart Avenue, Tarrytown, stated: "Before I lived at 68 Miller Avenue, across the street from Peter's house. I know that house almost 30 years and I went a lot of times in the backyard with the old man [Louis Bartoluzzi, former owner of 67 Miller Avenue]. We have coffee. **It was nice and flat** and after it go down. The guy was always fixing it every summer, you know he fixed the backyard. After, he got old, and he couldn't do anything. But I saw the hedges and it was up here [indicating a spot on the credenza] and once in a while he would take the them from here [original spot on credenza] and put them closer to the house [indicating another spot on the credenza, closer to her to simulate Mr. Bartoluzzi moving the hedges closer to the house] because it [retaining wall] go down. **Now I don't see the backyard but now I know it's down the hill but it was always flat..** At the time I was living at 68 Miller Avenue I went to.. .Mr. Louie's house and I had coffee with him and his wife because we were very friendly with them. And now you can't put a table because it will go down the hill." (Ms. Katsaris lived at 68 Miller from 1974 – 2010)

Ms. Katsaris's daughter, Sandy Kostaras, also addressed the Board to help interpret what her mother had said, stating: "I grew up at 68 Miller Avenue. I remember Mr. Louie always fixing the yard, but she was saying, which she wasn't able to say to you, that when she went back there, **there was a retaining wall back there and that is why the land was so flat and each year Mr. Louie would complain that the soil is falling and falling and falling and he would have to move his bushes back from the retaining wall [closer to the house] because of the soil erosion.** So I don't understand how bushes could stay flat like that if there was no retaining wall that high because there was flat ground back there...she remembers there was a wall because there wasn't a wall the ground would have gone, there would be nothing back there right now...Timeframe was 1974 to when he passed away [2003]."

4/24/17 Planning Board Meeting:

Michael McGuire, 80 Miller Avenue: "During the late 1960s and early 1970s, I was friendly with Steven Thompson who lived across the street at 67 Miller Avenue in what is now Mr. Bartolacci's house, and would frequently play with Steven in his yard. I also attended several birthday parties in Mr. Thompson's backyard from around 1967 to 1971. Mr. Bartolacci asked me to come here tonight to describe the property at 67 Miller Avenue prior to the collapse of the railroad tie retaining wall.

Steven Thompson and I would often take the stairs down to the lower part of the yard and then climb from the base of the retaining wall up to the top. **This single retaining wall was massive – I would estimate the West face of this retaining wall to be 2 stories high, or approximately 20 feet, angled into the slope due to the slight offset of each railroad tie.** This offset is what gave us a toe hold to allow us to climb the retaining wall. Back then there was a post and beam fence at the top of the retaining wall, as well as a hedgerow to protect people from falling from the backyard down the 20 or so feet.

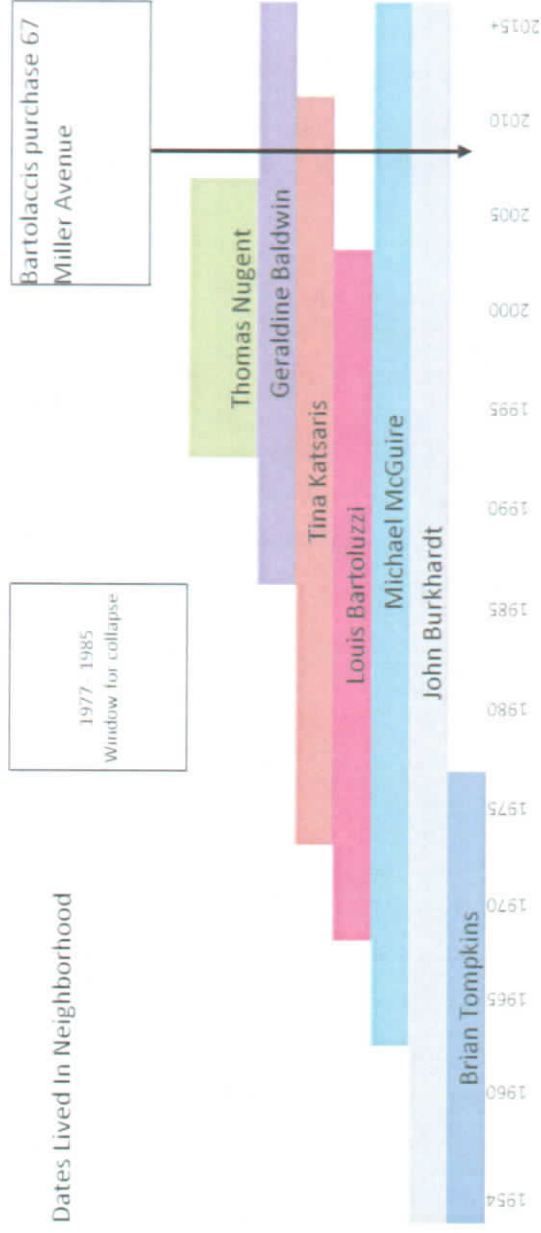
The backyard at 67 Miller Avenue was flat and extended from the house out to the top of the retaining wall. Mr. Bartolacci mentioned to me that some people have suggested that there was a tiered retaining wall back there. **This is absolutely not the case. There was a single massive retaining wall that went from its base straight up to the lawn.**

Mr. Bartolacci invited me into his backyard to see what it looks like now. I can tell you that **Mr. Bartolacci has lost a lot of backyard** due to the collapse of the railroad tie retaining wall. **The sloped area that currently exists between the hedgerow and retaining wall used to be filled in and was flat.** (Continued on next page)

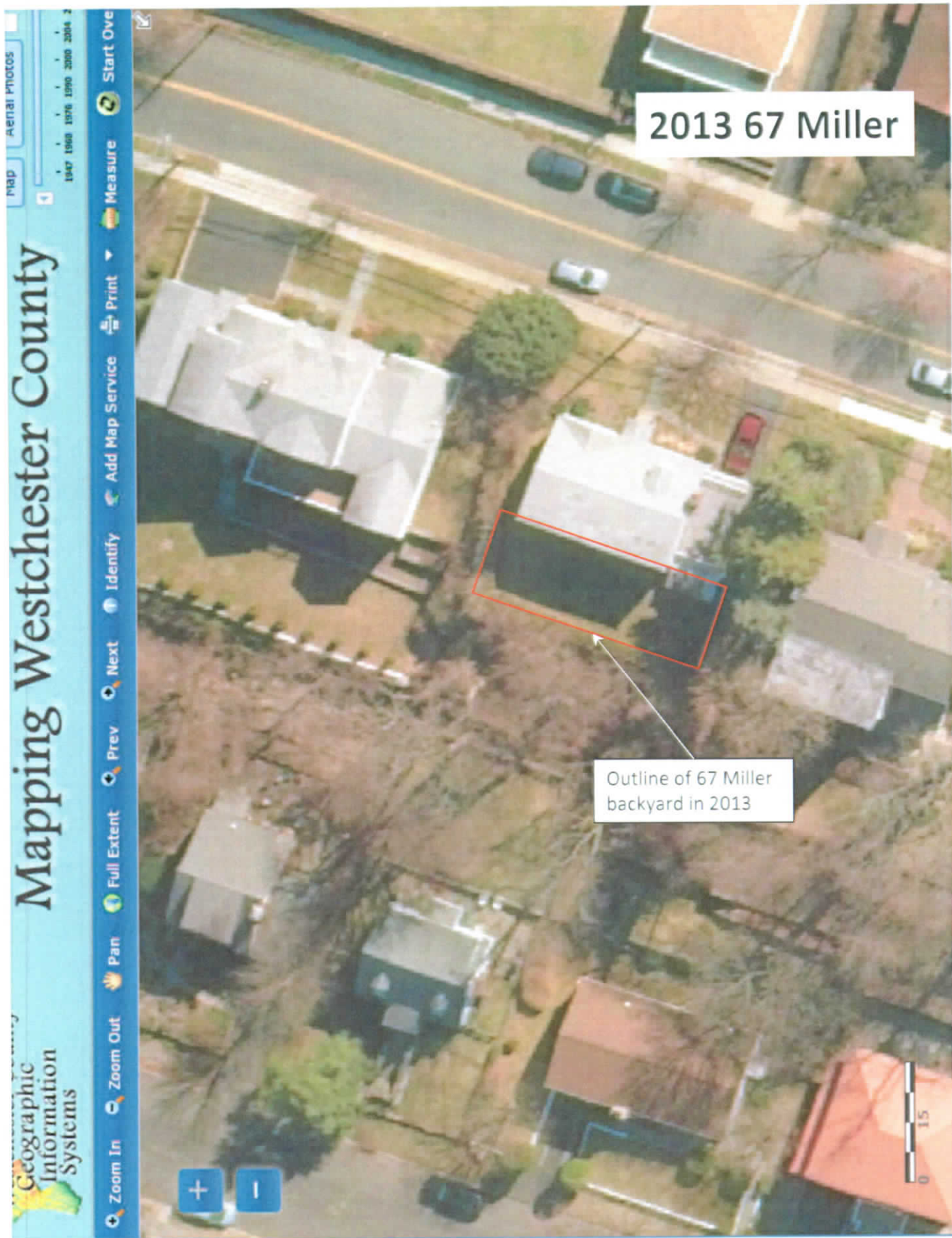
4/24/17 Planning Board Meeting (cont'd):

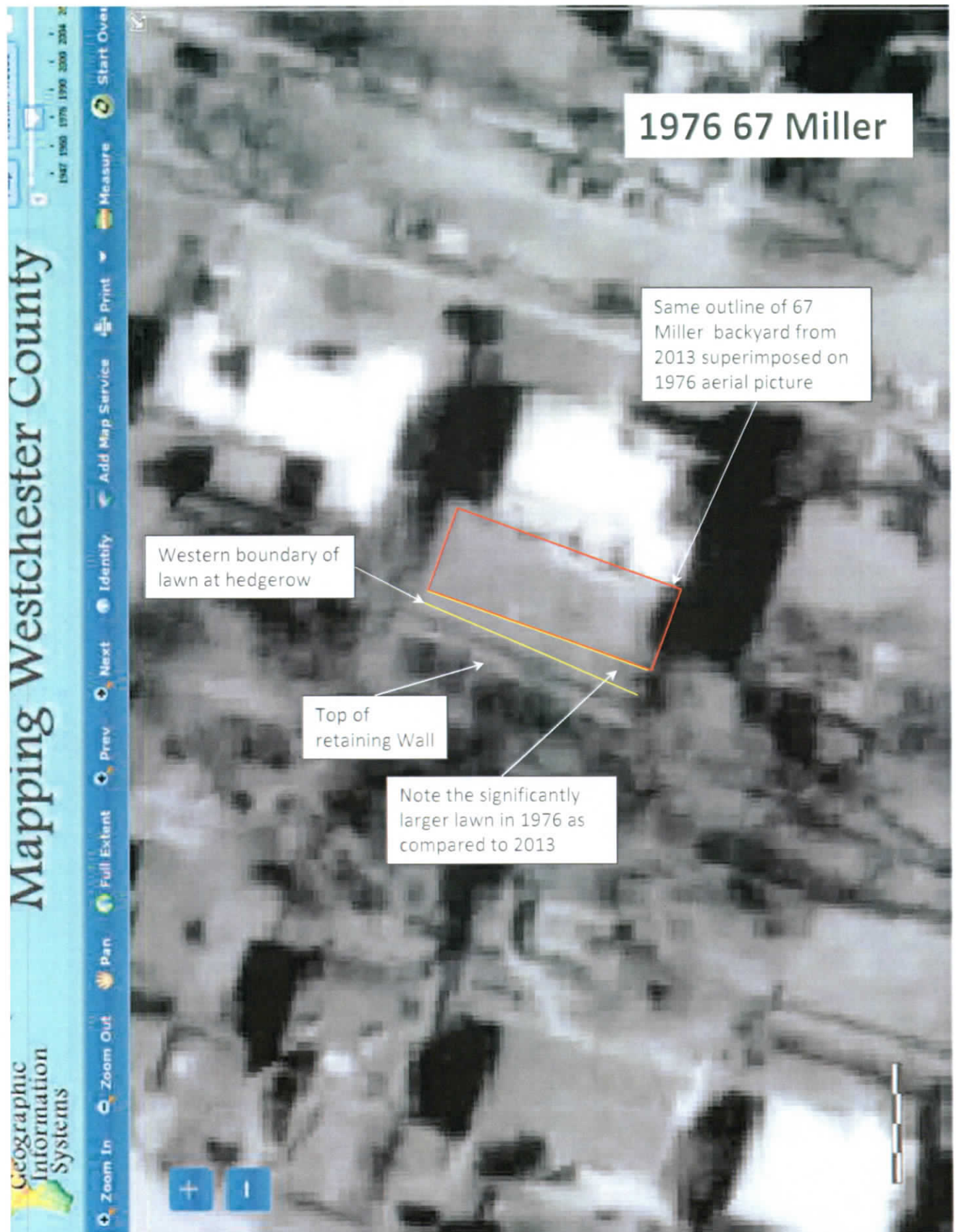
(Continuation from previous page) Back when Steven Thompson and I would take the stairs down, there was also a large vertical railroad tie retaining wall going straight up from the side of the stairs to form the Southern border of the lawn. From what I saw during my visit, there is practically nothing left of this retaining wall and most of the dirt in this Southwest corner is gone."

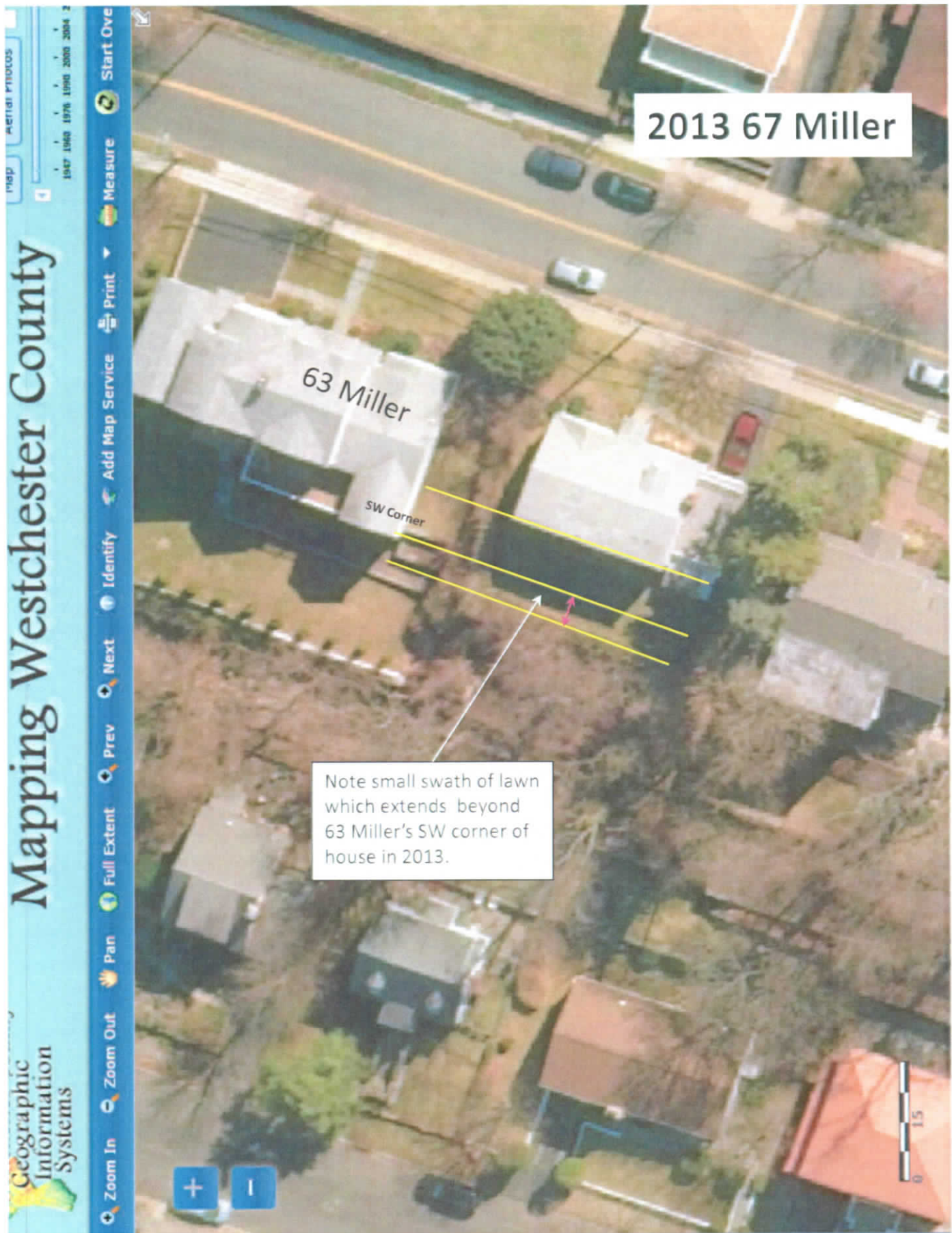
Thomas Nugent, formerly of 63 Miller from 1993 -2006: "This letter is in reference to the retaining wall between 63 and 67 Miller ave. I attached a picture of what the wall looked like in 1998. A Mr Bartoluzzi was the previous owner of 67 Miller ave. According to him while trimming his hedgerow, a "stack" or layer of 12 railroad ties fell off the top of the wall. So before 1993 the wall was about 10 feet higher than is in the picture."

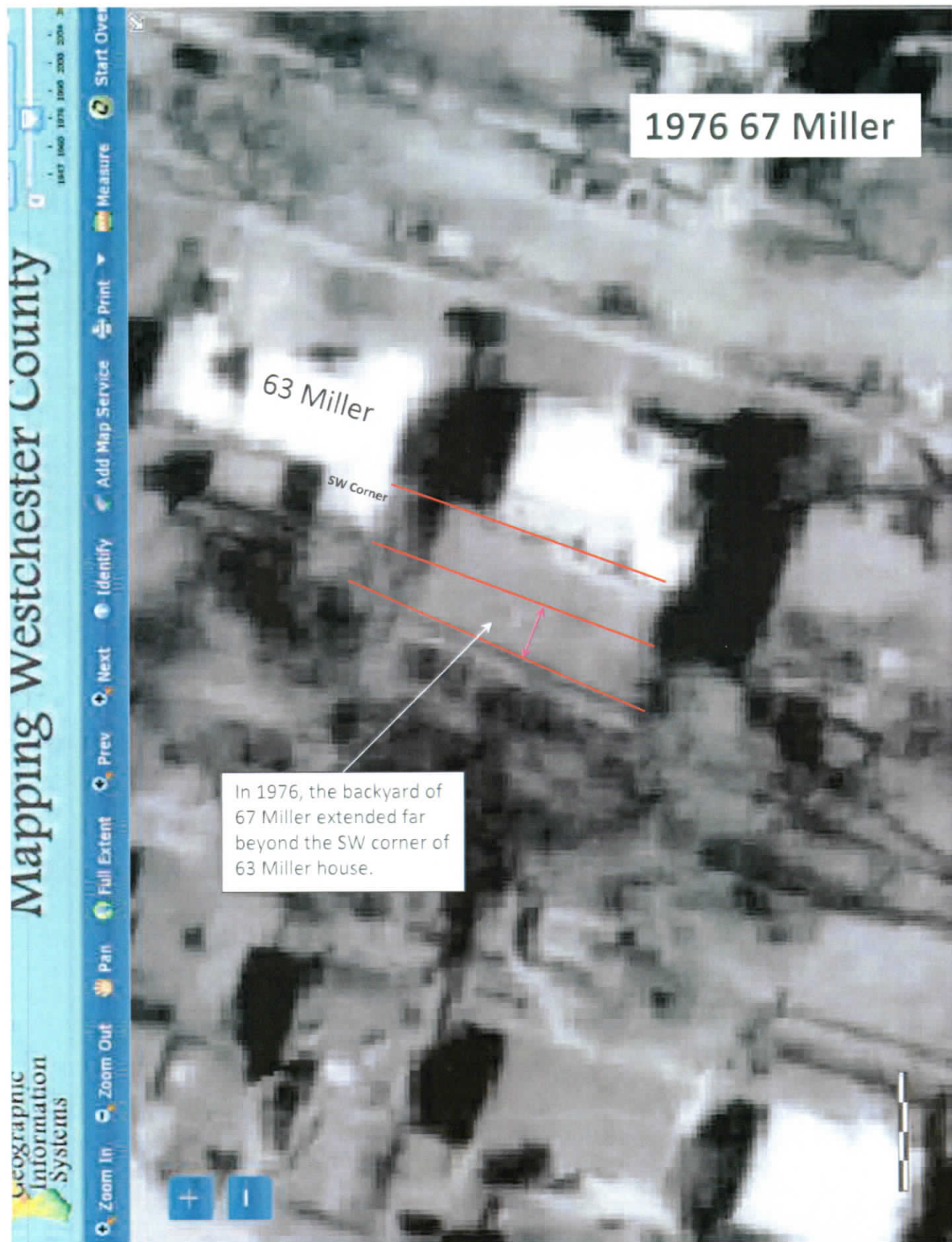


Per the timeline and testimony from neighbors, and in conjunction with Geraldine Baldwin's statement that the retaining wall has never been higher than 5-8 feet since 1986, then all of the retaining wall collapse had to occur in the 8 years between 1977 and 1985, with little to no further decay to the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









1976 67 Miller

63 Miller

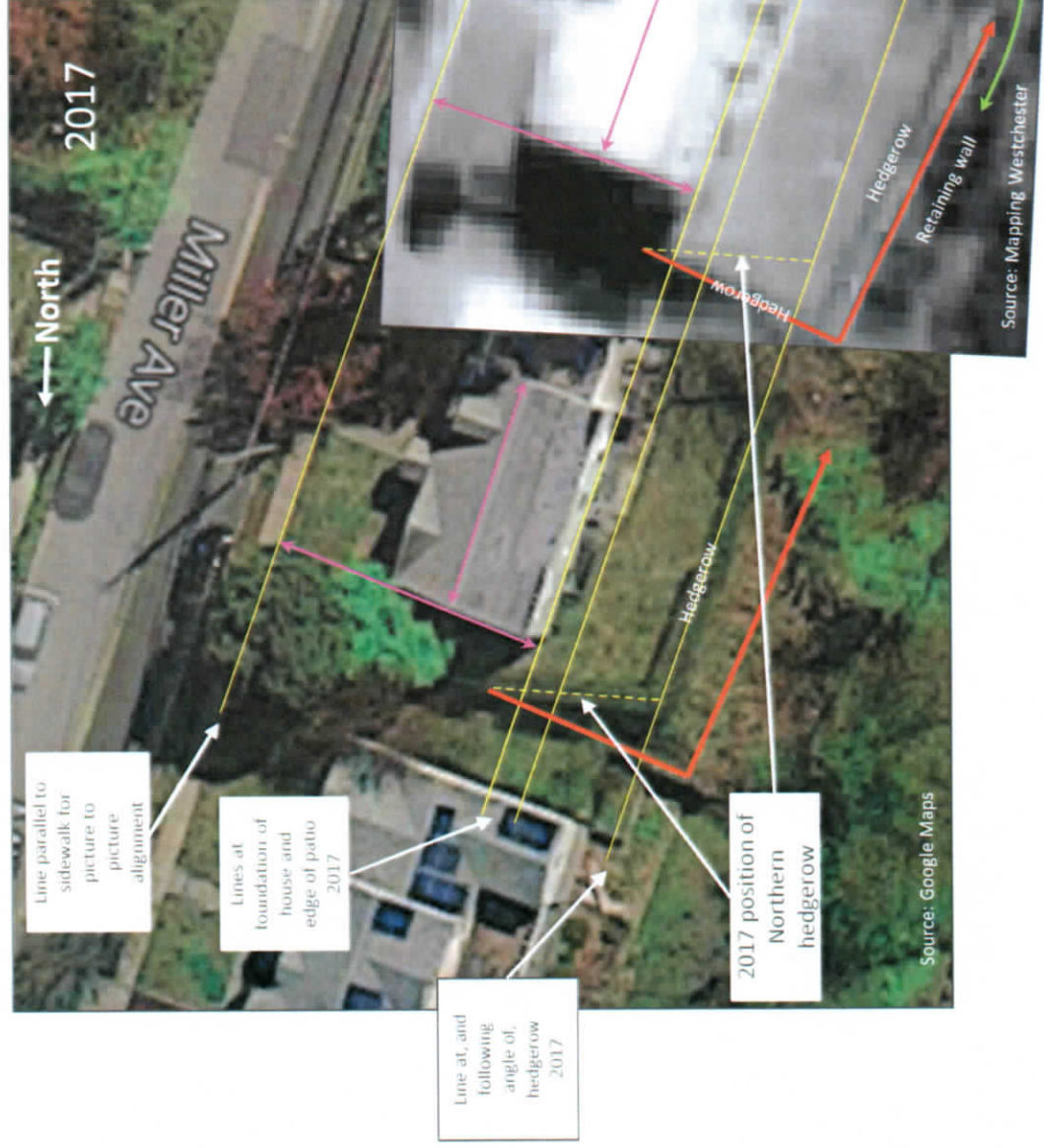
SW Corner

In 1976, the backyard of 67 Miller extended far beyond the SW corner of 63 Miller house.

