

Zoning Board of Appeals  
Village of Tarrytown  
Regular Meeting  
\*Village Hall – 1 Depot Plaza  
July 12, 2021 7:30 p.m.

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

ABSENT: Chairwoman Lawrence and Member Song

\*\*\* The Governor's Executive Order issued in response to the Covid-19 Pandemic is no longer in effect. ZBA Meetings have therefore resumed in person at Village Hall and will no longer be conducted via zoom videoconferencing.

Ms. Weisel chaired the meeting in Chairwoman Lawrence's absence and called the meeting to order at 7:35 p.m.

#### APPROVAL OF MINUTES – April 12, 2021

Mr. Jolly moved, seconded by Ms. Rachlin, with Mr. Braun abstaining, to approve the minutes of the April 12, 2021 meeting.

The secretary recorded the vote:

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

All in favor. Motion carried. 3-0

#### APPROVAL OF MINUTES – June 14, 2021

There was no quorum of the Board present to approve the June 14, 2021 minutes. These minutes will be considered at the next regular meeting.

#### CONTINUATION OF PUBLIC HEARING – Peter Bartolacci - 67 Miller Avenue

Peter Bartolacci, the applicant, appeared before the Board and advised that they have submitted renderings and pictures of several other similar type walls to what they are proposing as requested at the last meeting. The video connection is not working this evening, otherwise they would show them to the public. He has no further comment but would be happy to answer any questions.

Ms. Weisel thanked Mr. Bartolacci for the rendering of the proposed walls to see how the sides were designed which were very helpful. The examples of the concrete engineered block retaining walls were also helpful too. She referred to the walls laid out in different properties constructed with a straight line versus the walls that are stepped

back and noted that the walls in the back of the presentation were quite startling. She thanked Mr. Bartolacci for including them because it shows what a really tall wall with no screening capacity would look like.

Mr. Bartolacci also noted the Hackley wall, which is another massive wall located near the Tarry Crest parking lot. He pointed out that these types of walls can be built to tremendous heights and be structurally stable as long as they are built correctly.

Ms. Weisel noted the other walls that were in the packet that were tastefully done in residential areas. She held up a few to show the public and noted the 3- tiered wall in Castle Heights which is a nice comparison, and the wall at the Sisters of Sacred Heart.

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

Mr. Braun asked Mr. Bartolacci if there are any samples that he provided that he thinks are most similar to what they plan on putting in. Mr. Bartolacci said probably the Castle Heights example because it is straight, and also the 21 Union Avenue wall. He noted that none of them are exact but they all have the same characteristics, some are tiered and some are rounded, but their proposed wall is straight. The best example might be the one in Purchase, NY, which is a residential property, that has sort of a 90-degree angle toward the back.

Ms. Rachlin asked if any walls they submitted are similar to the type of block they are proposing. Mr. Bartolacci said that they are not sure if they are Mesa block, but they all look similar to the Mesa block. The Mesa block looks like bricks and they do have samples of that. He thinks that the 21 Union Avenue wall would be the most similar to what the Mesa block looks like; a rough face, but somewhat flat with no rounding.

Ms. Wiesel thanked Mr. Bartolacci for the pictures which were very helpful and asked if the Board Members had any additional questions pertaining to this proposal.

Mr. Jolly asked if there has to be an agreement about the type of wall with the Planning Board. Mr. Pennella advised that the Planning Board will work with the applicant who will propose a color and style and landscaping. Mr. Pennella noted that what is distinct about this wall is that the highest point is over to the north. The wall does taper off and it will not be uniform across in length and height. It will start at the maximum height that has been permitted and will taper down to almost zero at the south end.

Ms. Weisel opened up the meeting for public comment.

#### PUBLIC COMMENT PERIOD

Mark Fry, 36 S. Highland Avenue, Ossining, NY, is very familiar with this wall. A tremendous amount of work has gone into looking at conceivable alternatives in the last 6 or 7 years and the applicant has done an extraordinary job to make this the most



attractive wall that can be built. He feels the variances are minimal and he requests that the Board approve them.

Kristen Wilson, Attorney for Ms. Baldwin, submitted a letter to the Board which is attached as "Exhibit A".

Ms. Wilson said she is not here to rehash the lengthy history. Sometimes when relief is requested, it does not mean it needs to be granted. She would like Board to consider that Ms. Baldwin is the most impacted owner and will be looking at a shockingly different view from her kitchen window. They are not disputing that the slope needs to be stabilized, but the method that is proposed needs to be changed. There have been different variations of this plan. The applicant has looked at a three tiered and two 20 ft. tall walls, but she wants to know what the minimum variance is and what is actually necessary. This question has never been answered. Is it a 6- or 7-foot railroad tie wall that used to exist and needs to be redone with modern technology? It was sufficient decades before. She would like this Board to require the applicant to answer this question because what this does to the downgradient properties is significant and that is undeniable. With regard to the 5-point balancing test, there is an undesirable change to all of the downgradient properties. There are other methods to use. You could look at a 6- or 7-foot railroad type wall or another