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

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

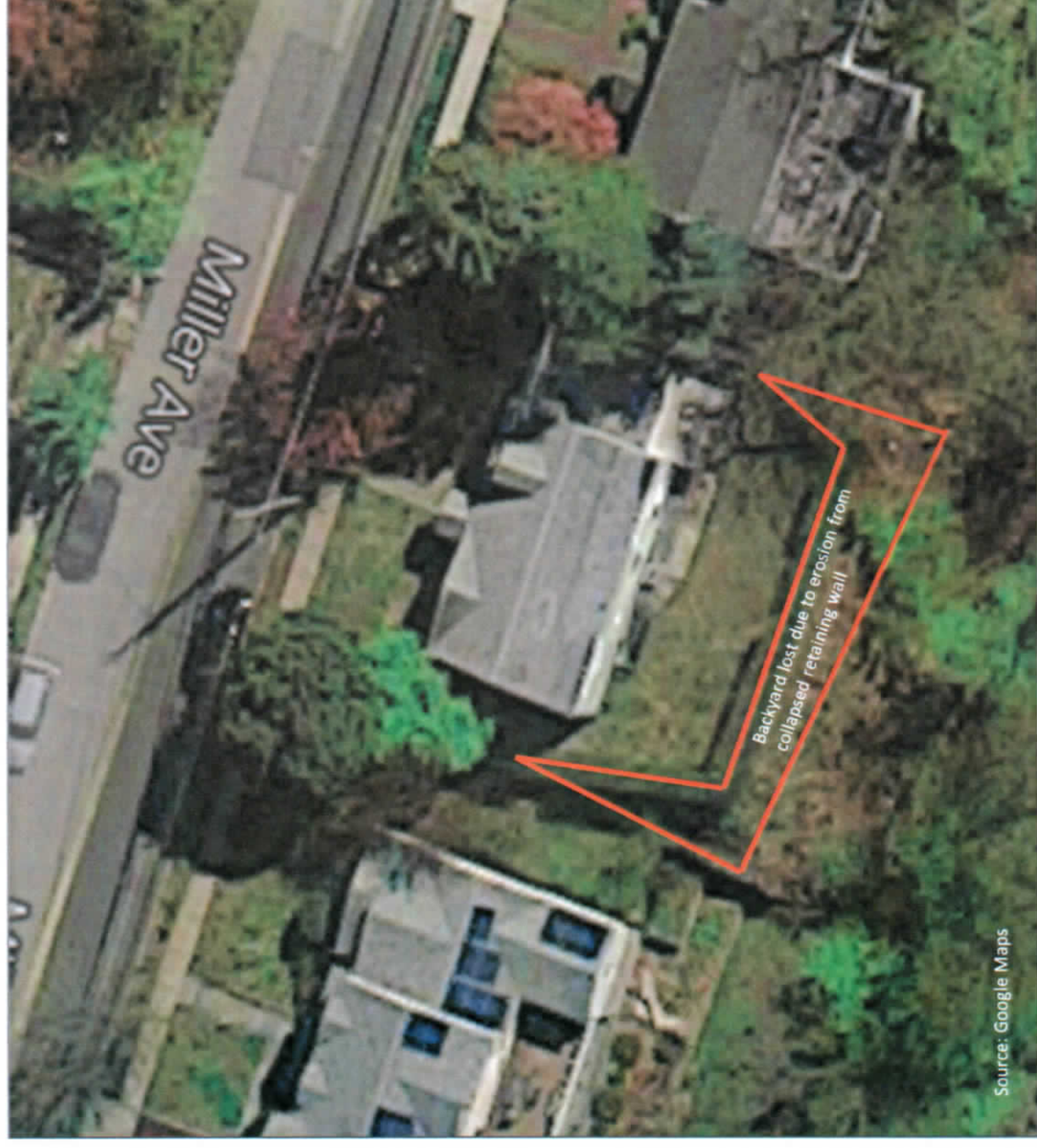
This same red line superimposed on the 2017 photo shows a significant amount of backyard has been lost both in the North, NW corner, and Western portions of the lawn, that the hedgerow has been moved closer to the house, and that the higher layers of railroad ties on the retaining wall have disappeared,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



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



67 Miller Avenue – Backyard lost between 1976 and 2017



Comparison of retaining wall at 67 Miller vs. 15+ foot high retaining wall at 93 Miller as seen in aerial picture from 1976.



93 Miller as it looks presently



1998 Picture of NW Corner of Retaining Wall Provided by Thomas Nugent, Owner of 63 Miller Avenue from 1993 to 2006

"My name is Thomas Nugent. I lived at 63 Miller from 1993 - 2006. This letter is in reference to the retaining wall between 63 and 67 Miller ave. I attached a picture of what the wall looked like in 1998. A Mr Bartoluzzi was the previous owner of 67 Miller ave. According to him while trimming his hedgerow, a "stack" or layer of 12 railroad ties fell off the top of the wall. So before 1993 the wall was about 10 feet higher than is in the picture. If you have any questions about the retaining wall from that time , let me know."

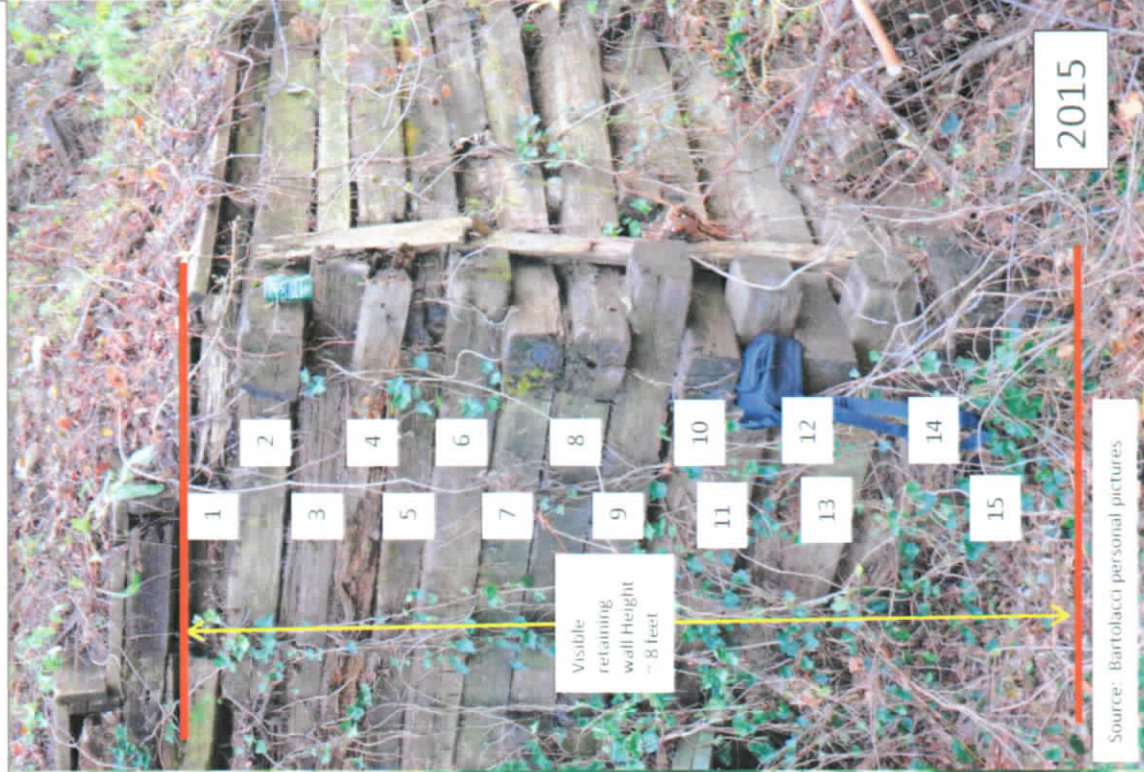
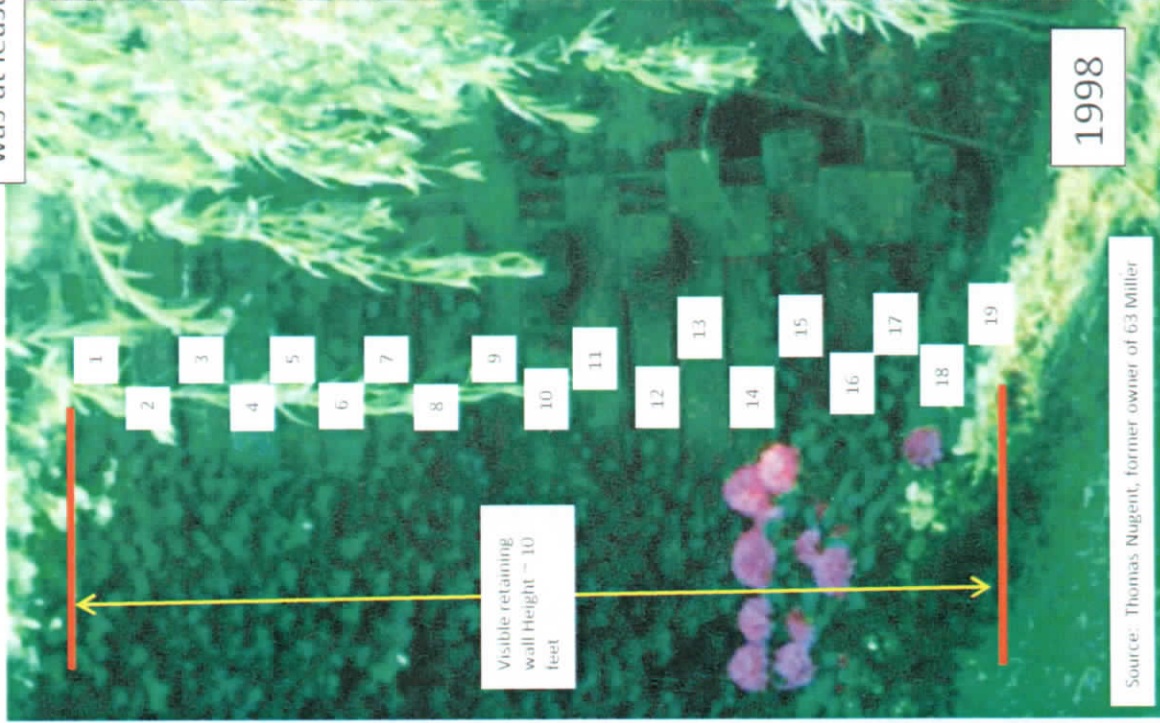
Text Source: Email message from Thomas Nugent to the Planning Board 1/22/17



"I spoke to a neighbor who lived in Brian Tomkins's house, the gentleman you heard from earlier, he moved in after they had moved out. His comment to me was that Louis Bartoluzzi, the owner of our property, had said to him one day "I was trimming the hedges and I took a step and a layer of 12 railroad ties came off the top of the wall and down the hill.""

Text Source: Statement made by Peter Bartolacci at the 8/26/13 Planning Board Meeting. See recording of meeting. Meeting Minutes do not accurately reflect Mr. Bartolacci's statement.

NW Corner of 67 Miller Retaining Wall – In 1998 it was at least 10 feet high.



Picture provided by Thomas Nugent, resident at 63 Miller from 1993 to 2006



Picture taken sometime between 1993 and 1998 from backyard of 63 Miller looking South towards North retaining wall at 67 Miller Avenue

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

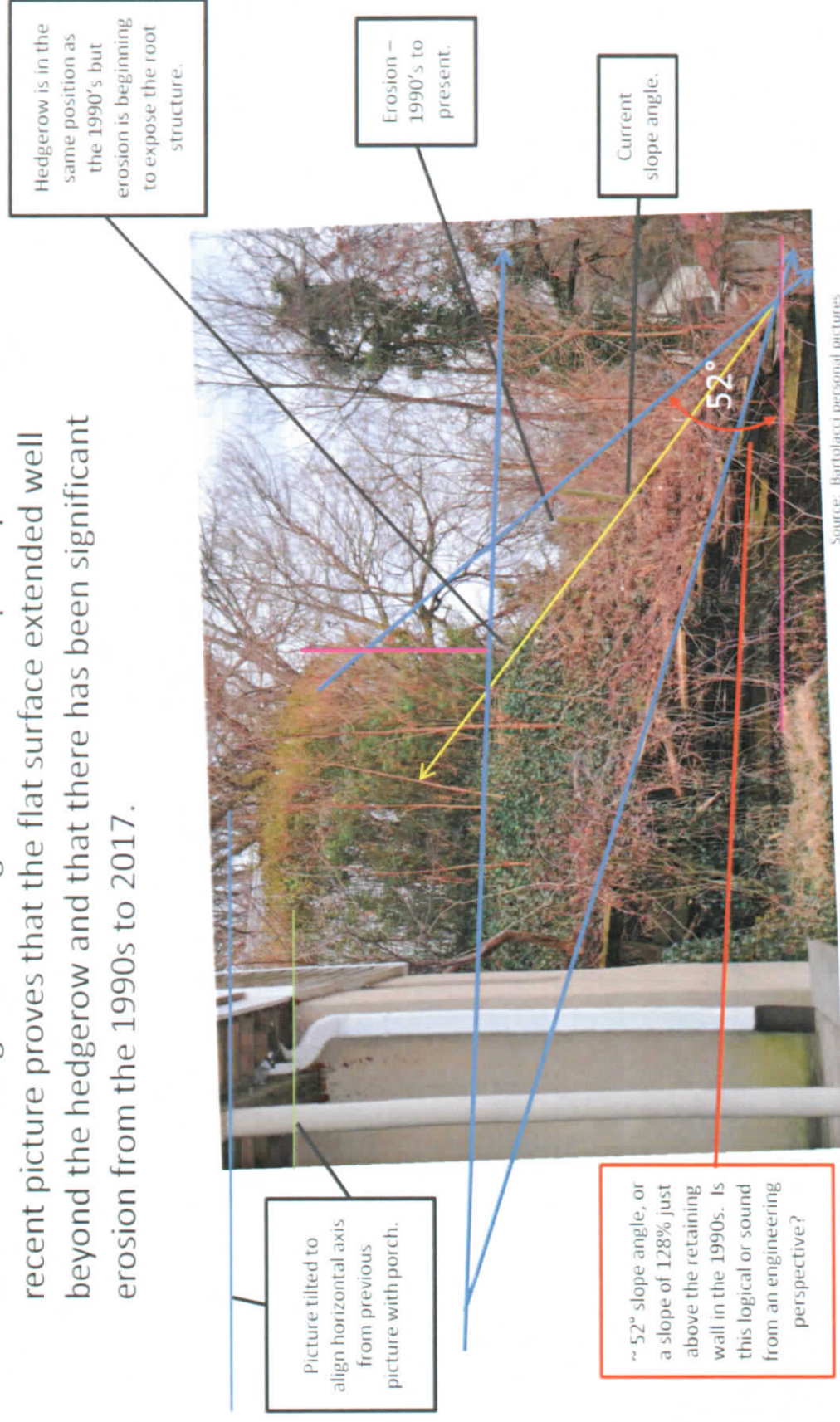


Need to tilt picture to level off using the deck as horizontal reference

Magenta line shows position of hedgerow in the 1990's

Triangle drawn capturing yard level, West slope, and North retaining wall angles

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



Source: Bartolacci personal pictures

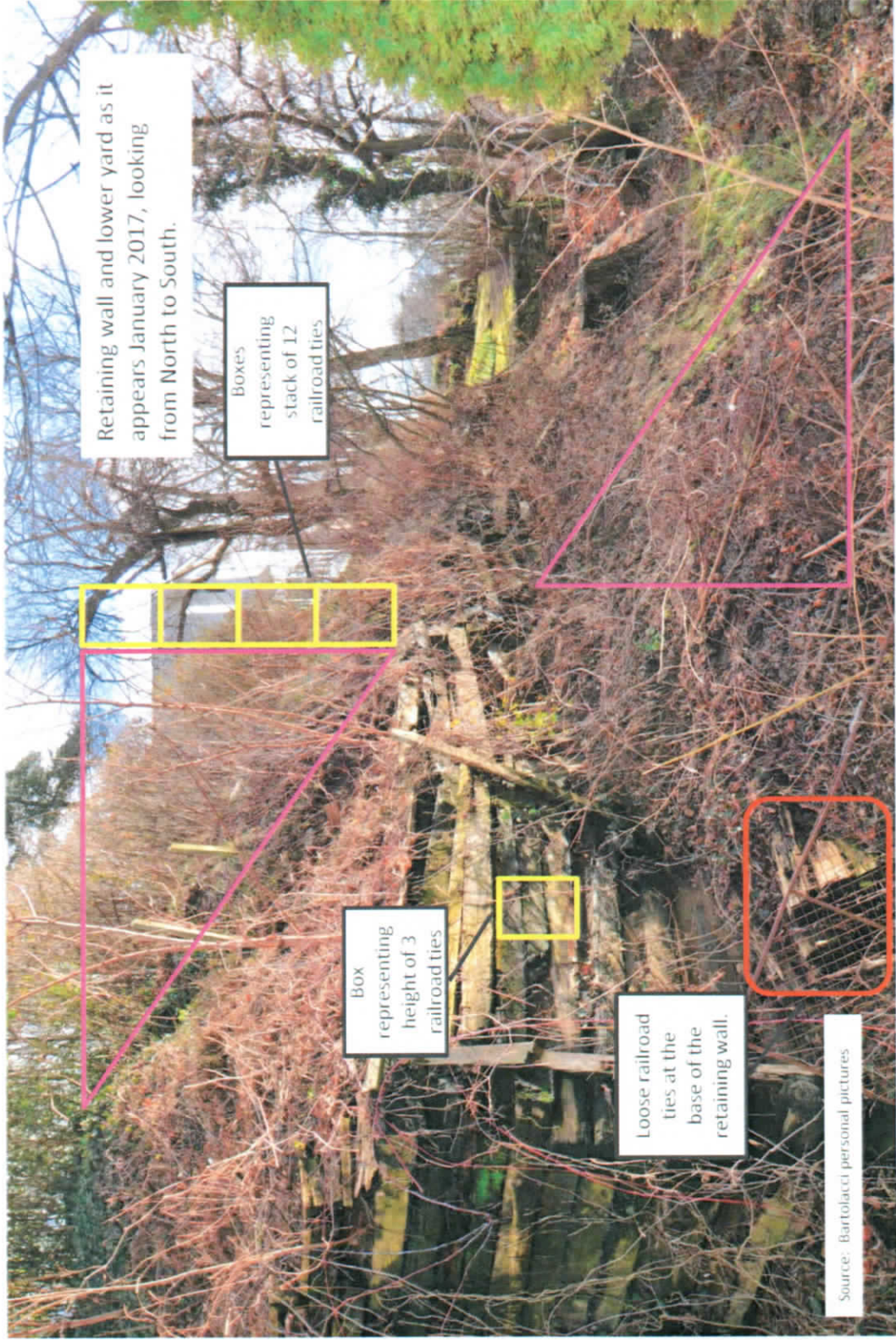
Photo from January 2017

The amount of apparently eroded soil deposited at the base of the retaining wall appears consistent with a leveled off backyard extending out all of the way to the top of a large retaining wall. This is also consistent with testimony from former neighbors.



Retaining wall and lower yard as it appears January 2017, looking from South to North.

Source: Bartolacci personal pictures



Retaining wall and lower yard as it appears January 2017, looking from North to South.

Boxes representing stack of 12 railroad ties

Box representing height of 3 railroad ties

Loose railroad ties at the base of the retaining wall.

Source: Bartolacci personal pictures

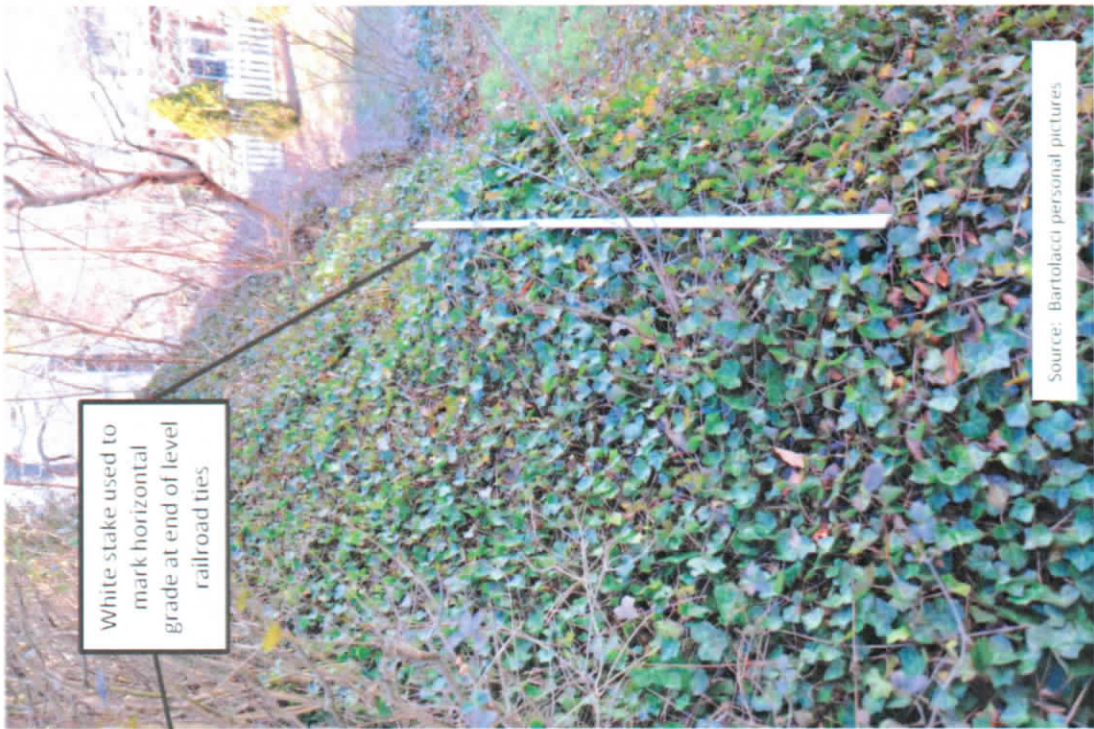
There are currently at least 7 visible railroad ties haphazardly piled at the base of the NW corner of the existing retaining wall which would appear to have fallen off the top of the retaining wall. There are likely many more buried underneath the pile of dirt at the base of the retaining wall.



Source: Bartolacci personal pictures

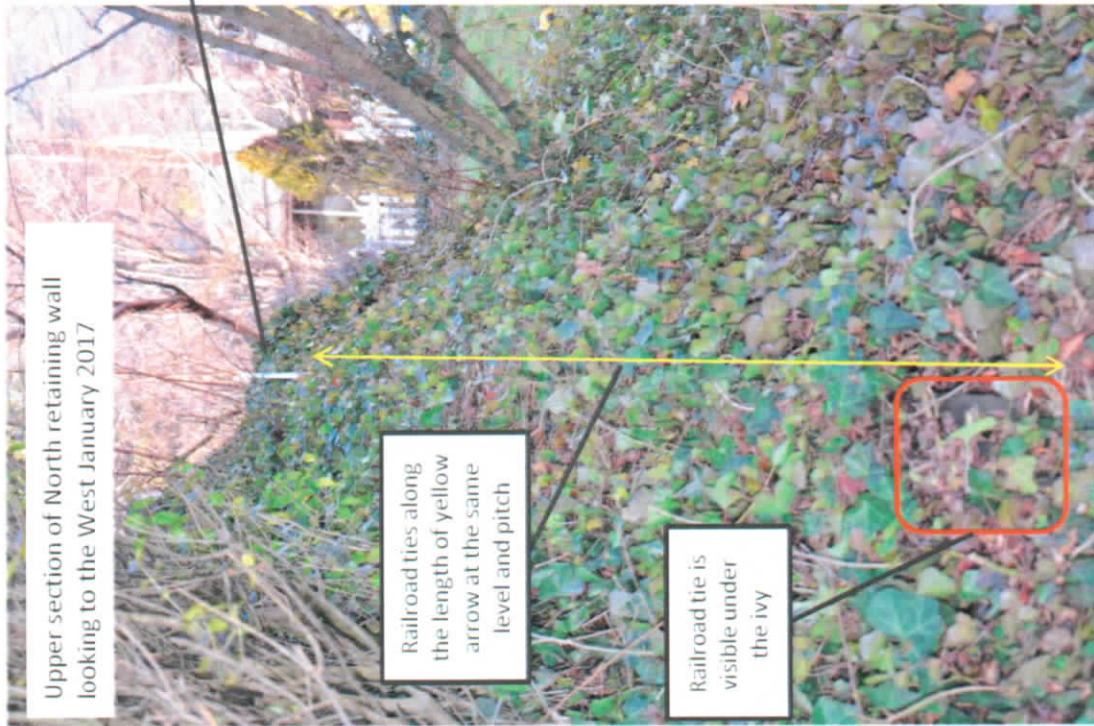
Dilapidated tie backs significantly above top of existing retaining wall indicate that a higher retaining wall was once in place, consistent with neighbor testimony.





White stake used to mark horizontal grade at end of level railroad ties

Source: Bartolacci personal pictures



Upper section of North retaining wall looking to the West January 2017

Railroad ties along the length of yellow arrow at the same level and pitch

Railroad tie is visible under the ivy

Line drawn at same pitch as white stake and upper retaining wall railroad ties, extending out to corner of retaining wall

White stake used to mark horizontal grade at end of level railroad ties on upper section of retaining wall

Box representing height of 3 railroad ties

4 of the same size boxes stacked on top of each other to represent the stack of 12 railroad ties which fell off the retaining wall sometime before 1993 according to Mr. Bartoluzzi

NW Corner Retaining Wall January 2017

Source: Bartolacci personal pictures



Current pitch of 67 Miller Backyard – South end, close to patio



Multiple former neighbors testified that the backyard at 67 Miller used to be "flat". This is clearly no longer the case due to the severe erosion which has occurred

Current pitch of 67 Miller Backyard – South end, close to hedgerow



Current pitch of 67 Miller Backyard – North end, close to Patio



Current pitch of 67 Miller Backyard – North end, close to hedgerow



Multiple former neighbors testified that the backyard at 67 Miller used to be "flat". This is clearly no longer the case due to the severe erosion which has occurred

EXHIBIT B

April 24, 2017

Members of the Tarrytown Planning Board,

My name is Michael McGuire. I live at 80 Miller Avenue. During the late 1960s and early 1970s, I was friendly with Steven Thompson who lived across the street at 67 Miller Avenue in what is now Mr. Bartolacci's house, and would frequently play with Steven in his yard. I also attended several birthday parties in Mr. Thompson's backyard from around 1967 to 1971. Mr. Bartolacci asked me to come here tonight to describe the property at 67 Miller Avenue prior to the collapse of the railroad tie retaining wall.

Steven Thompson and I would often take the stairs down to the lower part of the yard and then climb from the base of the retaining wall up to the top. This single retaining wall was massive – I would estimate the West face of this retaining wall to be 2 stories high, or approximately 20 feet, angled into the slope due to the slight offset of each railroad tie. This offset is what gave us a toe hold to allow us to climb the retaining wall. Back then there was a post and beam fence at the top of the retaining wall, as well as a hedgerow to protect people from falling from the backyard down the 20 or so feet.

The backyard at 67 Miller Avenue was flat and extended from the house out to the top of the retaining wall. Mr. Bartolacci mentioned to me that some people have suggested that there was a tiered retaining wall back there. This is absolutely not the case. There was a single massive retaining wall that went from its base straight up to the lawn.

Mr. Bartolacci invited me into his backyard to see what it looks like now. I can tell you that Mr. Bartolacci has lost a lot of backyard due to the collapse of the railroad tie retaining wall. The sloped area that currently exists between the hedgerow and retaining wall used to be filled in and was flat.

Back when Steven Thompson and I would take the stairs down, there was also a large vertical railroad tie retaining wall going straight up from the side of the stairs to form the Southern border of the lawn. From what I saw during my visit, there is practically nothing left of this retaining wall and most of the dirt in this Southwest corner is gone.

I would be happy to answer any questions you may have about the railroad tie retaining wall that existed at 67 Miller Avenue prior to its collapse.

Sincerely,

Michael McGuire

Michael McGuire
80 Miller Avenue
Tarrytown, NY 10591
(914) 715-1808

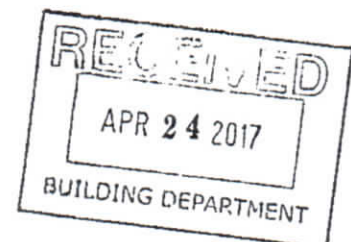


EXHIBIT C



TARRYTOWN-ON-HUDSON

One Depot Plaza, Tarrytown, New York 10591-3199

Mayor
DREW FIXELL
Deputy Mayor
THOMAS T. BASHIER

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
914-631-3668
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

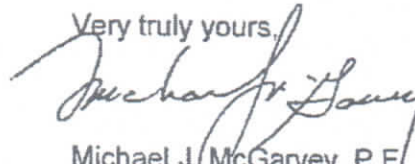
RE: 67 Miller Avenue

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 been 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

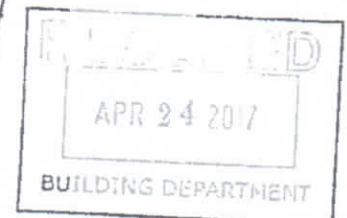


EXHIBIT D

October 21, 2103

Mr. McGarvey,

You will recall that in the August Planning Board meeting, Chairman Friedlander instructed you to determine the height of a retaining wall on my property (67 Miller Avenue) assuming the base of the wall was in its current location, and there was a flat backyard (5% grade) extending from the house directly to the top of this retaining wall. In this meeting, you also agreed to share this calculation with my wife and me.

As I had not received any communication from you on the calculation, on October 18, 2013, I met with you to inquire as to the status of the calculation, at which time you provided me with a copy of a letter dated September 26, 2013, which you sent to the Planning Board, Mr. Blau, and attorney Shumejda (but not to me or my wife). This letter provided a summary of my engineer's calculations using the agreed criteria as well as your "professional opinion" that the original retaining wall was a three tier design and not a single wall. You justified this conclusion by stating that "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."

I have several questions regarding this letter:

1. In the August Planning Board meeting, my wife specifically requested that you share your conclusions with us, and you readily agreed to do so, so why was I not copied on the original letter you sent on September 26th to the Planning Board and others?
2. Considering that 3 impartial eyewitnesses have stated that there was a single wall, and this evidence was accepted by the Planning Board, it is difficult to understand what leads you to believe that there were three walls, each approximately 7' high, especially considering that one section of the current wall is approximately 10 feet high. Could you provide more information as to how you reached your conclusion, including any evidence used to substantiate this claim?
3. Would it be possible for you to provide a scaled drawing of what you believe the wall looked like when it was originally built? You stated in the August Planning Board meeting that when making your calculations "We're going to keep the base of the wall where it is." In doing so, and then assuming a three tier design as you opined, you will either end up with a near vertical three tier design which would have resulted in almost the same amount of erosions as a single wall, or a design that intrudes so far into my backyard that I suspect I would lose backyard that I currently have. You will also recall that both Mr. Tompkins and Ms. Katsaris testified that we have lost a significant amount of backyard. I am curious as to what your vision of the original wall is.
4. How did you calculate the amount of fill (850 cubic yards) that would have had to wash down the hill? While I am not a professional engineer, it would appear that your estimate has been exaggerated significantly (200 -300%). For reference purposes, 850 cubic yards of soil represents a cuboid area of 70' by 20' by 16.4'. Please see Appendix I for further detail.
5. Was it your intent to ignore the Planning Board's instructions which asked you to calculate the height that the wall had to be, assuming a flat backyard (agreed to be 5%) extending out to the retaining wall with no change in the pitch of the backyard? Your letter states that the calculations

you provided were done by my engineer, which you had specifically said you would not rely on so that your measurements would be seen as impartial.

6. Did the Planning Board ask you why you had not done what was requested?
7. Did the Planning Board ask for your "professional" opinion as to what the design of the original retaining wall was? In the Public Hearings where my property was discussed, at no time did the Planning Board make this request.
8. When you presented your findings to the Planning Board in the September working session, was there any scrutiny by the Planning Board? Did they ask any questions? If so, what were these questions, and how did you respond. Given that your conclusion (3 tiered wall) directly contradicts the testimony by three impartial witnesses, and that your fill calculation appears to be wildly inflated, I would have expected quite a bit of push back from the Planning Board members.

As is evident from my questions above, you have not done what the Planning Board asked you to do, and what you said you would do in the August Planning Board Meeting:

"We're going to keep the wall in the location where it is. I'm going to try to, to the best of my ability, determine the height of where the wall existing, and I'm the final say on that? I think it was pretty much agreed that the left hand side was a little bit higher than the right hand side and I think on the latest plan it shows 6' up to 12' and I will take it from there."

Note that you even referred to "the wall", not "the walls", or the "three tiered wall", or the "multi-tiered wall".

You will also recall that I was adamant about making sure that you were going to assume a 5% slope going from the house level back to the top of the retaining wall, not the current grade which is significantly steeper than it was originally. You may recall that both my wife and I referred to this as a "geometry exercise", and Chairman Friedlander and the members of the Planning Board agreed with this approach.

As you have agreed to visit the property again, I think it would be prudent for you to notify the Planning Board that the conclusions reached in your letter dated September 26th need to be revisited and that they should disregard this letter. You have not done what you were instructed to do which was to estimate the height of a single retaining wall assuming a flat backyard, you have provided incorrect information regarding the amount of erosion, and your unsolicited professional opinion that a 3-tiered wall was the original design is completely unsubstantiated by any evidence and directly contradicts the eyewitness accounts. Do you really want to associate your professional reputation with such a dubious piece of work?

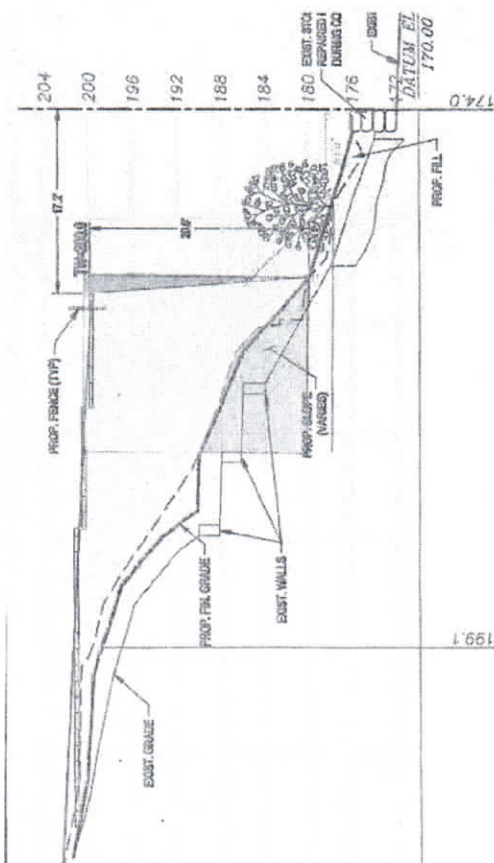
I look forward to receiving your updated letter and responses to my questions so that we can have an educated discussion regarding your conclusions.

Sincerely,

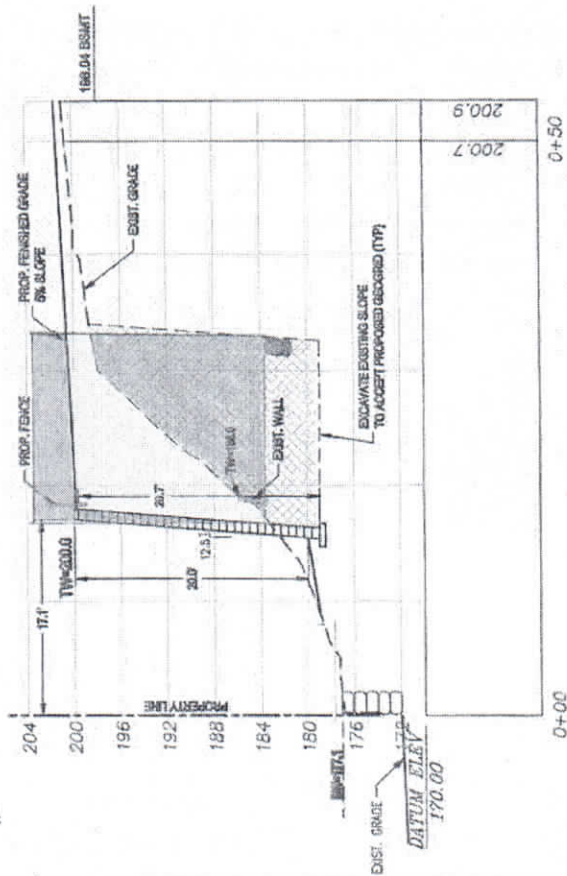
Peter Bartolacci
67 Miller Avenue
Tarrytown, NY 10591

Appendix I

The following diagrams show cross sections of our property at various points, along with the outline of a retaining wall built to the specifications discussed in the August Planning Board meeting: 5% grade backyard extending all of the way to the retaining wall with no change in pitch. Superimposed on top of these cross sections is a rectangle representing the dimensions of a cuboid measuring 850 cubic yards (70 feet by 20 feet by 16 feet). The areas in yellow represent actual eroded soil that would need to be filled in. The areas in orange represent the excess fill that would be needed to approximate 850 cubic yards. As you can see, the estimate of 850 cubic yards of erosion is highly exaggerated.

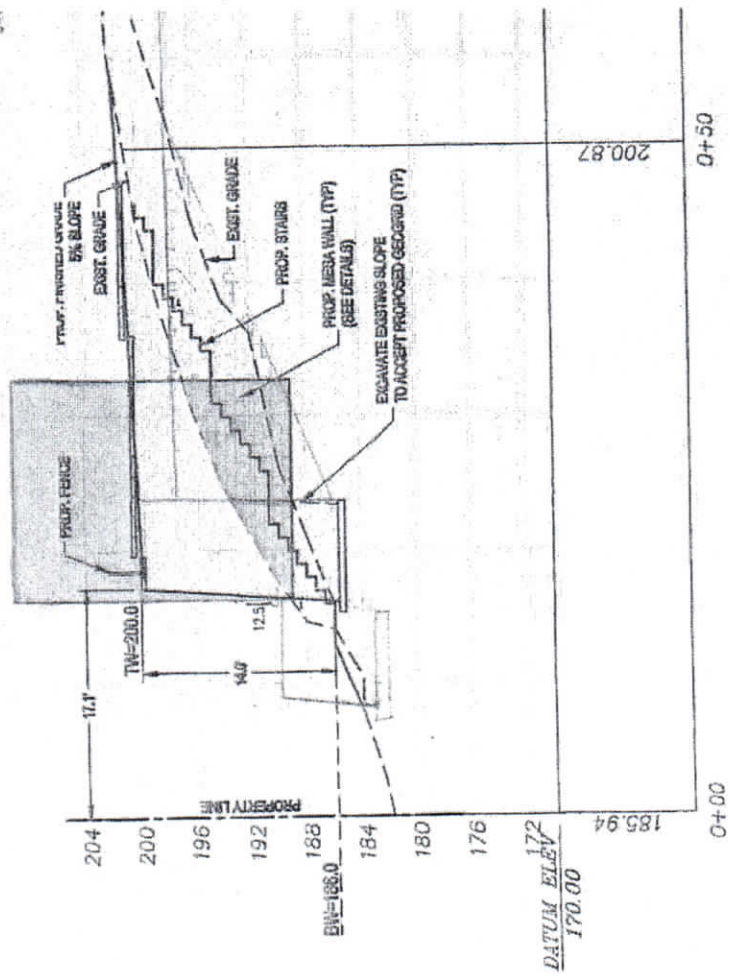


NORTH WALL ELEVATION
 SCALE: 1"=10'-0" HORZ & VERT.



SECTION B-B
 SCALE: 1"=10' (H) & (V)





SECTION E-E
SCALE: 1"=10' (H) & (V)

EXHIBIT E

MARK W. BLANCHARD
PARTNER



ALAN H. ROTHSCHILD
OF COUNSEL

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

BLANCHARD & WILSON LLP

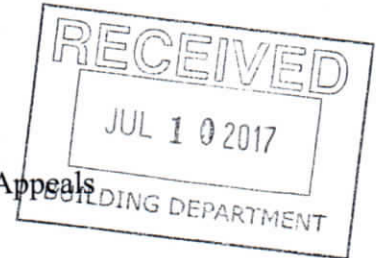
DENNIS E.A. LYNCH
OF COUNSEL

235 Main Street / Suite 330 / White Plains, NY 10601
P (914) 461-0280 F (914) 461-2369
BlanchardWilson.com

July 10, 2017

Via Hand Delivery

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



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

Dear Honorable Members of the Tarrytown Zoning Board of Appeals,

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

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

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

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

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

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

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

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

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

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

III. EXISTING WALLS IN TARRYTOWN

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

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BUILDING DEPARTMENT

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

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

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

IV. IMPACT FROM TRUCKLOADS CARRYING 262 CUBIC YARDS OF FILL

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

V. CONCLUSION

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

Respectfully submitted,



Kristen K. Wilson

cc: Geraldine Baldwin



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
In the matter of the Application of
PETER BARTOLACCI,
Petitioner,

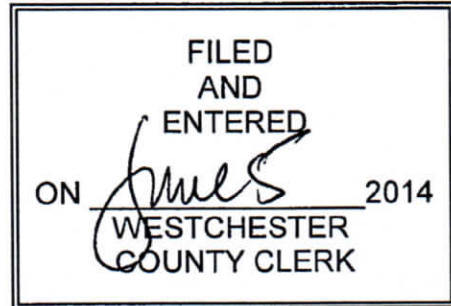
For a Judgement Pursuant to Article 78 of
the CPLR,

-against-

VILLAGE OF TARRYTOWN, ZONING
BOARD OF APPEALS

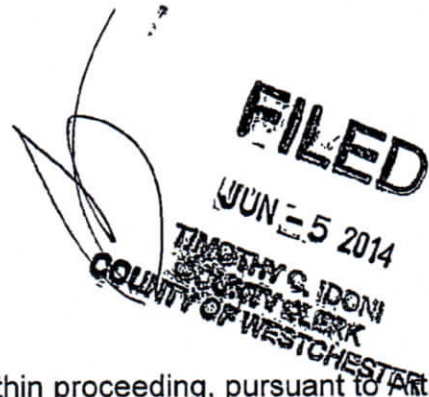
Respondent.
-----X

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:

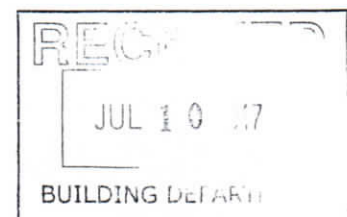
Notice of Petition, Petition with annexed Exhibit A	1-2
Verified Answer, Affidavit of Sally Lawrence in Opposition to Petition, Memorandum of Law	3-5
Certified Record containing Exhibits 1 through 238, Packet of Copies of Plans Furnished to Petitioner in accordance with the Freedom of Information Law, 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 ¹

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

¹ 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.

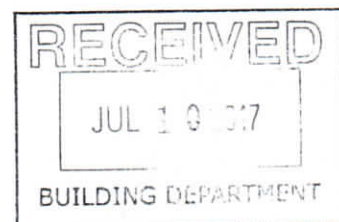


presently in disrepair and, according to Petitioner, has resulted in "a steeply sloped pile of earth and railroad ties in a collapsed heap at the rear and side of the property, encroaching onto neighbors' properties and rendering the back yard [sic] essentially unusable . . . " (Verified Petition, ¶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



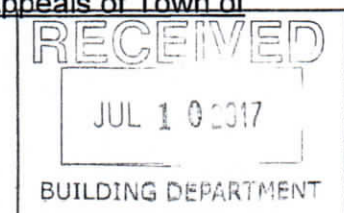
The Respondent ZBA maintains its January 13, 2014 determination is lawful and represents a proper and consistent application of applicable governing law.

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 Vil. of South Hampton, 7 AD3d 710, 711 [2004], citing, Matter of Ifrah v. Utschig, 98 NY2d 304, 308 [2002]; Matter of Falco Realty v. Town of Poughkeepsie 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 458 [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 Vil. of Harriman, 19 AD3d 422, 424 [2d Dept. 2005], lv. denied 6 NY3d 709 [2006], quoting Matter of Toys "R" Us v. Silva, 89 NY2d 411, 418-419 [1996] [internal quotation omitted]; Matter of Dudyshyn v. Zoning Bd. of Appeals of Town of

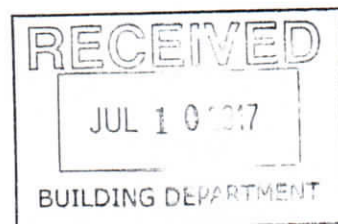


Mount Pleasant, 255 AD2d 445 [2d Dept. 1998]; Matter of Sposato v. Zoning Bd. of Appeals of Vil. of Pelham, 287 AD2d 639 [2d Dept. 2001]; Matter of Lee v. Zoning Bd. of Appeals of Town of Putnam Valley, 1 AD3d 600 [2d Dept. 2003]; see also, Matter of Pecoraro v. Board of Appeals of Town of Hempstead,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



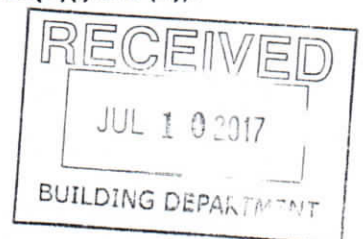
(Tarrytown Code § 305-67(A)(i)(a) and (c). The Tarrytown Code does not differentiate as to "steep slopes" which occur naturally or as a result of a manmade condition.

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 § 7-725². 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)³. 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

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

³The 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)).



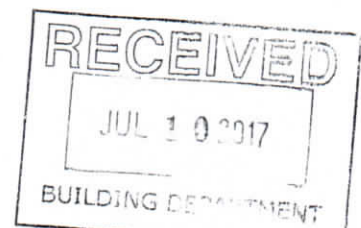
procedures established in the following Village of Tarrytown local laws (Tarrytown Code § 305-66). Further, the Tarrytown Code plainly mandates the application of these regulations to enumerated laws as well as "any other local law relating to matters regulating the natural or built environment which 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 embraced by this chapter or other local laws, codes of 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

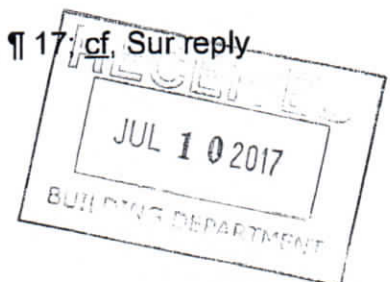


from site plan approval by the Planning Board. While the record clearly establishes the existence of a retaining wall on the site, there is undeniable proof that such retaining wall was constructed of railroad ties as opposed to concrete and that the wall has deteriorated to the point of collapse.

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 Mesa 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. 178-79).

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 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]).

Moreover, as it is rational, it is entitled to deference (Matter of Raritan 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 21 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 96 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)⁴.

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 116 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)(l); Verified Petition, ¶ 63).

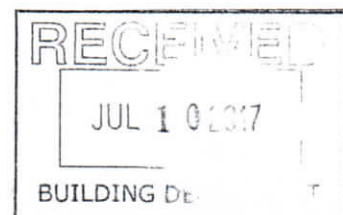
The record below addresses an additional application seeking to construct a retaining wall in the presence of a steep slope condition. This involved property located at 65 Castle Heights Avenue. The Building Inspector/Engineer referred this application to the Planning Board due to "slopes on the sides 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 151 Rte. 17M Assoc, 19 AD3d 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

⁴ 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

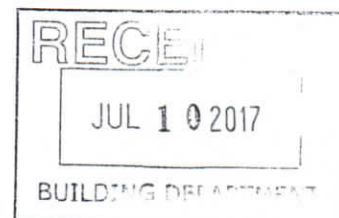


Hon: Barry E. Warhit
Acting Justice, Supreme Court

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



Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D50394

C/hu

____AD3d____

Argued - October 11, 2016

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
COLLEEN D. DUFFY
FRANCESCA E. CONNOLLY, JJ.

2014-07192

DECISION & ORDER

In the Matter of Peter Bartolacci, appellant, v Village
of Tarrytown Zoning Board of Appeals, respondent.

(Index No. 1326/14)

Feerick Lynch MacCartney, PLLC, South Nyack, NY (J. David MacCartney, Jr., of
counsel), for appellant.

Silverberg Zalantis LLP, Tarrytown, NY (Steven M. Silverberg of counsel), for
respondent.

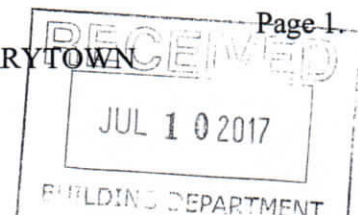
In a proceeding pursuant to CPLR article 78 to review a determination of the Village
of Tarrytown Zoning Board of Appeals dated January 13, 2014, which, after a hearing, determined
that the Village of Tarrytown Planning Board had the authority to review the petitioner's application
for a building permit, 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.

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 [internal citations omitted]). "However, where the issue

November 16, 2016

MATTER OF BARTOLACCI v VILLAGE OF TARRYTOWN
ZONING BOARD OF APPEALS




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; *see Matter of Toys R Us v Silva*, 89 NY2d 411, 419). “[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).

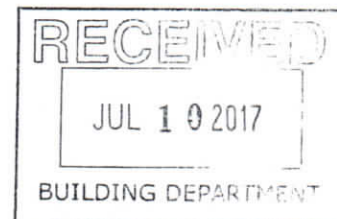
Here, pursuant to our independent review of the law, we conclude that the determination of the respondent Village of Tarrytown Zoning Board of Appeals (hereinafter the ZBA) complied with the applicable legal principles (*see Matter of BBJ Assoc., LLC v Zoning Bd. of Appeals of Town of Kent*, 65 AD3d 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; *Matter of Corona Realty Holdings, LLC v Town of N. Hempstead*, 32 AD3d 393, 395). 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.

DILLON, J.P., DICKERSON, DUFFY and CONNOLLY, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court



November 16, 2016

Page 2.

MATTER OF BARTOLACCI v VILLAGE OF TARRYTOWN
ZONING BOARD OF APPEALS

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BUILDING DEPARTMENT

offer properly on
MILLER BROTHERS

CHURCH

ST.

INDEPENDENCE

ST.

BRIDGE ST.

BROADWAY

MILLER

REVIEW

PARK

AVE.

GLEN ST.

MILLER
E.

177° 01' 16" E

FRANKLIN

WASHINGTON
D.C.

BENEDICT PARK

SUBDIVIDED & DEVELOPED

D

MILLER BROTHERS

IN THE VILLAGE OF

TARRYTOWN

Town of Greasburgh

Westchester Co., N.Y.
Sept. 1880

Notes:
A-1's 800 to 825 hours
Subsequent "Mama's" and
Some additional hours taken "Troy" to 8

SEPT. 2, 1924

SEPT. 2, 1924

Follow us through Africa on the *Discover* at *Wash. & Jago* in 1994.

1866-1867

We, Ward Computer, a Cdn. do hereby certify that the fields noted in the story above have been used "completely" (July 29, 1984) and that the computations were completed and map drafted 3 Sept. 84.

[illegible]

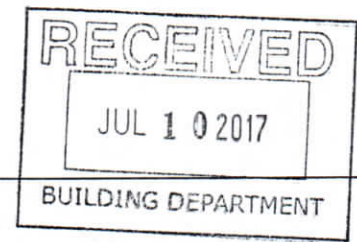
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9 JUL 10 2017

BUILDING DEPARTMENT

BUT

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



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

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

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



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

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

Ms Moriarty

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

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

My Question: Am I correct in understanding from the Survey that the dry stone wall is one half on my property and one half on Lots 107 and 106? Do I own at least part of this wall?

I would appreciate a reply from your Surveyor at your earliest convenience, preferably before the close of business today

Thanks in advance

Geraldine F. Baldwin





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

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

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

Lot Area = 5,000 sq. ft.

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

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

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

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

Copyright (c) 2014 Ward Carpenter Engineers, Inc. All Rights Reserved.

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

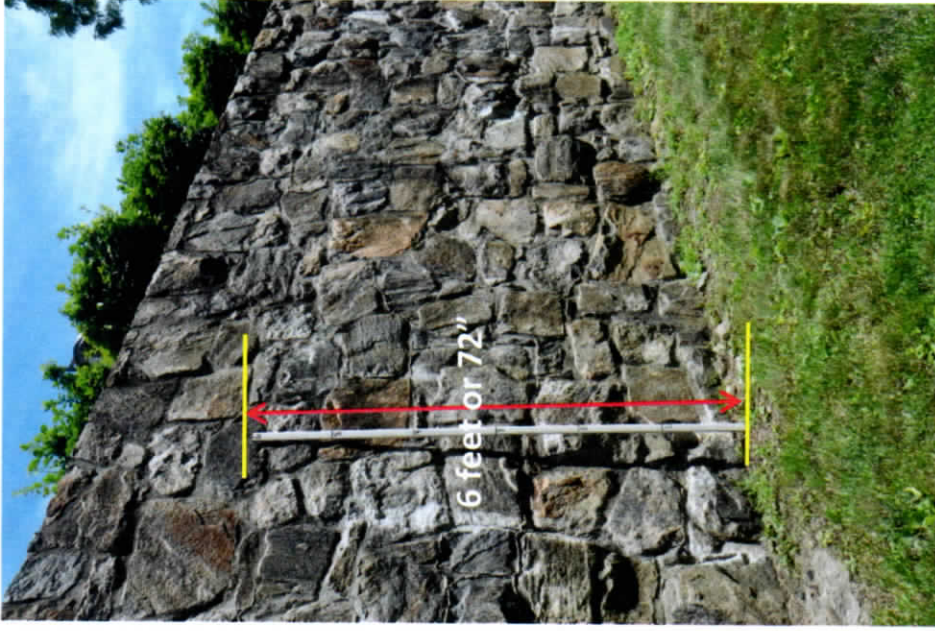
Job # 52685

LDD 52685\dwg\52685.dwg

EXHIBIT F

Edgemont Condominiums, 301 Martling Avenue – 97" High

Note: This retaining wall was rebuilt in 2007, Permit # 2007-5459 10/16/07, **No Variance Required**



65 S. Broadway parking off of Franklin Street – 87" High



61 Franklin Street – 97" High

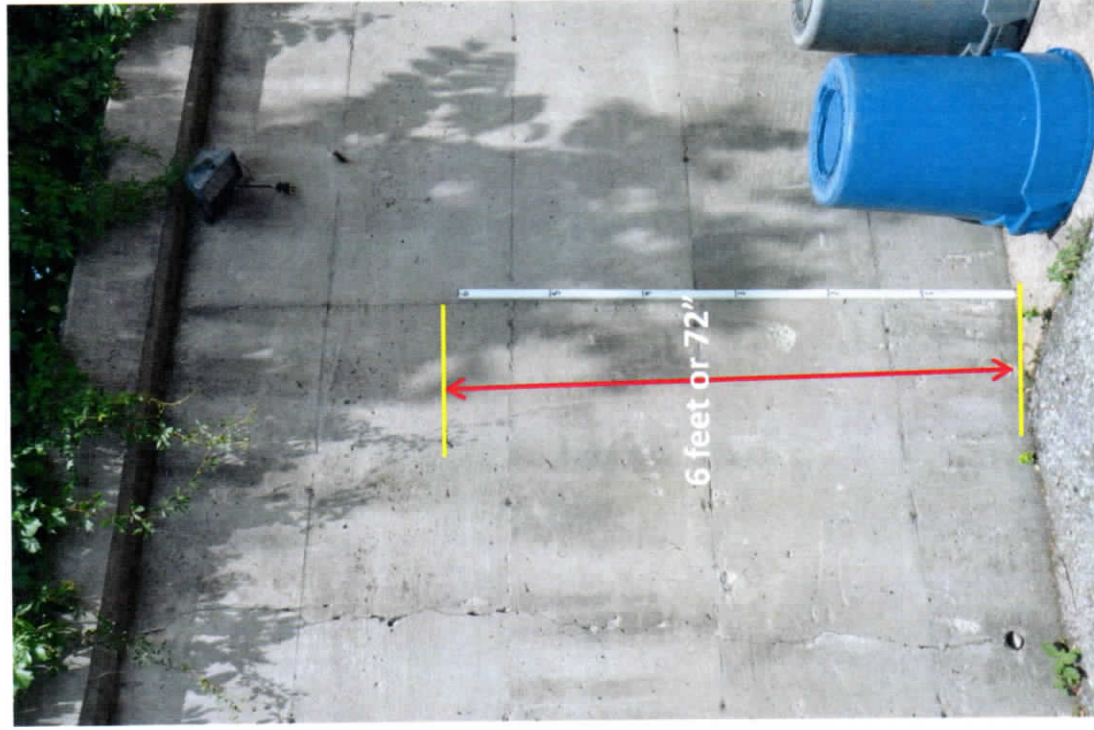


Below 65 Bridge Street > 174"



VIEWED
JUL 19 2017
BUILDING DEPARTMENT

145 Franklin Street – 128" High

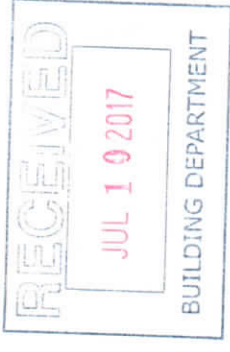
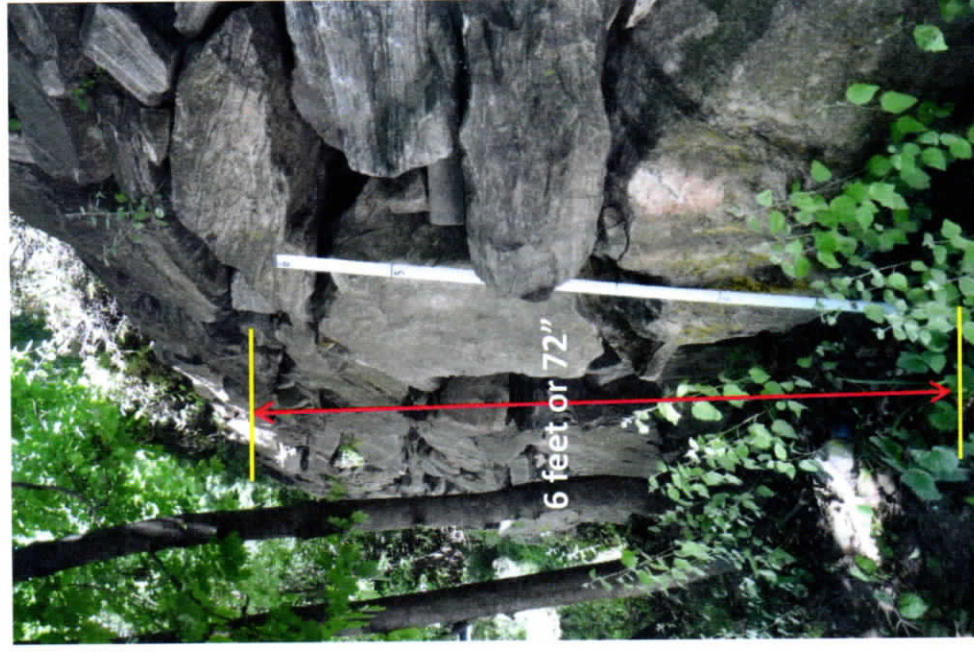


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Intersection of Cottage Place and Main Street – 116" High



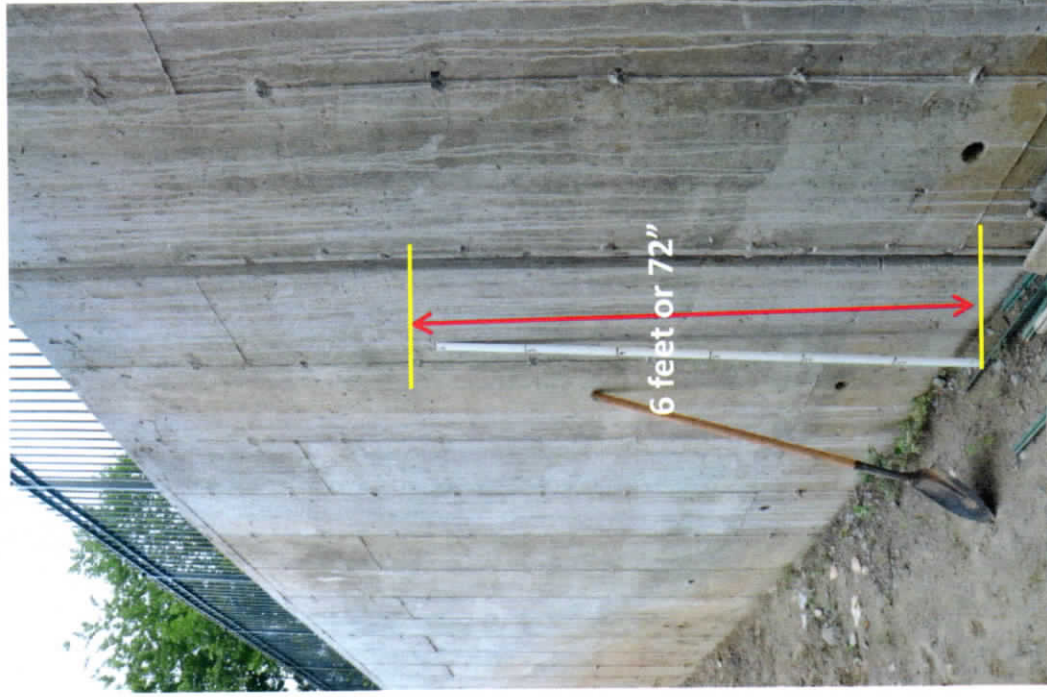
83 Main Street – >95"



21 Wildey Street – 128" High

Note: This application was referred to the Planning Board and ZBA (6/8/15)

- No retaining wall height variance required

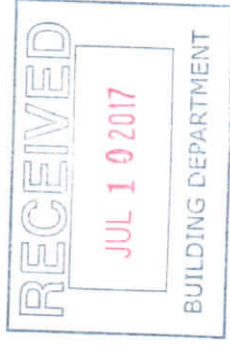
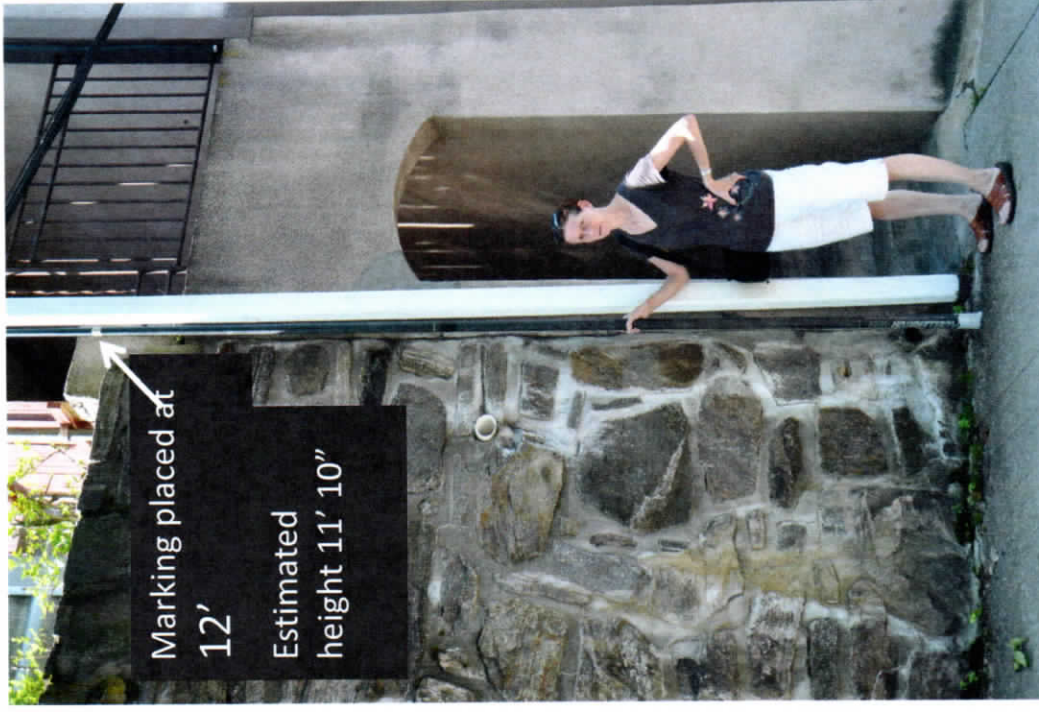
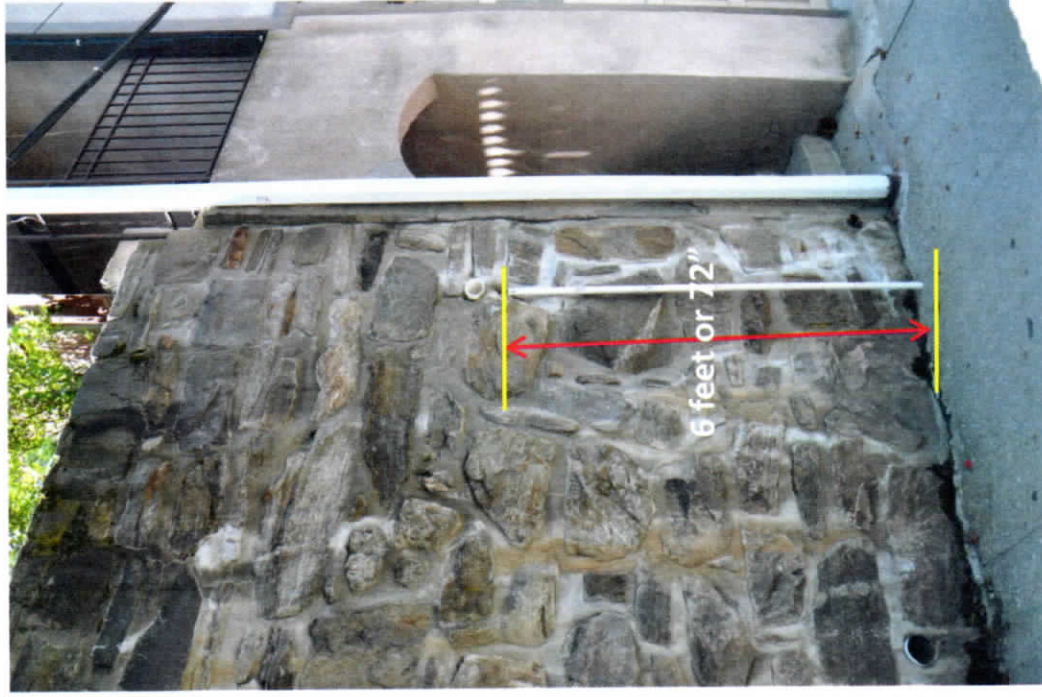


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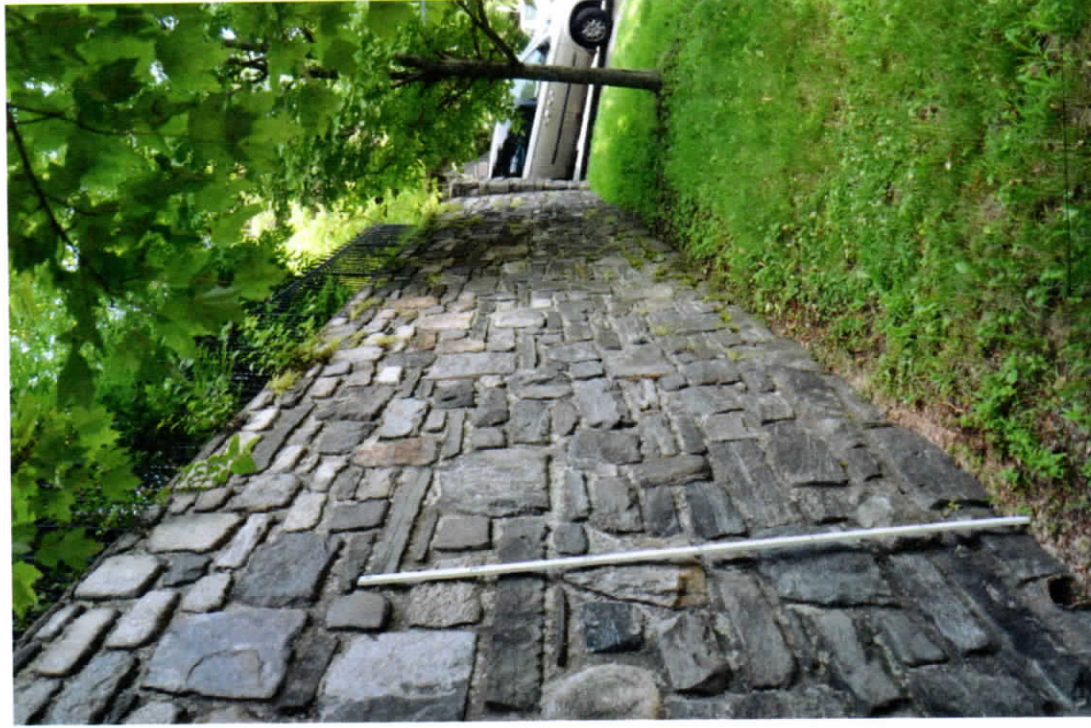
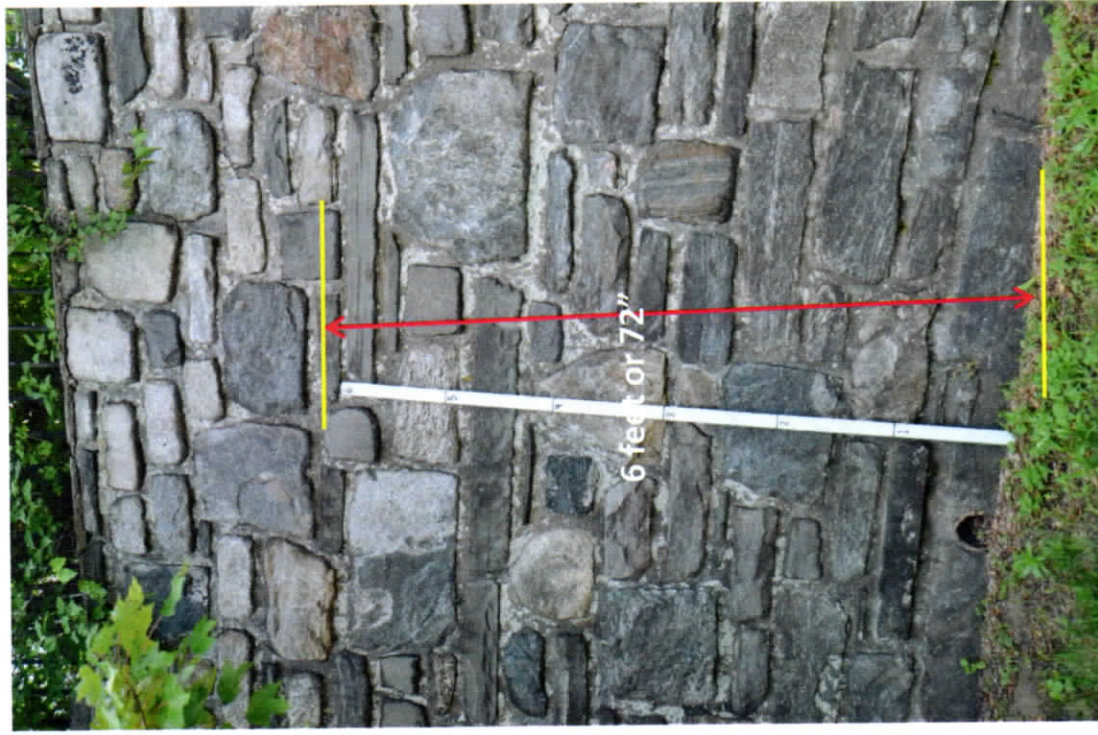
JUL 10 2017

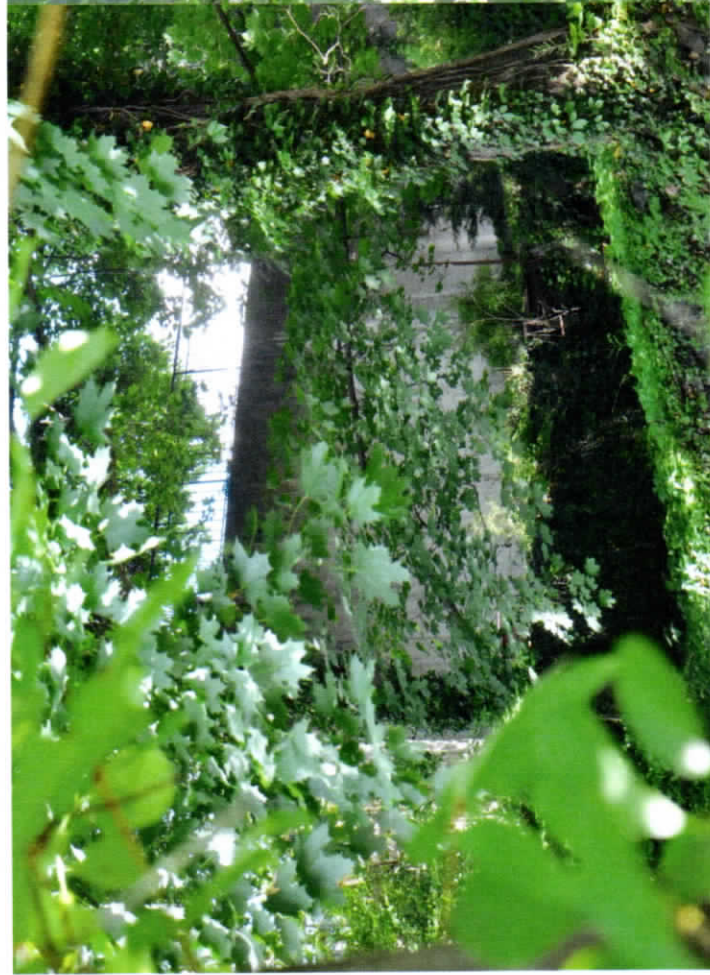
BUILDING DEPARTMENT

88 Main Street (Source: Photo)



47 Church Street @ Riverview Ave – 104" (Source: Photo)





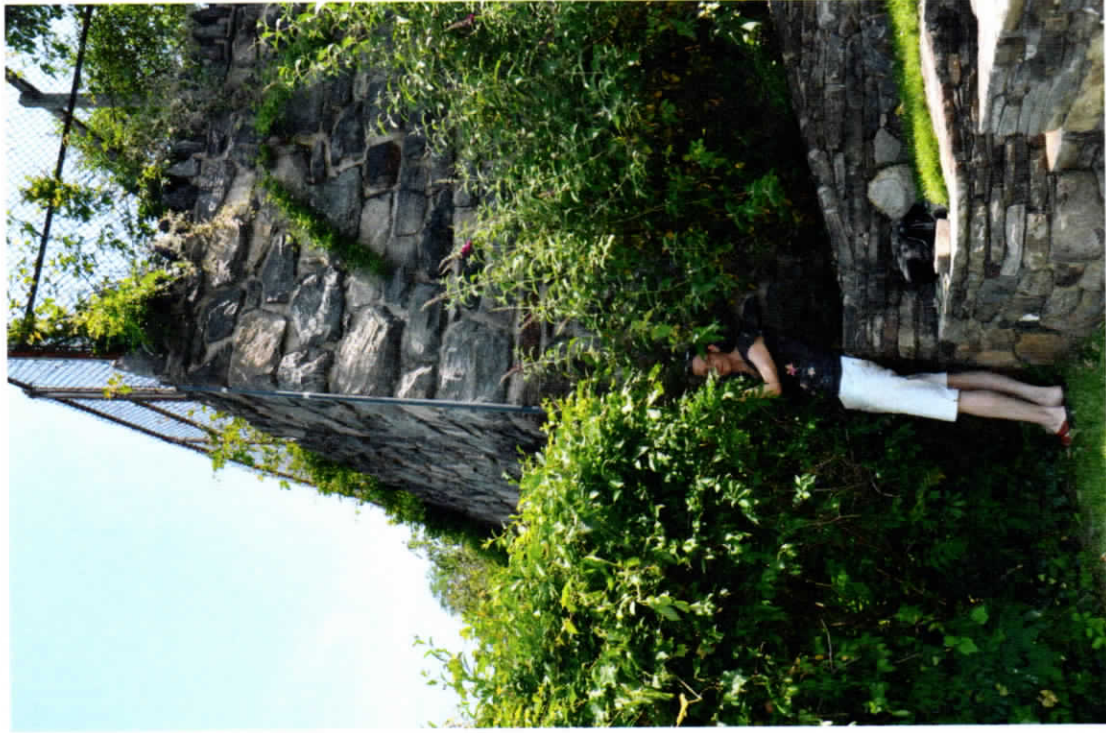
Whisper Hill retaining wall to
allow for flat parking lot area –
154" High

JUL 10 2017

BUILDING DEPARTMENT

93 Miller Avenue - > 16 feet High

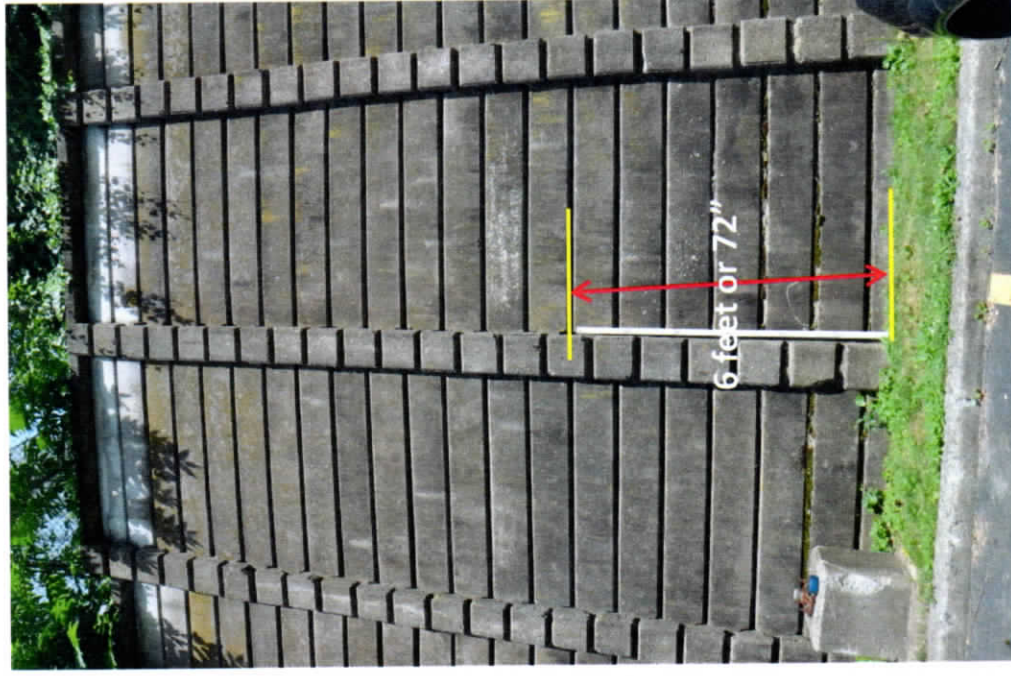
5 Houses South of 67 Miller and retaining wall built on Property Line



JUL 10 2017

BUILDING DEPARTMENT

1 River Plaza (below Cottage Pl) – 248" or 20' 8" High



82 Riverview Avenue > 80"

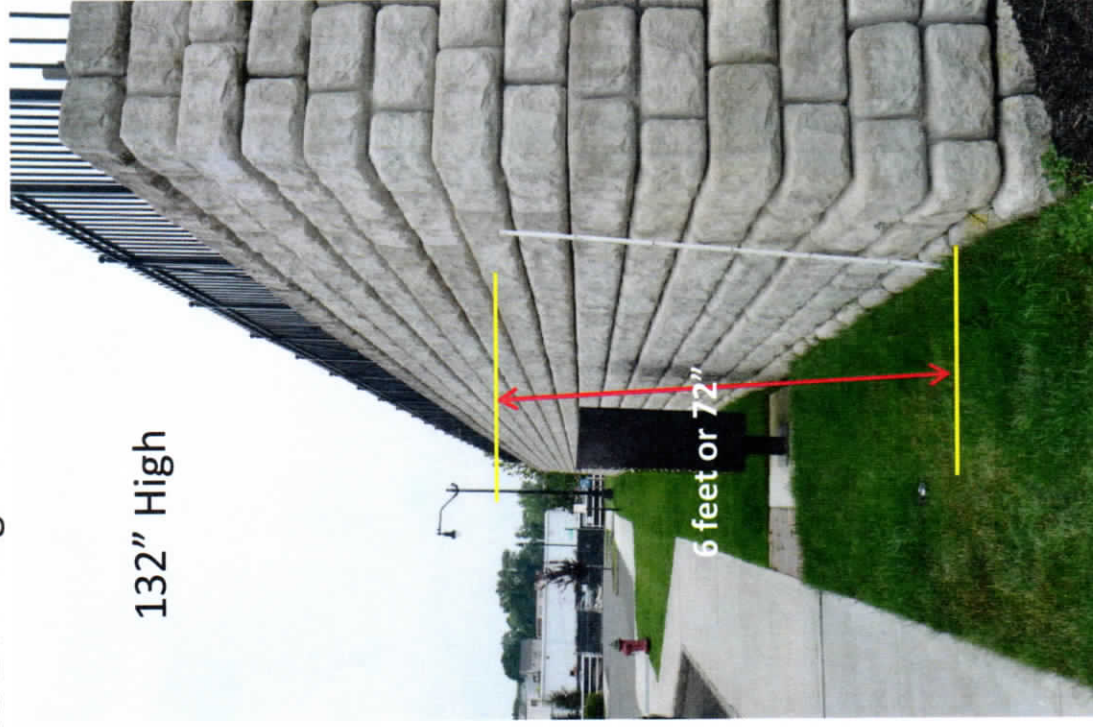


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3 Riverview Place – 132" High on West Side
and 144" High on South Side



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3 Riverview Place

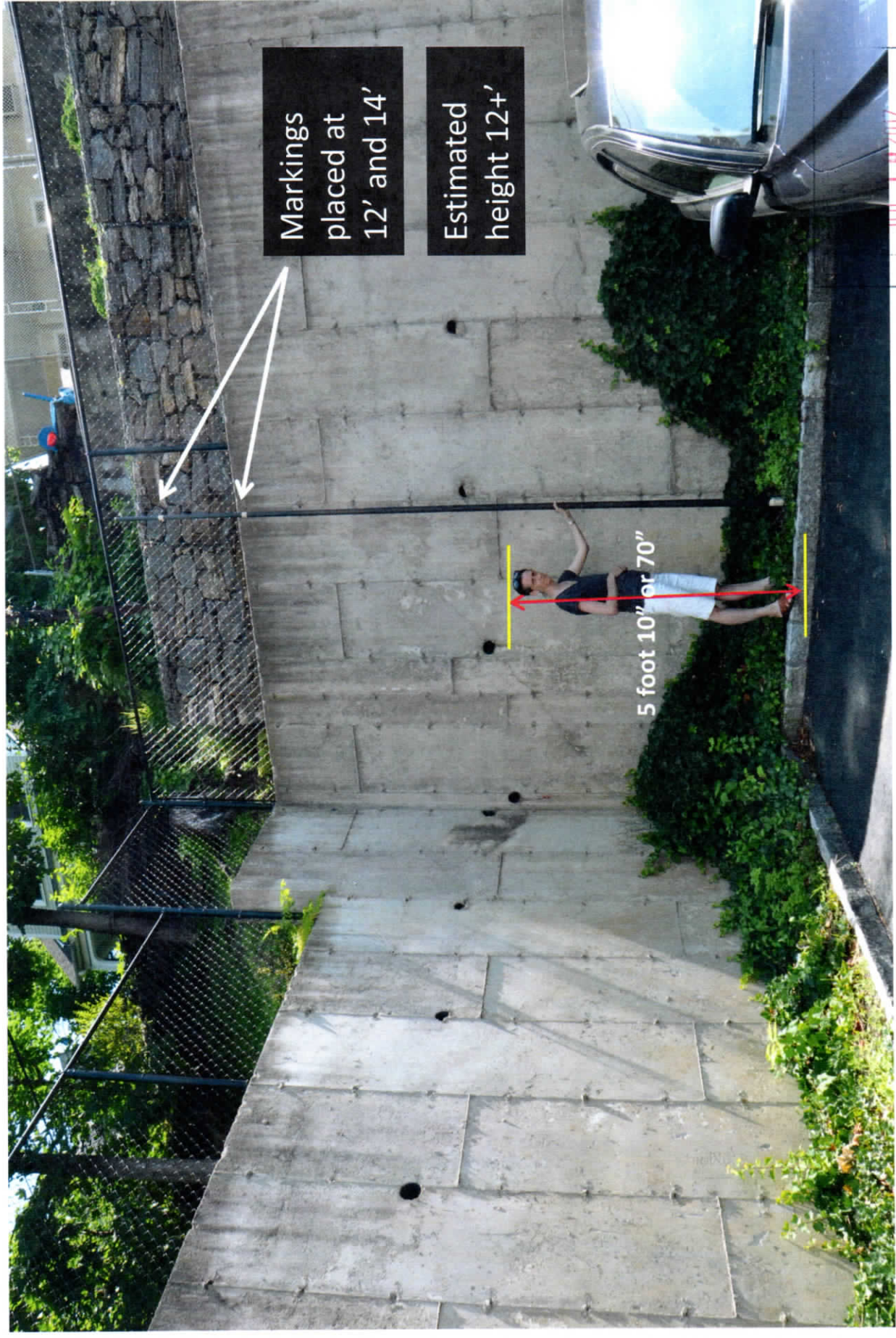


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View of retaining wall on 116 South Broadway – 12+ Feet High (> 144") (Source: Photo)



Markings
placed at
12' and 14'

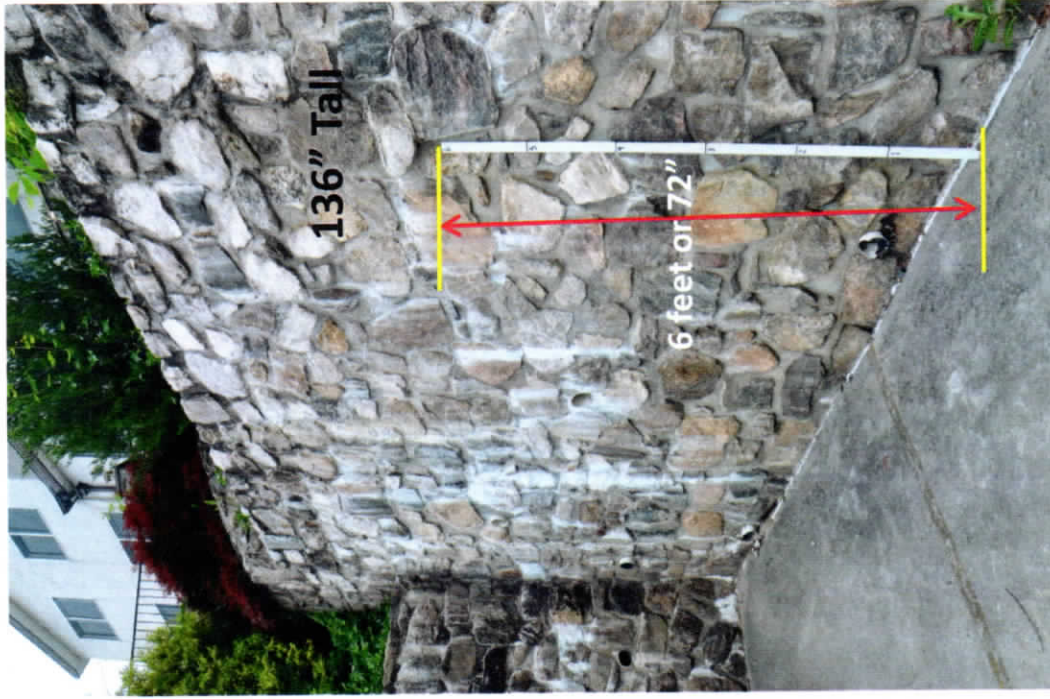
Estimated
height 12+'

5 foot 10" or 70"

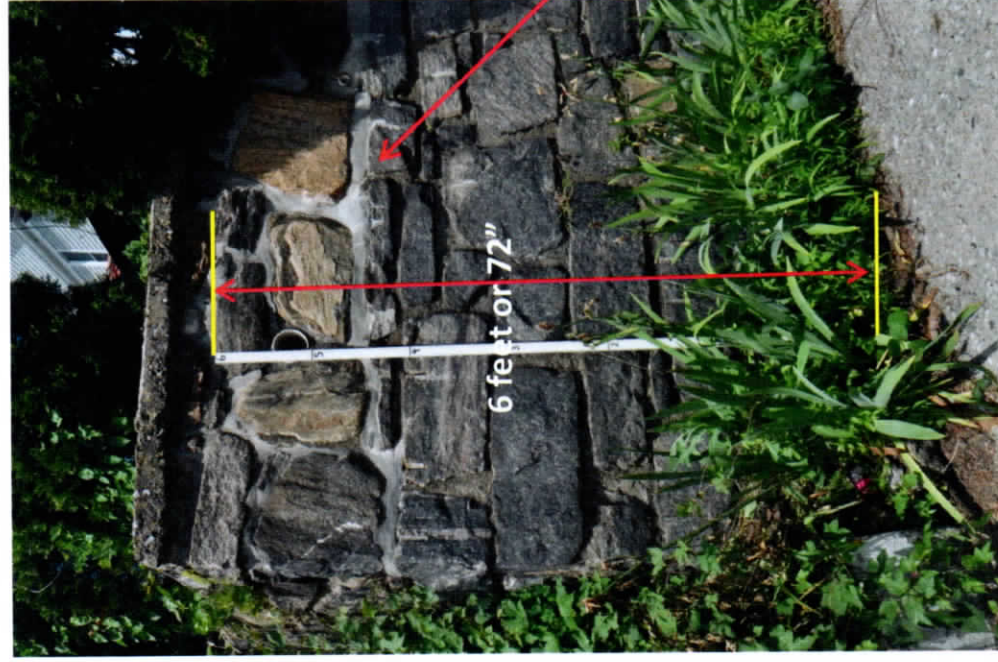
JUL 19 2017

BUILDING DEPARTMENT

96 Main Street Retaining Wall on White Street
Built in 2000 – 12 feet high, replacing a 9 foot high retaining wall, no variance required.



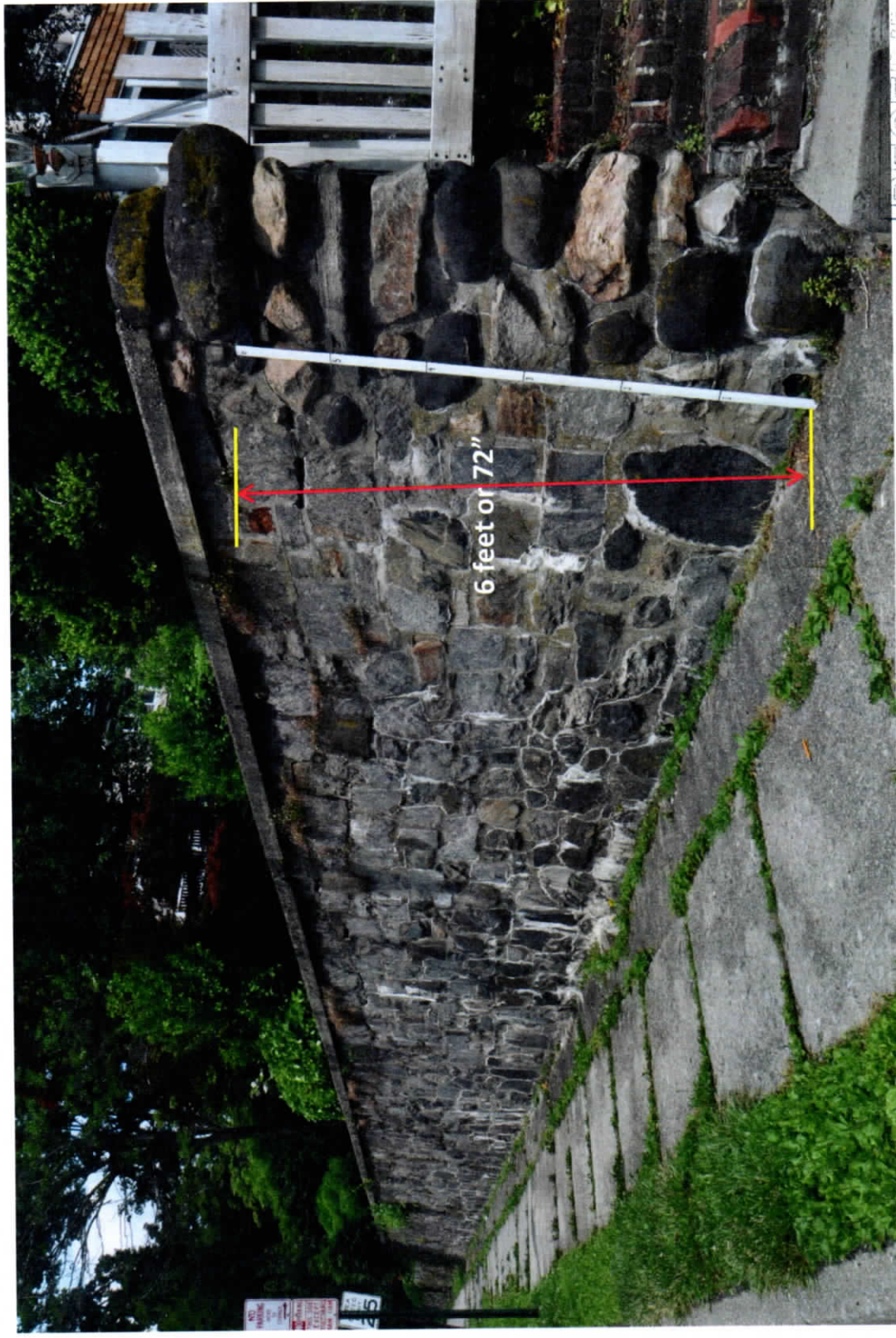
123 Grove Street – 80" High



Note that top 2 feet were recently added or repaired



25 Benedict Avenue – 85" High

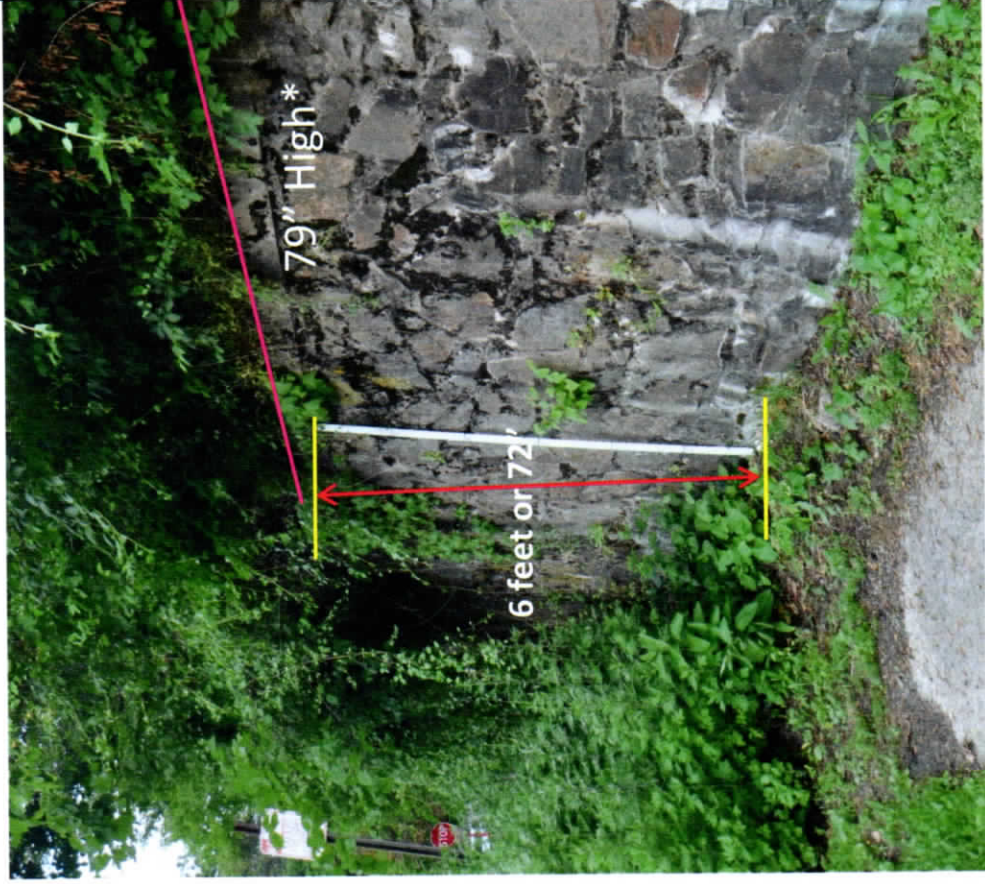


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BUILDING DEPARTMENT

100 Grove Street – 92" High
Recently Rebuilt or Repaired – Was a
variance required?

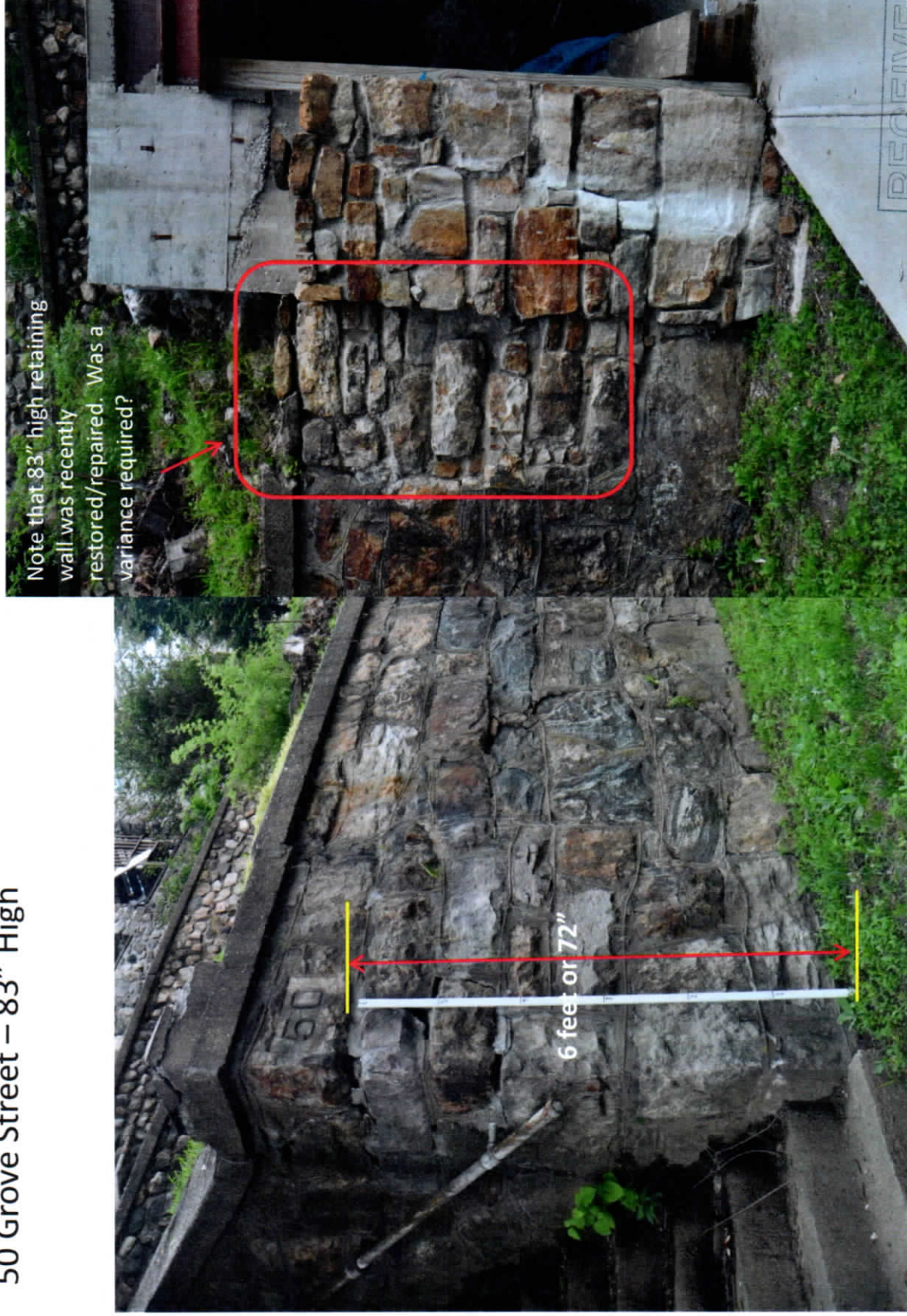


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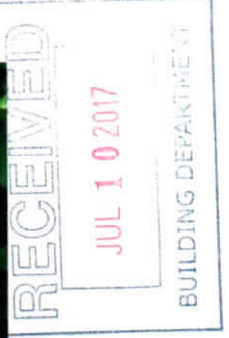
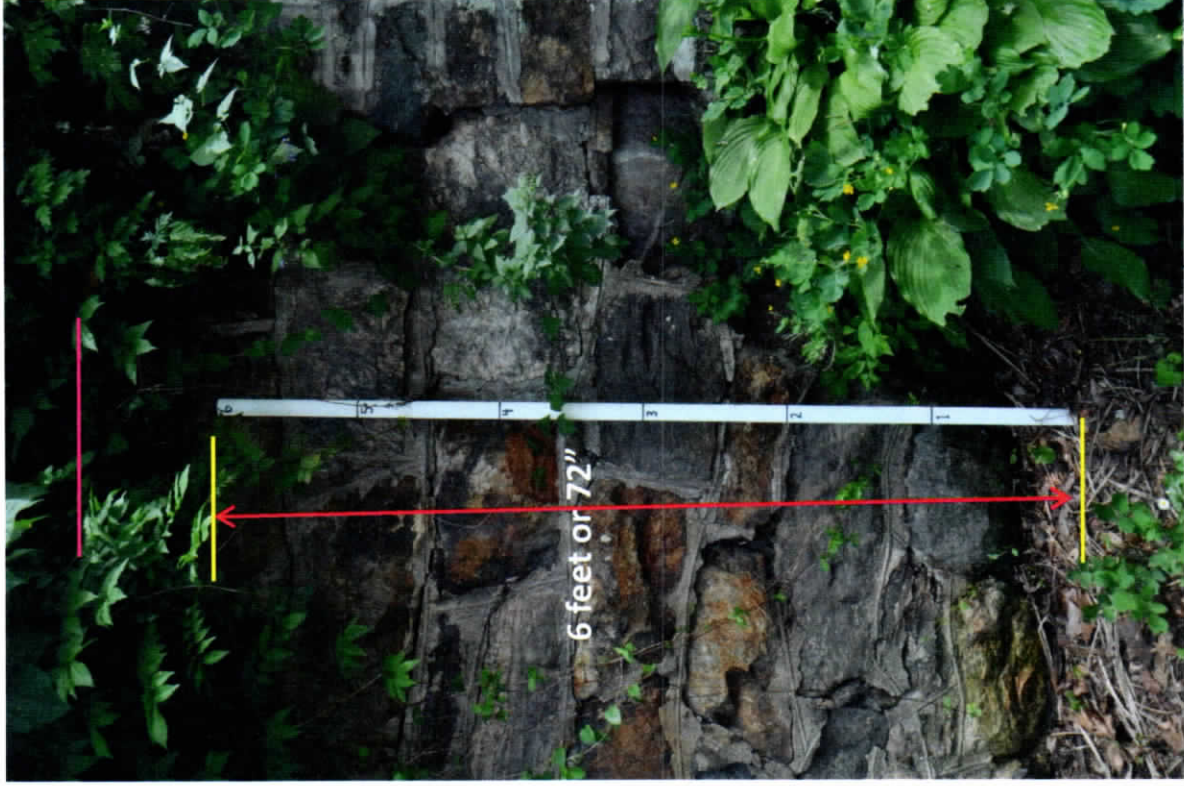
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BUILDING DEPARTMENT

50 Grove Street – 83" High



54 Grove Street – 83" High



62 Grove Street – 115" High

Note that upper 2 feet were recently added or restored/repaired. Was a variance required?



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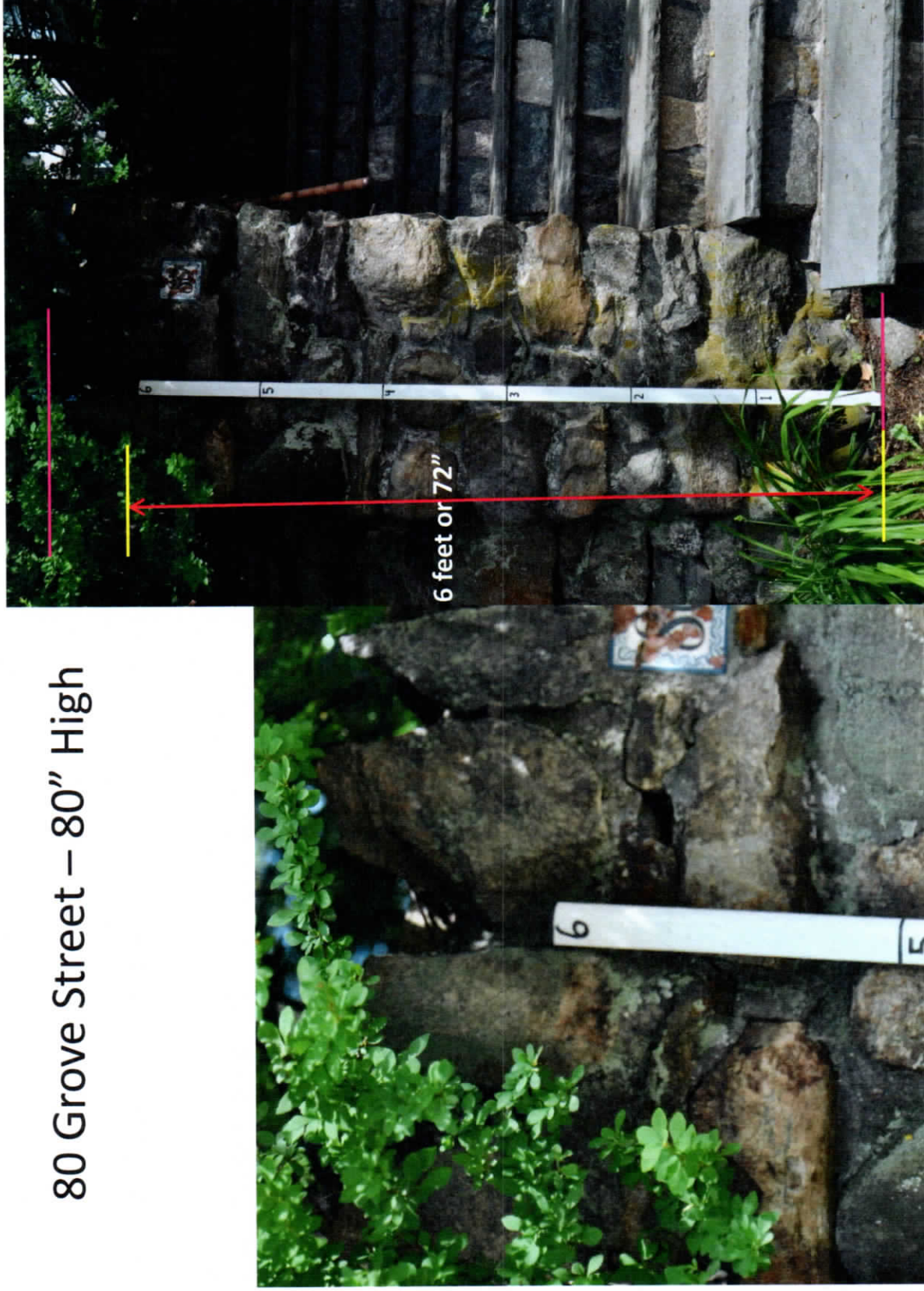
BUILDING DEPARTMENT

90 Grove Street – 75" High

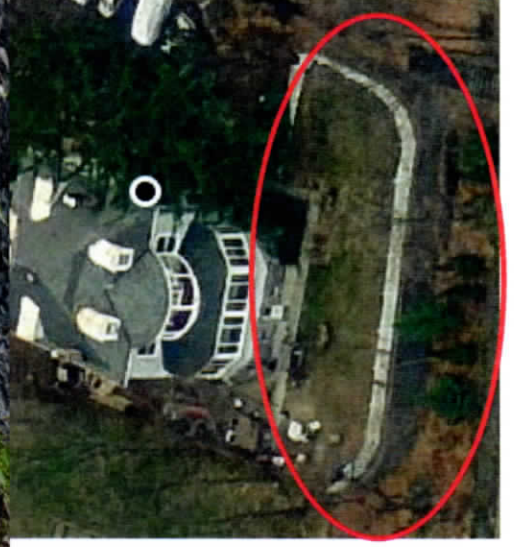
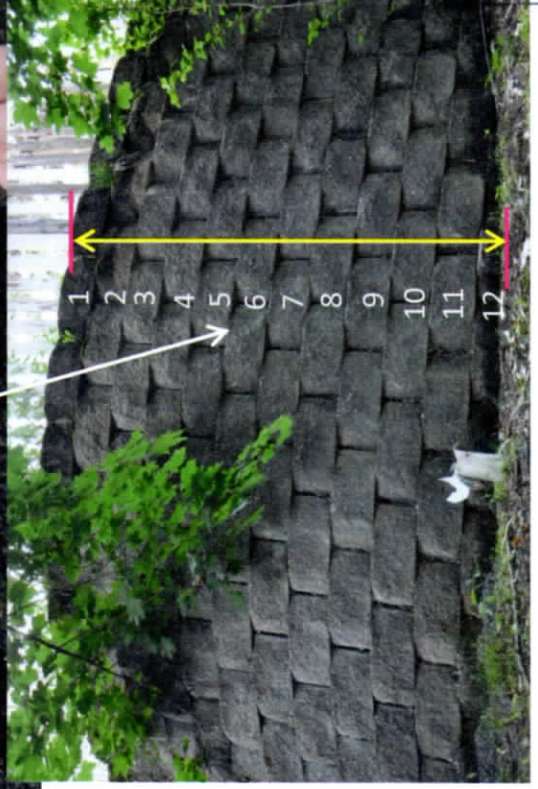
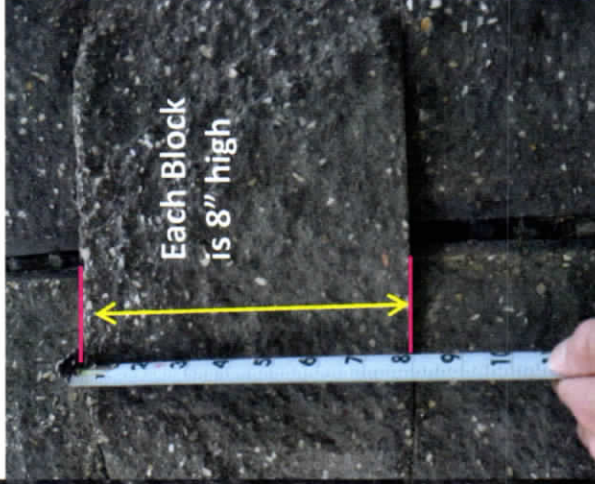
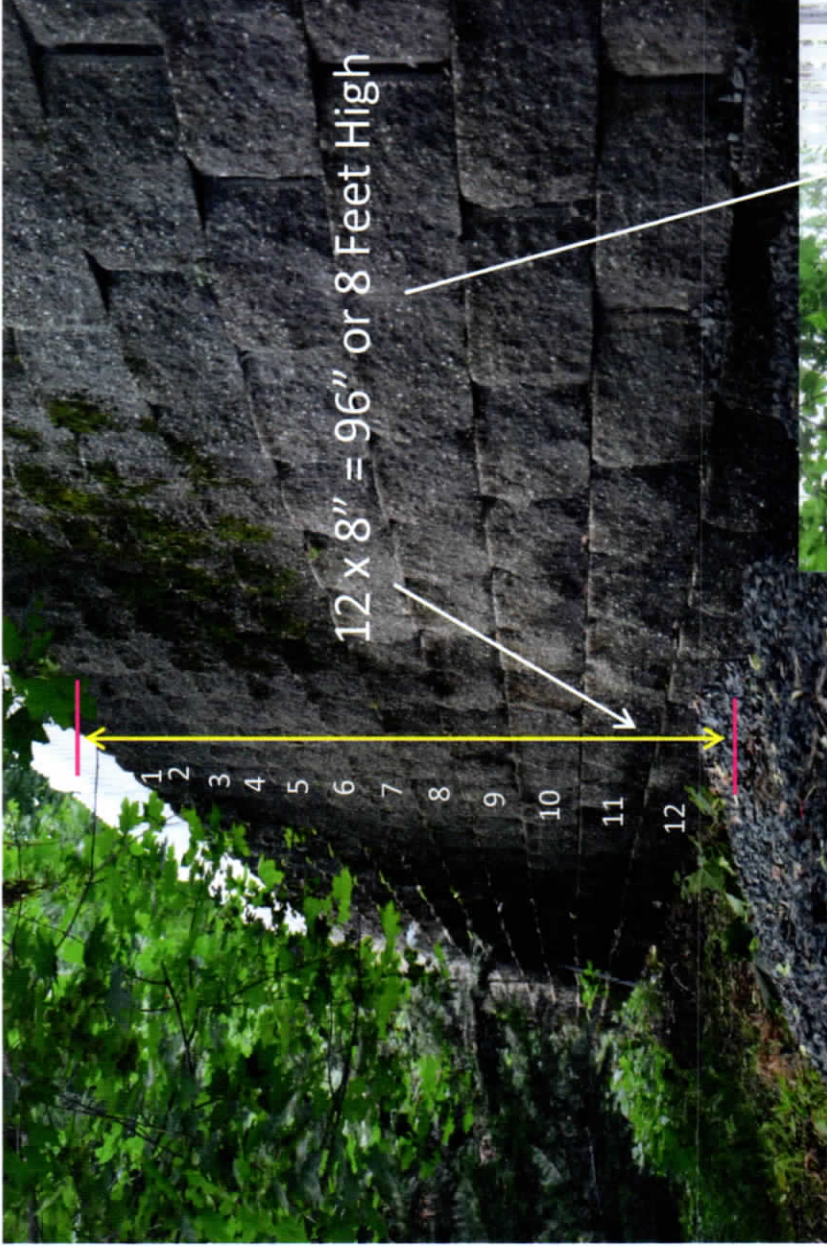


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BUILDING DEPARTMENT

80 Grove Street – 80" High



104 Grove Street

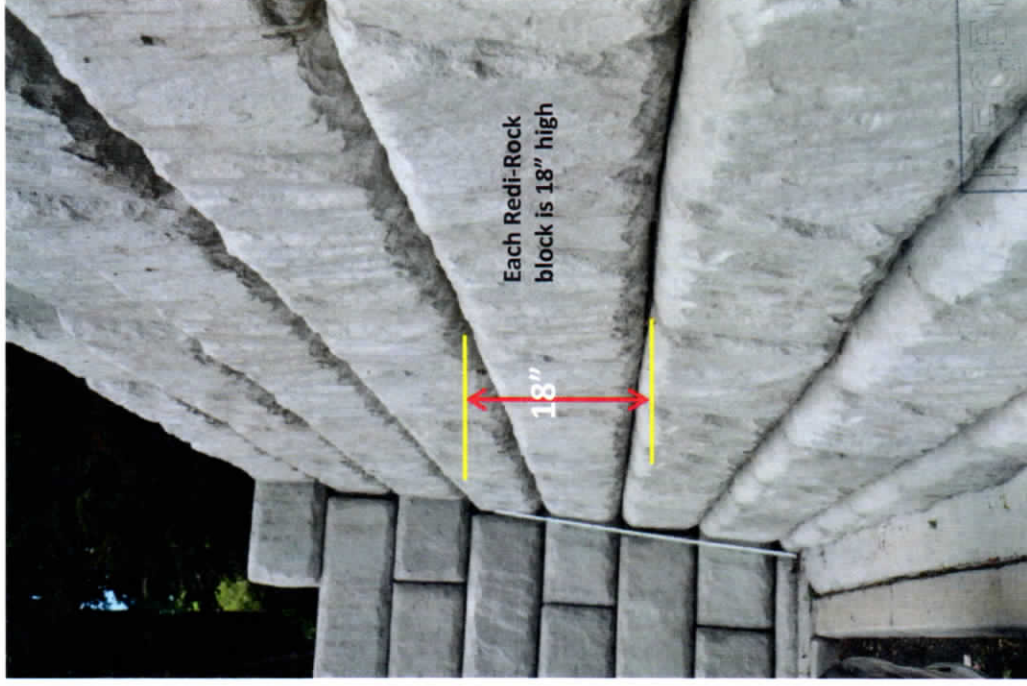
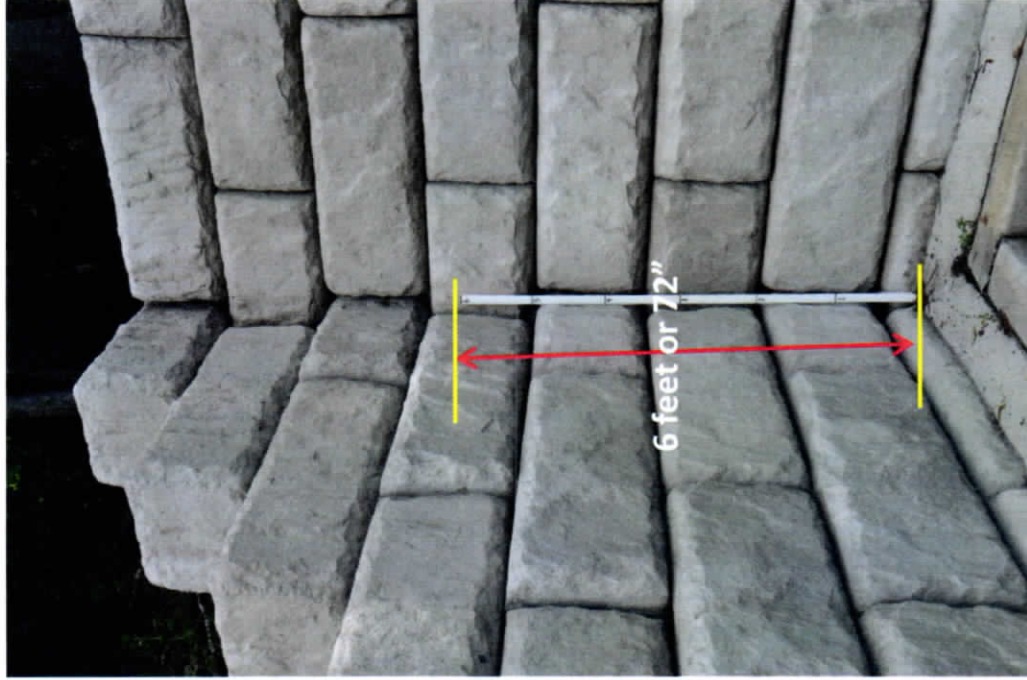


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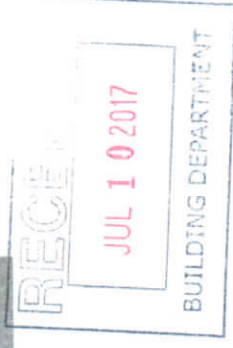
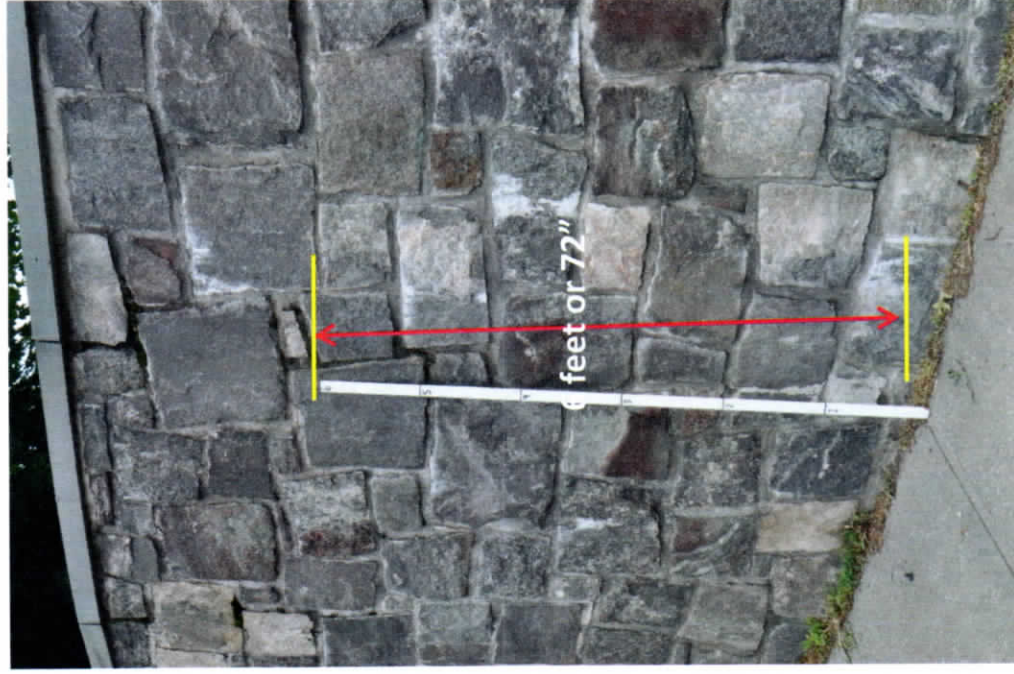
JUL 10 2017

BUILDING DEPARTMENT

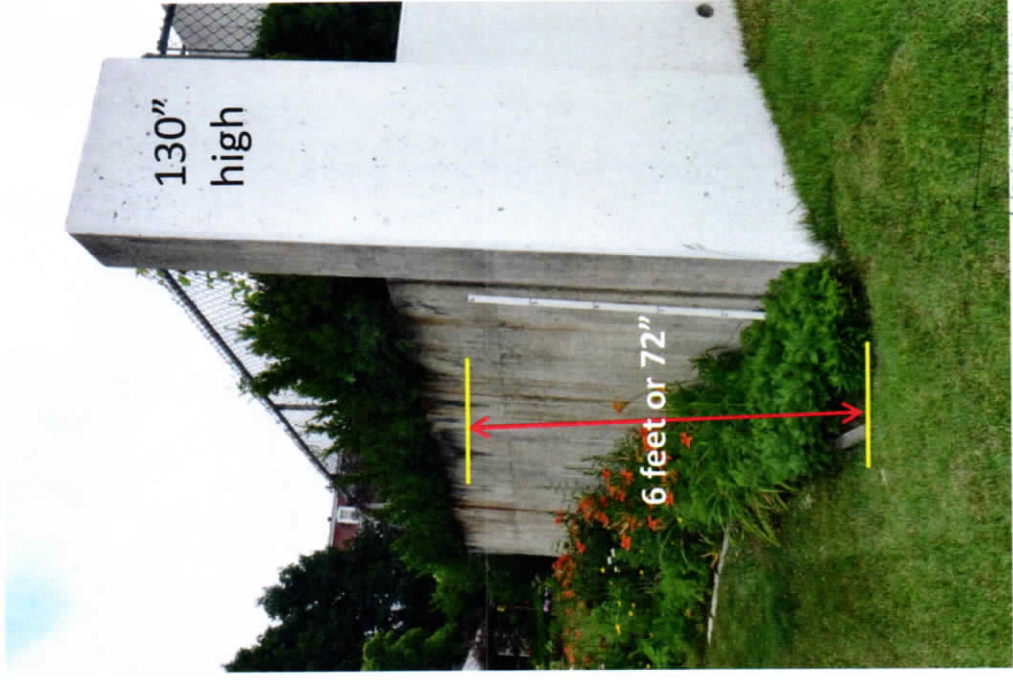
155 White Plains Road – 133" High



177 White Plains Road – 104" High

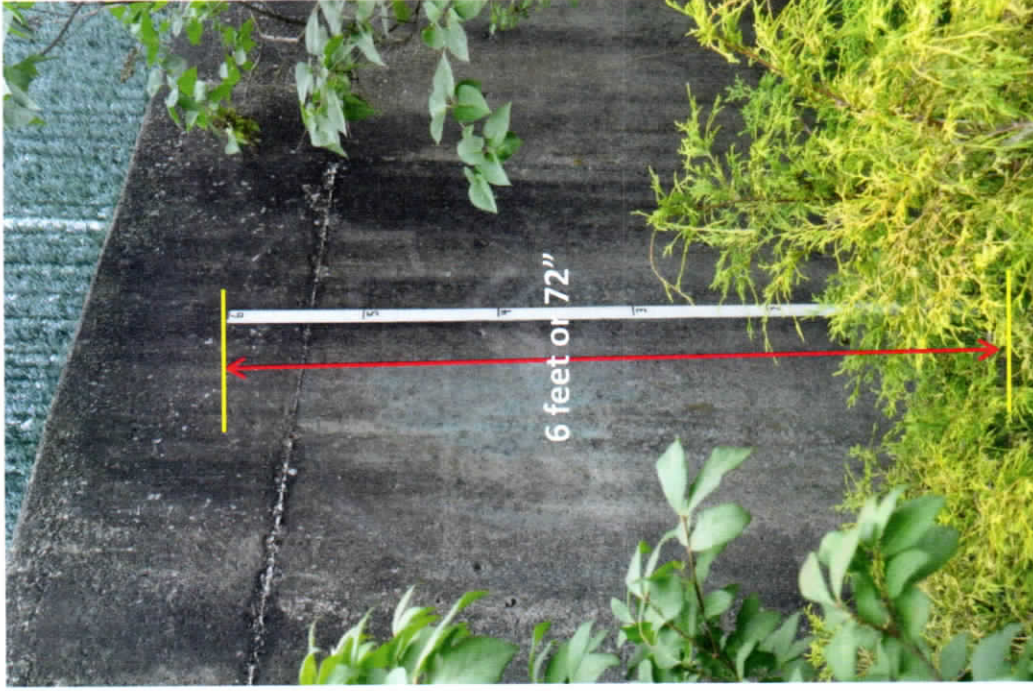


75 N. Broadway/ 11 Dixon Street – 130" High

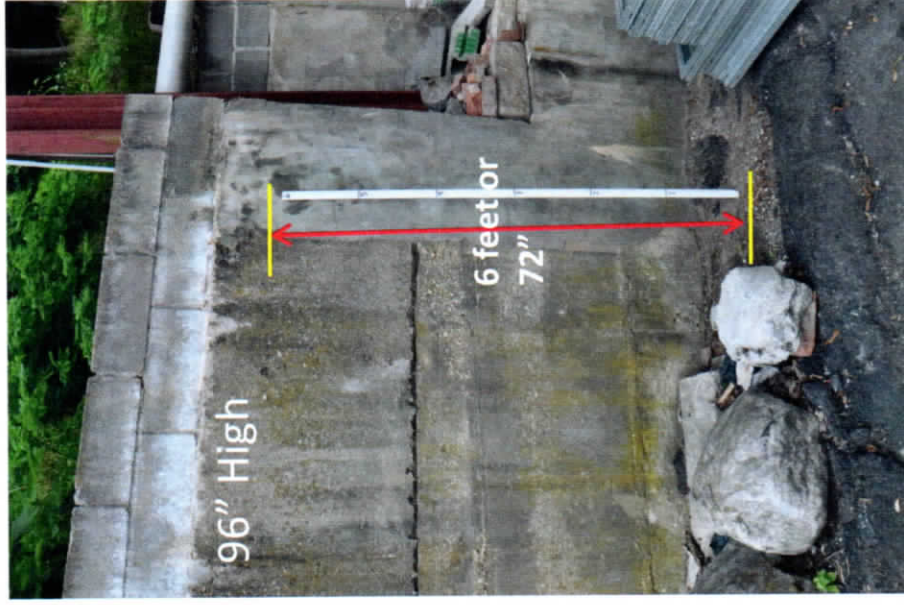


69 N. Broadway/ 16 Dixon Street

84" High



120 N. Broadway – 96" High

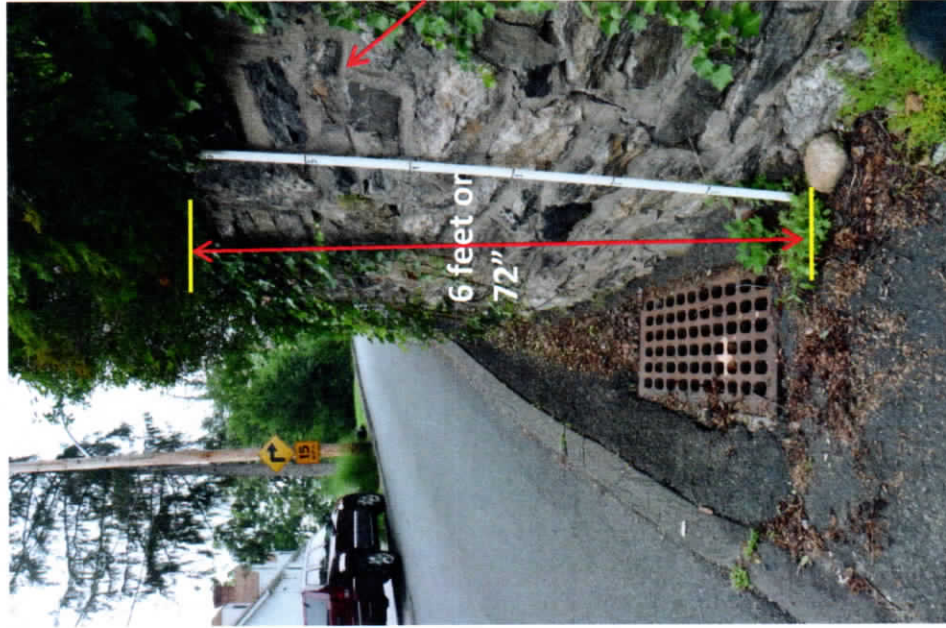




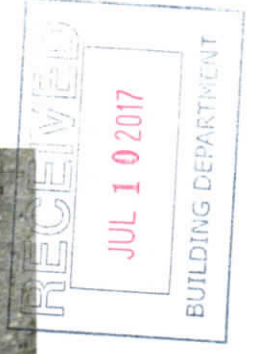
126 N. Broadway – 96" high



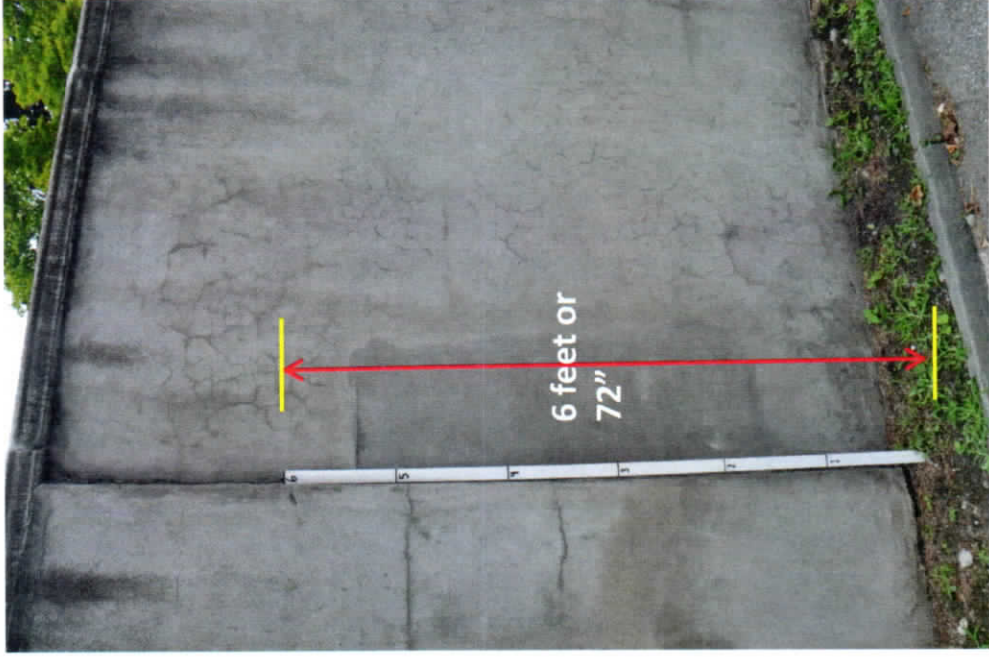
42/58 Cobb Lane – 74" High



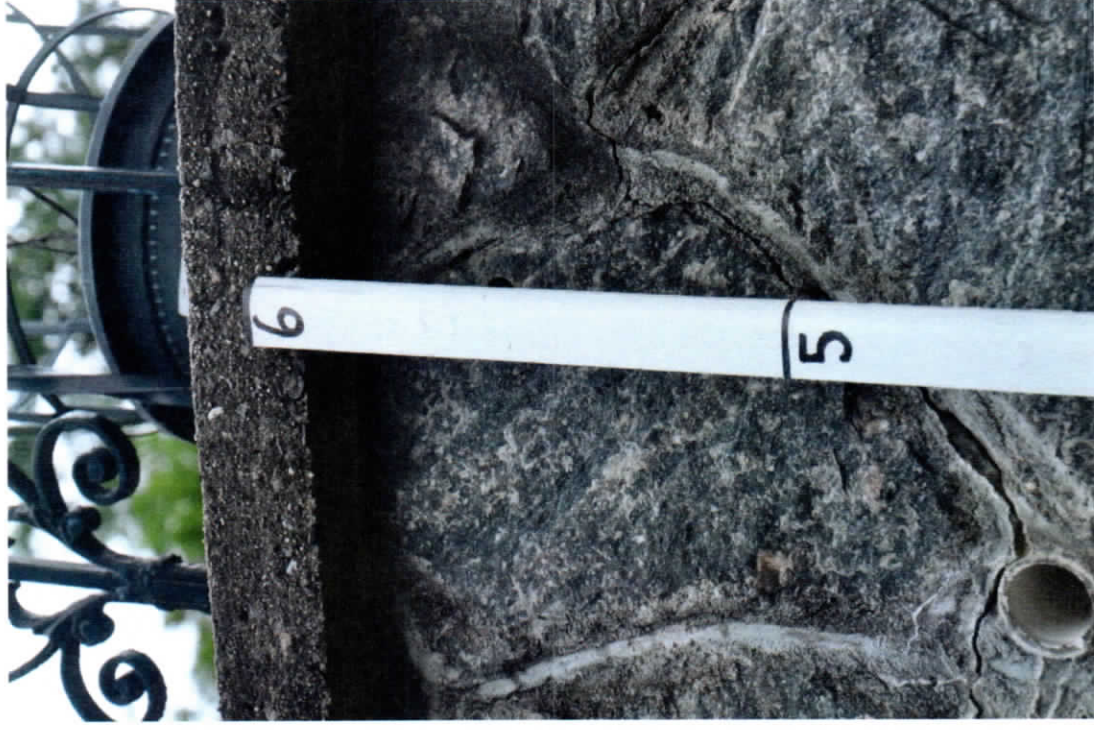
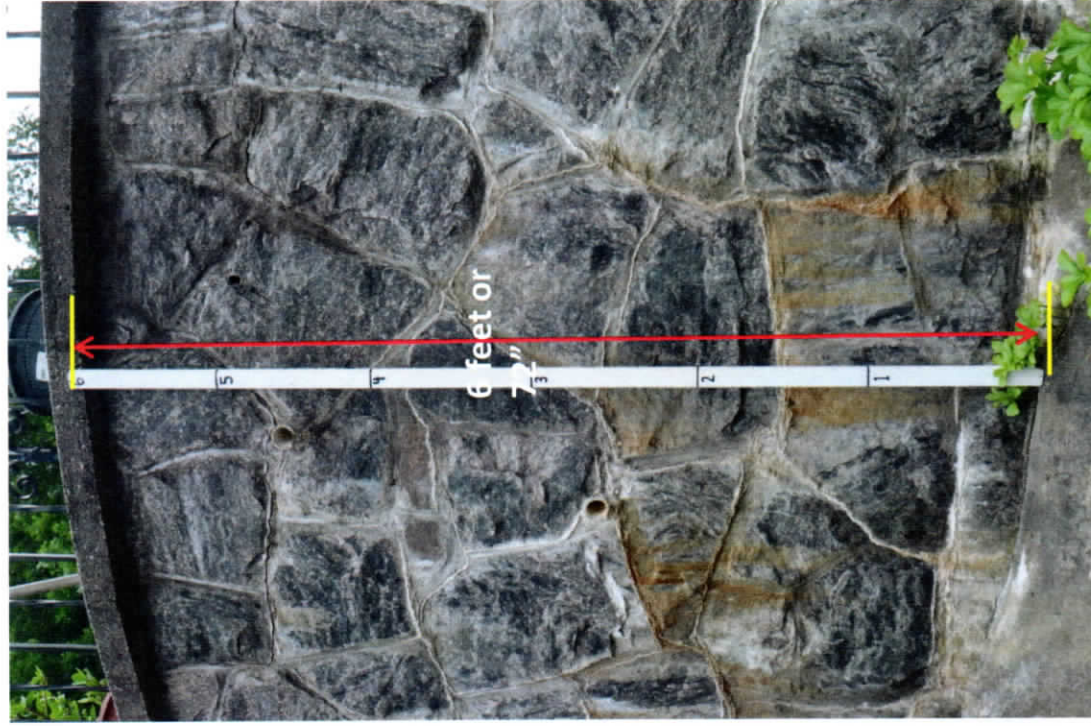
Retaining wall
was recently
repaired – was
a variance
required?



57 Cobb Lane – 100" High

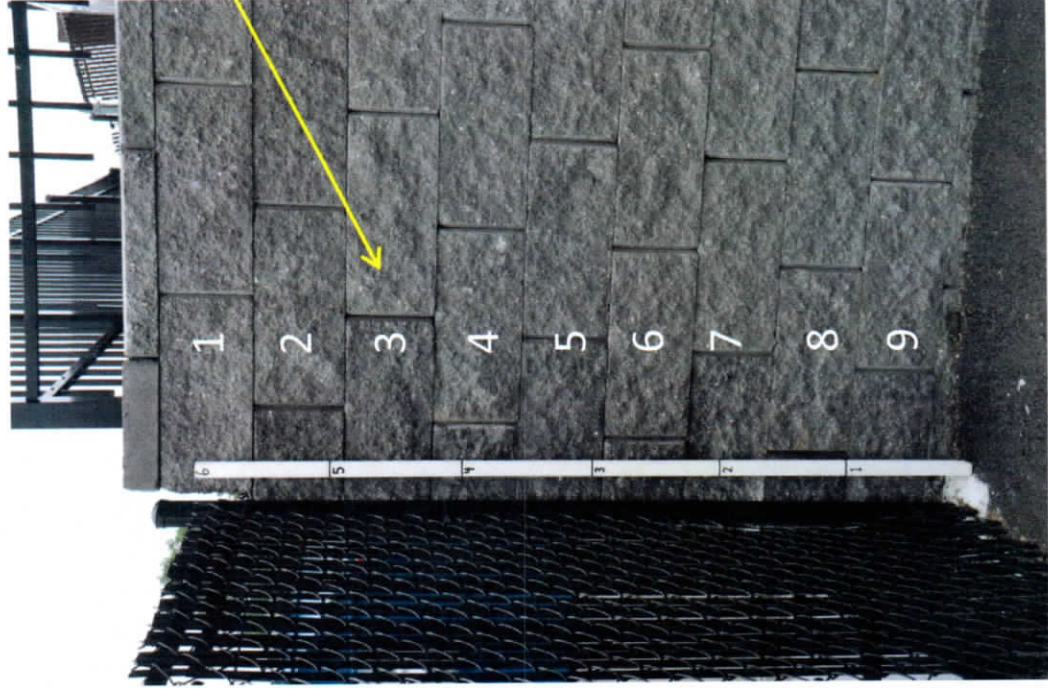


58 Cobb Lane – 74"



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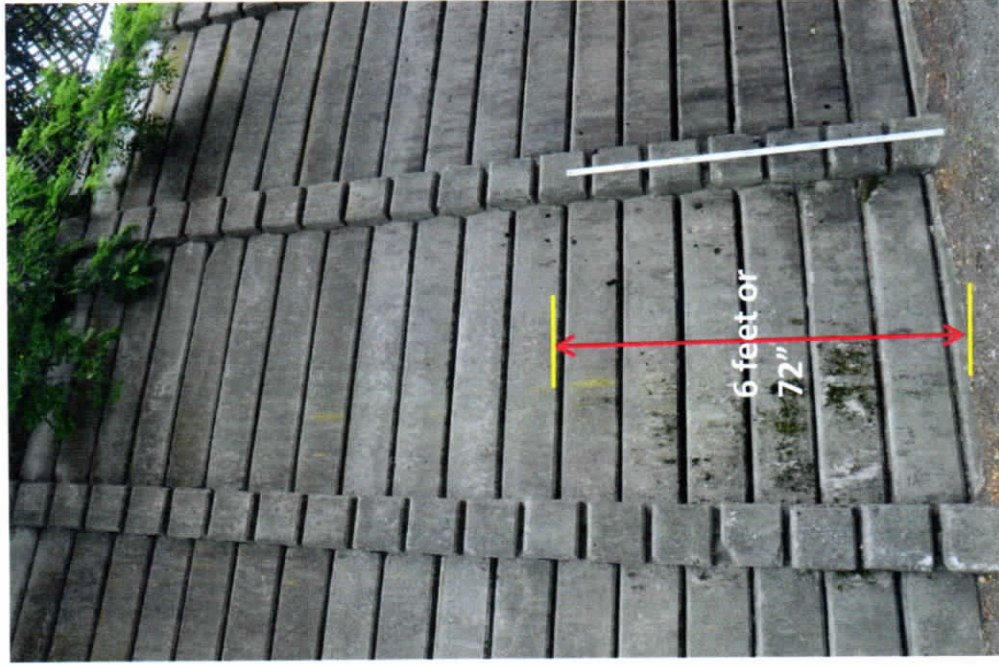
45-51 N. Broadway – 78" High – Recently Constructed



Each block is
8" high



135 – 162 Wildey Street – 214" High



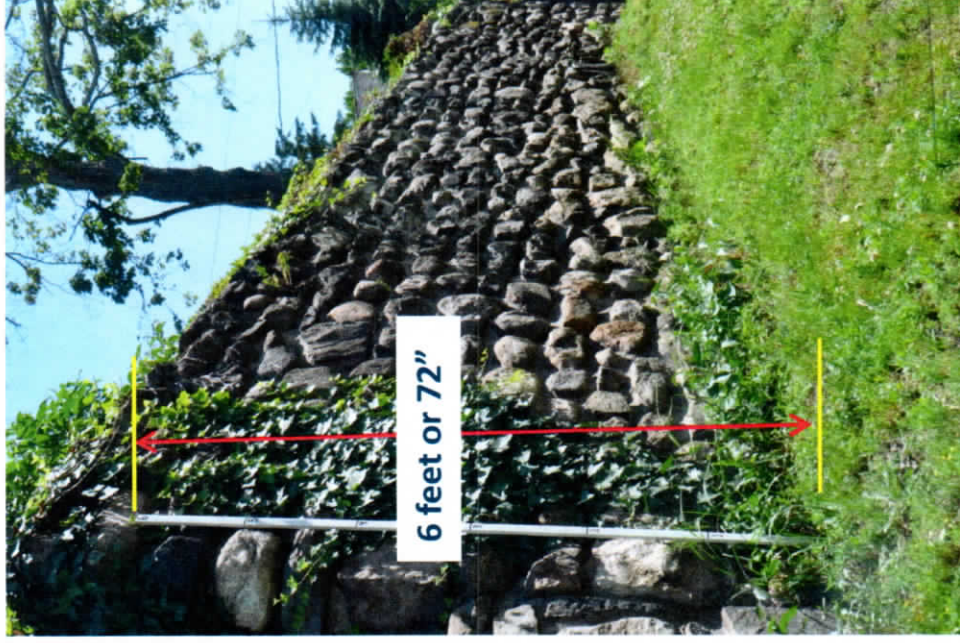
0 Grove Street – 95" High



JUL 10 2017

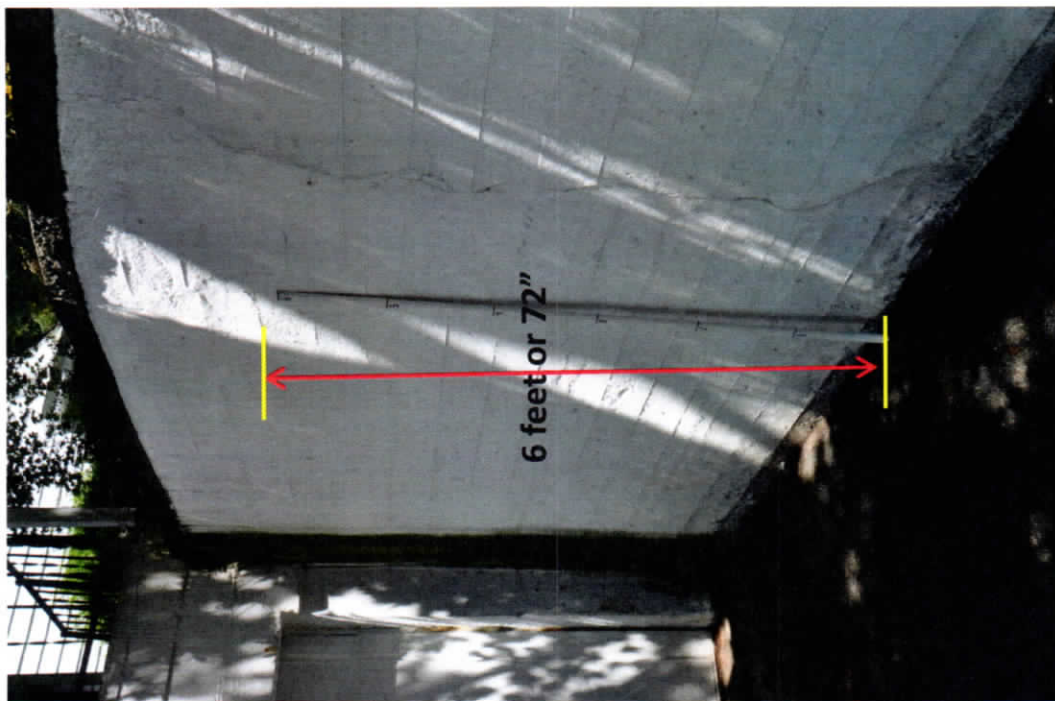
BUILDING DEPARTMENT

35 Loh Avenue – 83" High



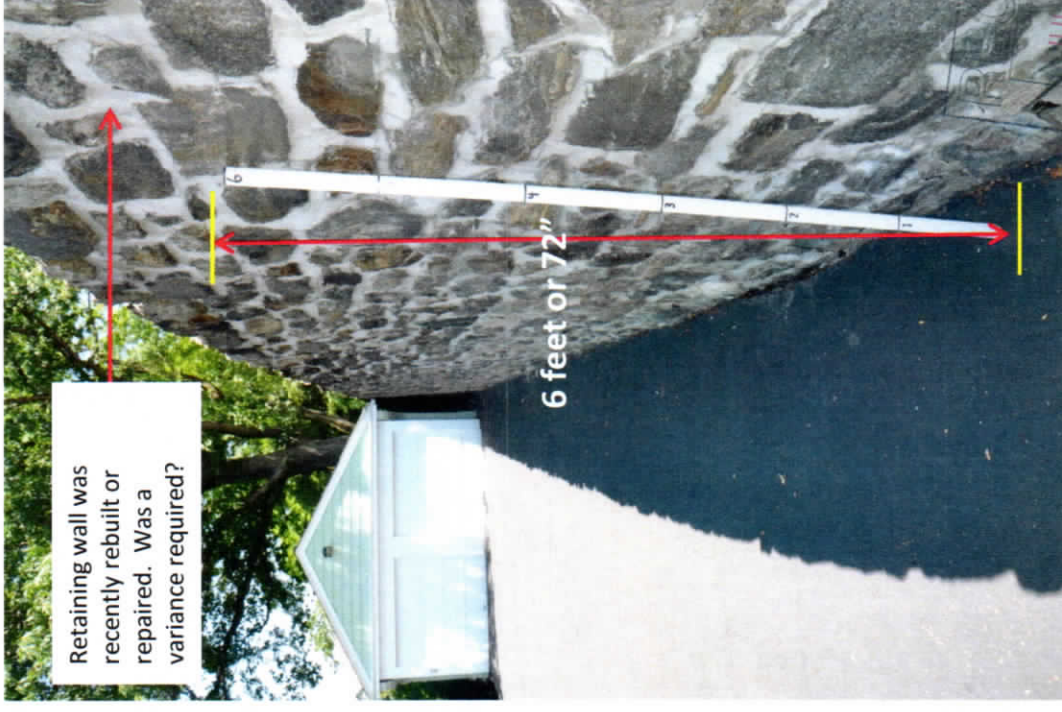
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88 Benedict (Loh Avenue Side) – 96” High



JUL 10 2017
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65 Altamont – 92" High



56 and 54 Grove Street

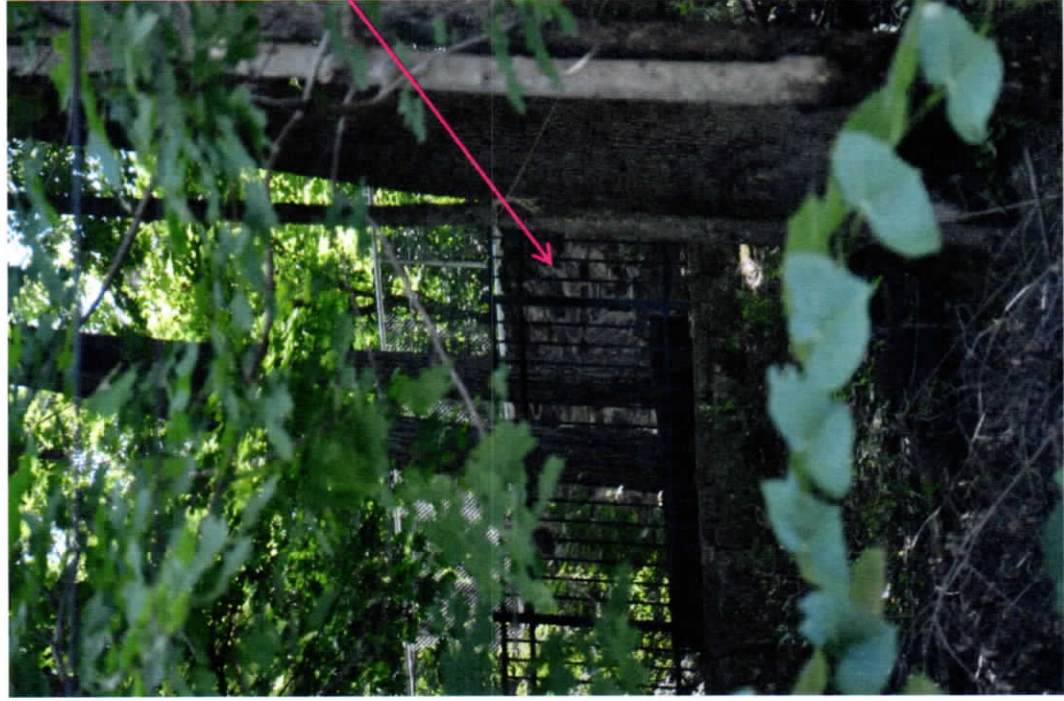


FILED
JUL 10 2017
BUILDING DEPARTMENT

56 Grove Street – 108" High



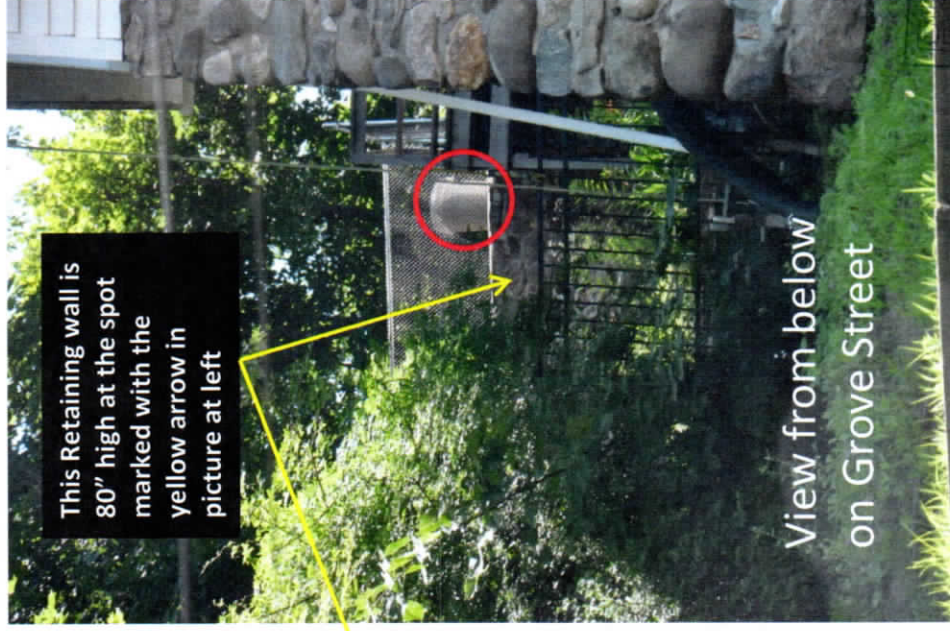
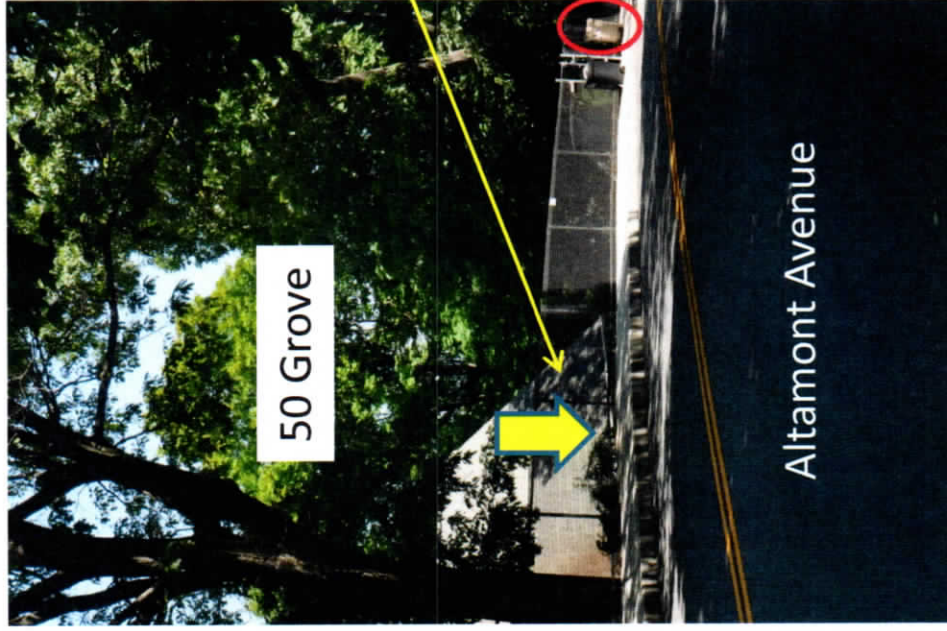
54 Grove Street – 84" High



Retaining wall is 84" high where property drops from Altamont Avenue sidewalk. This picture shows view from below on Grove Street



50 Grove Street – 80" High



1 Grove Street – 77" High



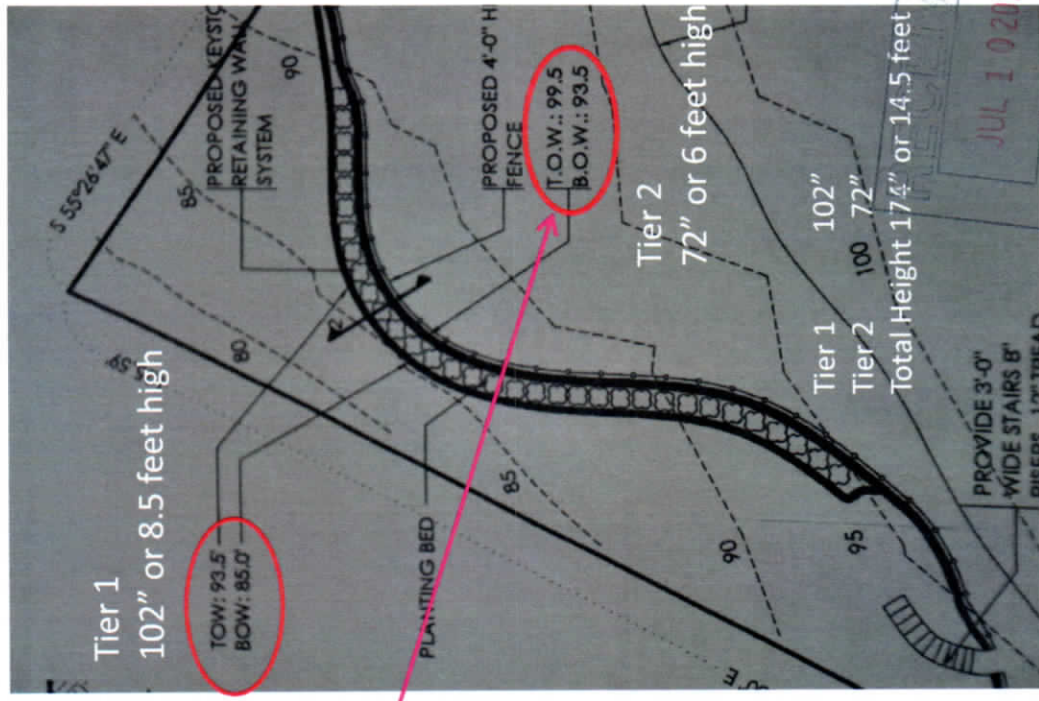
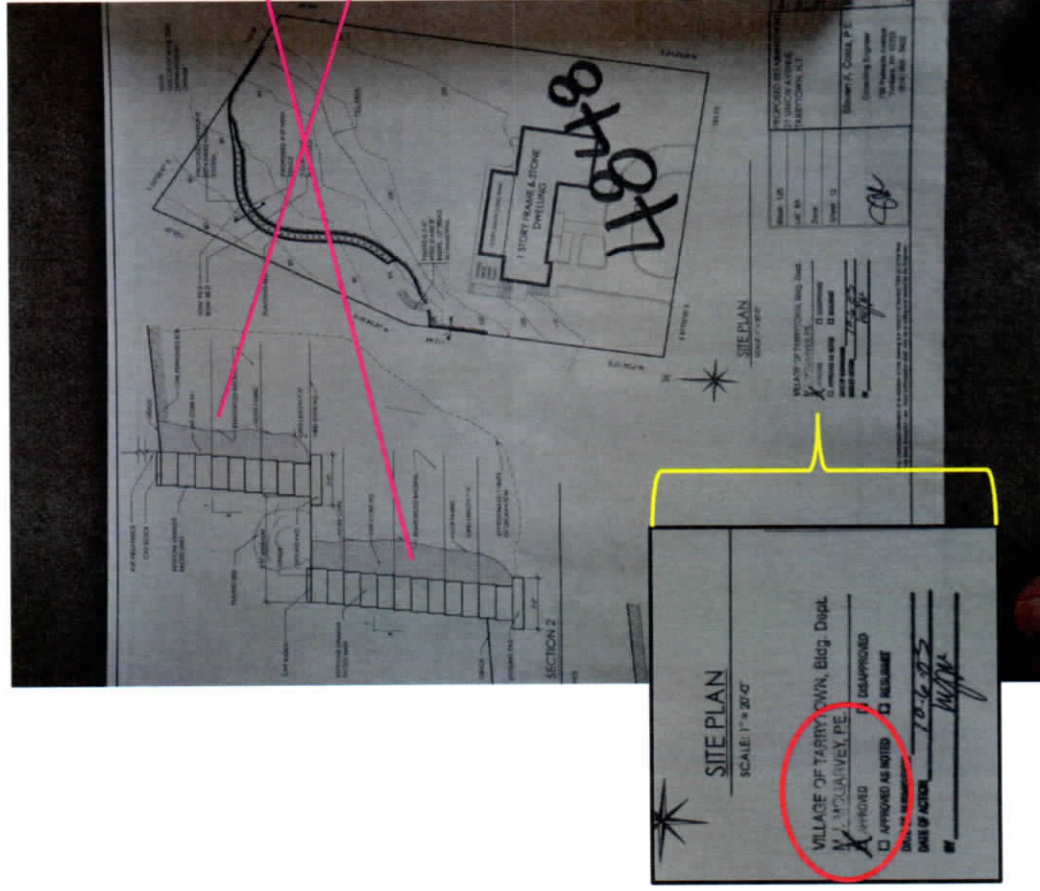
42 Riverview Avenue – 80” High



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BUILDING DEPARTMENT

21 Union Avenue – 102" High

No Planning Board review despite disturbing steep slopes, being a new retaining wall, and being in high ground
No variance required despite being > 6 feet in height



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63 Miller and 64 Riverview

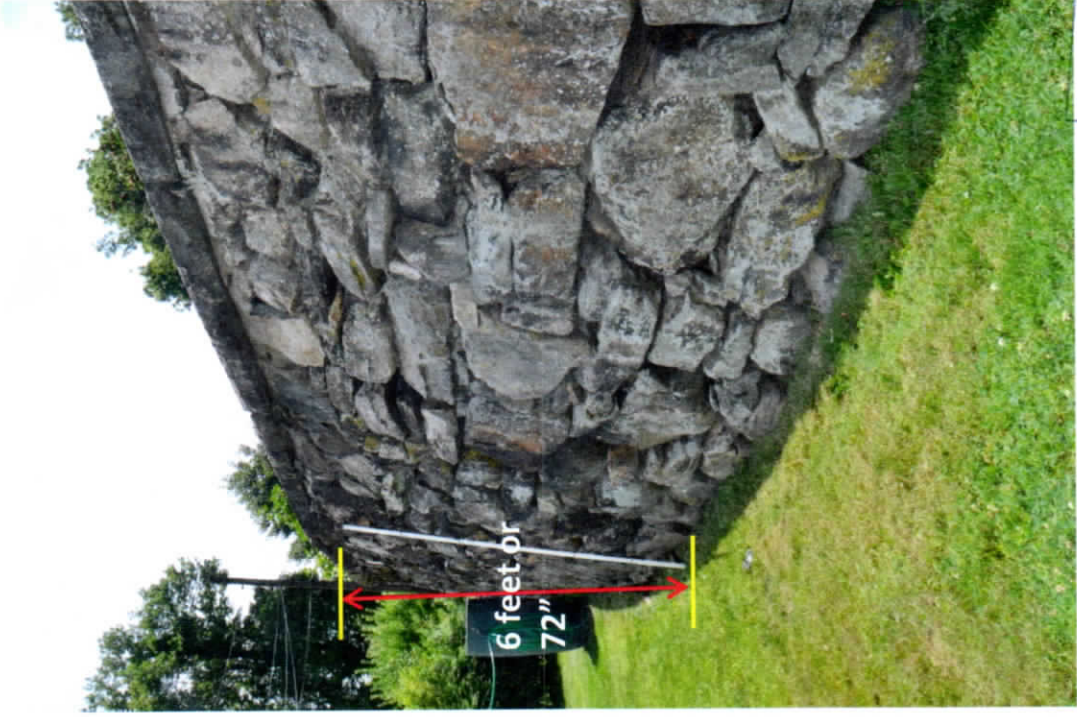


27 Cottage Place – 183" High



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93 Highland Avenue – 86" High



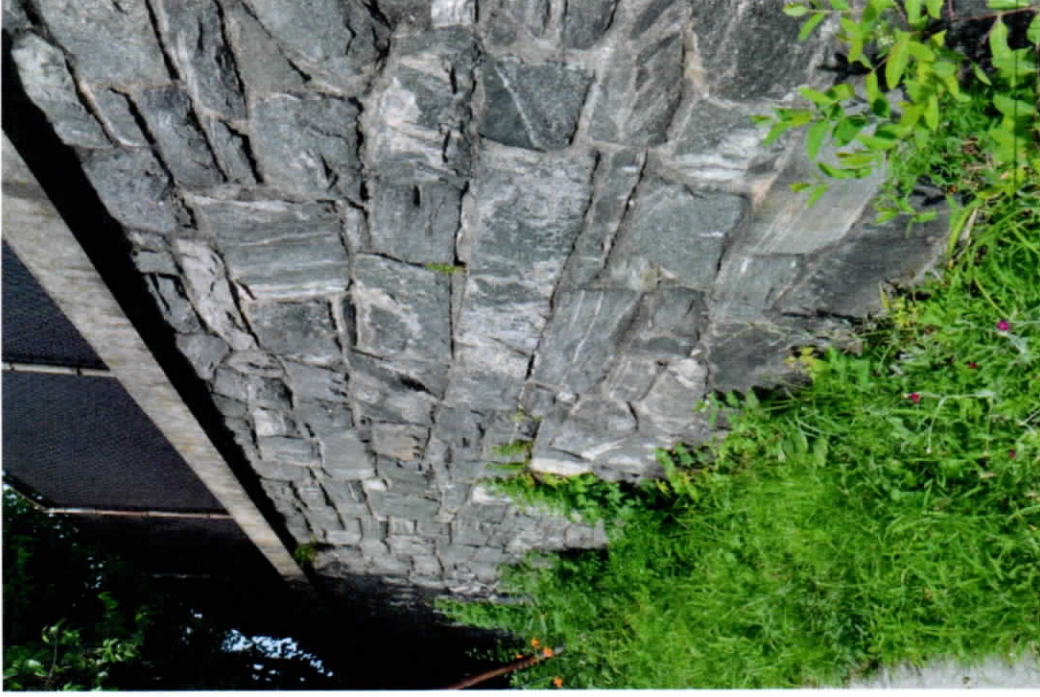
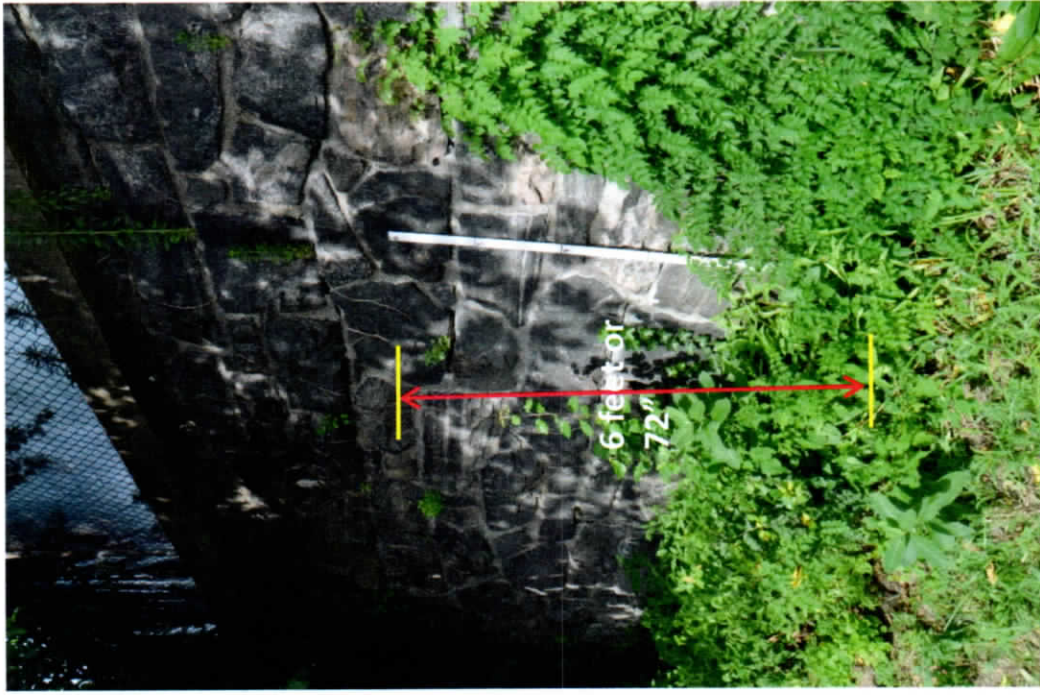
RECEIVED
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28, 32, 34, 40 Miller Avenue – > 204" High

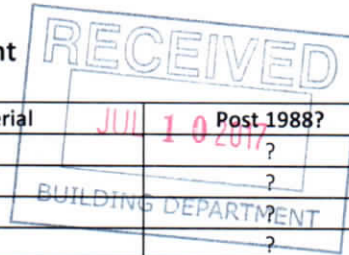


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Across from 63 Miller > 130" High



67 Miller Application - Other Walls > 6ft Sorted by Height



	Property Address	Material	Post 1988?	Retaining Wall Height	
				Inches	Feet
1	1 River Plaza	Concrete	?	248	20.7
2	135 – 162 Wildey Street	Concrete	?	214	17.8
3	28, 32, 34, 40 Miller Avenue	Stone	?	204	17.0
4	93 Miller Avenue	Stone	?	192	16.0
5	27 Cottage Place	Cinder Block/Concrete	?	183	15.3
6	Below 65 Bridge Street	Poured Concrete	Yes	174	14.5
7	62 Grove Street	Stone/Poured Concrete	Yes - Recently Rebuilt	155	12.9
8	Whisper Hill	Pour Concrete	?	154	12.8
9	3 Riverview Place	Engineered Concrete Block	Yes	144	12.0
10	116 South Broadway	Poured Concrete	Yes	144	12.0
11	96 Main Street	Stone	Yes	144	12.0
12	88 Main Street	Stone	?	142	11.8
13	155 White Plains Road	Engineered Concrete Block	Yes	133	11.1
14	75 N. Broadway/ 11 Dixon Street	Poured Concrete	?	130	10.8
15	Across from 63 Miller	Stone	?	130	10.8
16	21 Wildey Street	Poured Concrete	Yes	128	10.7
17	145 Franklin Street	Poured Concrete	?	128	10.7
18	Intersection of Cottage Place and Main Street	Stone	?	116	9.7
19	56 Grove Street	Stone	?	108	9.0
20	47 Church Street on Riverview Ave	Stone	?	104	8.7
21	177 White Plains Road	Stone	?	104	8.7
22	21 Union Avenue	Engineered Concrete Block	Yes	102	8.5
23	57 Cobb Lane	Poured Concrete	?	100	8.3
24	Edgemont Condominiums, 301 Martling Avenue	Stone	Yes - Recently Rebuilt	97	8.1
25	61 Franklin Street	Stone	?	97	8.1
26	104 Grove Stree	Engineered Concrete Block	Yes	96	8.0
27	120 N. Broadway	Poured Concrete	?	96	8.0
28	126 N. Broadway	Stone	?	96	8.0
29	88 Benedict (Loh Avenue Side)	Cinder Block/Concrete	?	96	8.0
30	83 Main Street	Stone	?	95	7.9
31	0 Grove Street	Stone	?	95	7.9
32	100 Grove Street	Stone	Yes - Recently Rebuilt	92	7.7
33	65 Altamont	Stone	Yes - Recently Rebuilt	92	7.7
34	63 Miller	Mafia Block	Yes	90	7.5
35	65 S. Broadway parking off of Franklin Street	Stone	?	87	7.3
36	93 Highland Avenue	Stone	?	86	7.2
37	82 Riverview Avenue	Stone	?	85	7.1
38	25 Benedict Avenue	Stone	?	85	7.1
39	69 N. Broadway/ 16 Dixon Street	Poured Concrete	?	84	7.0
40	54 Grove Street	Stone	?	84	7.0
41	50 Grove Street	Stone	?	83	6.9
42	54 Grove Street	Stone	?	83	6.9
43	35 Loh Avenue	Stone	?	83	6.9
44	123 Grove Street	Stone	Yes - Recently Rebuilt	80	6.7
45	80 Grove Street	Stone	?	80	6.7
46	50 Grove Street	Stone/Poured Concrete	Yes - Recently Rebuilt	80	6.7
47	42 Riverview Avenue	Cinder Block/Concrete	?	80	6.7
48	45-51 N. Broadway	Engineered Concrete Block	Yes	78	6.5
49	1 Grove Street	Stone	Yes - Recently Rebuilt	77	6.4
50	90 Grove Street	Stone	?	75	6.3
51	42/58 Cobb Lane	Stone	Yes - Recently Rebuilt	74	6.2
52	58 Cobb Lane	Poured Concrete	?	74	6.2

EXHIBIT G

Summary: re Walls Submitted by 67 Miller for ZBA Meeting on June 12, 2017

1. None of the pictured walls are of Mesa block requiring extensive geogrids that would eliminate the steep slope on 67 Miller Ave property
2. 10 of the 17 walls pictured are of Old Stone and well pre-date the Current Village Section 305-47 B (7), dated August 17, 1987, chapter 305, amended in its entirety December 1, 2008.
3. None of the 7 remaining walls are located in a Single Family Home Neighborhood and hence are not relevant to the Miller Ave/Riverview Ave Single Family Home Neighborhood.

It is requested that this Statement be made of record in the 67 Miller Application.

Respectfully submitted,

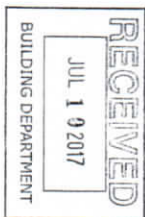
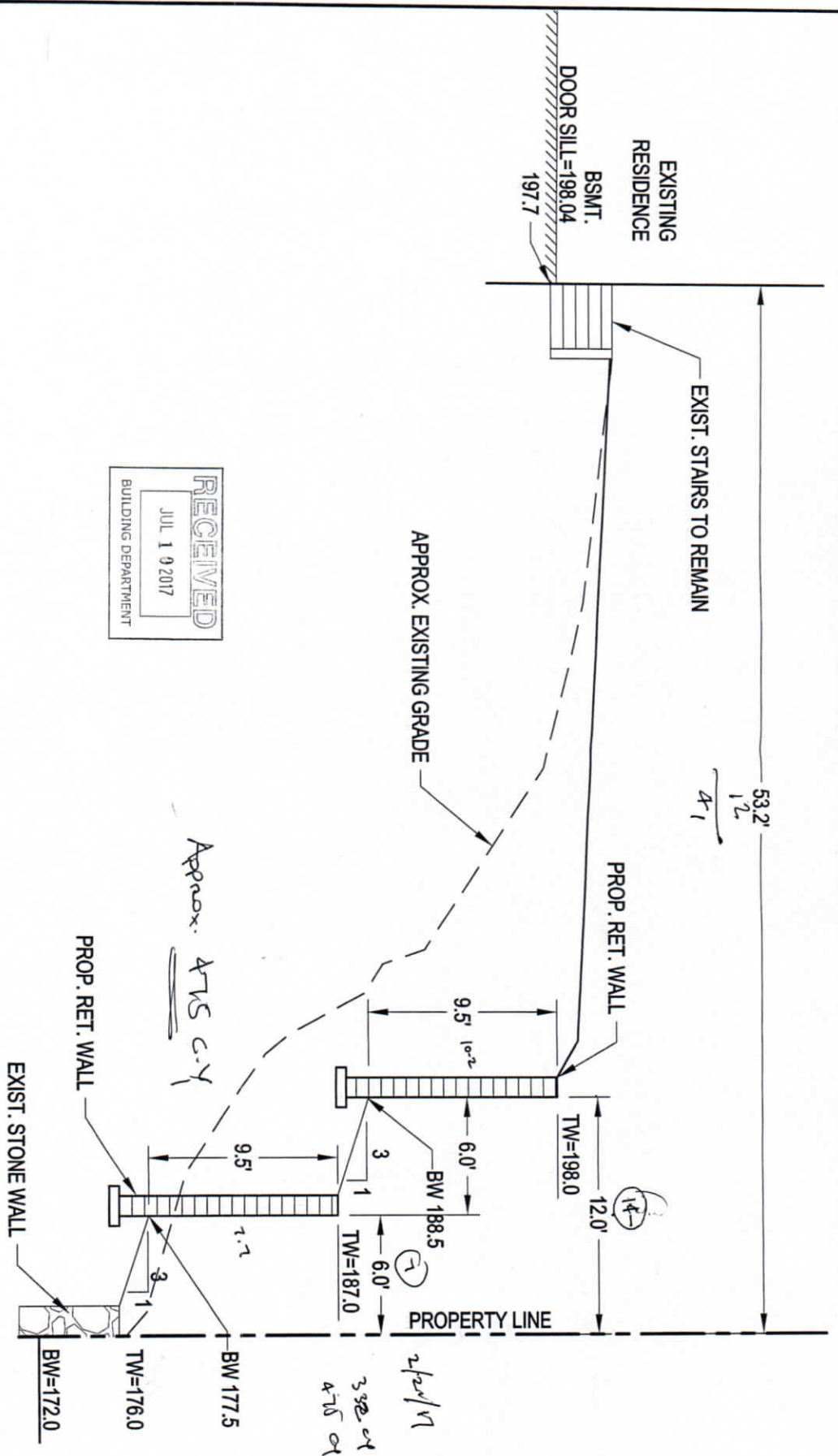
Geraldine F Baldwin

To the Tarrytown Zoning Board of Appeals Meeting July 10, 2017

Pictures of Walls Submitted by 67 Miller for ZBA Meeting on June 12, 2017

Pic. #	Wall Location	Wall Type	Neighborhood
1	Martling Ave	Old stone	Multi-Family housing
2	65 S Broadway	Old stone	Office Building, Parking Lot
3	61 Franklin	Old stone	Multi-Family housing
4	"Below Bridge St"	Concrete	Industrial – wall behind Backup Generator of Village Pump Station –not on Bridge St
5	Franklin	Cement block/concrete	Multi-Family housing , Parking lot
6	Cottage Place & Main Street	Old stone	Multi-Family housing
7	83 Main St	Old stone	Multi-Family housing, River Cliff condos
8	19 Wildey St	Concrete	Multi-Family housing
9	11 Dixon	Concrete	Multi-Family housing
10, 19	85 Main St	Old stone	Multi-Family housing
11	Church/Riverview	Old stone	Single Family Homes
12	Whisper Hill Condo	Concrete	Multi-Family housing
13,15	82 Riverview Ave	Old stone	Single Family Homes
14	River Plaza	Cement - railroad ties	Section 8 Multi-Family housing, Parking Lot
16	Orchard Drive	Block	Multi-Family Condos, Town homes & High Rise buildings
17	116 S Broadway	Concrete	Waiver of Steep Slope obtained from Planning Board 6/26/2006 for safety – to avoid cars backing out the driveway- Multi-Family housing , Parking Lot
18	White St	Old stone	Multi-Family housing , Parking Lot

EXHIBIT H-1



WALL SECTION AT BASEMENT DOOR
 TIERED WALLS - SKETCH-2

SCALE: 1"=5'-0"

July 10, 2017

EXHIBIT H-2

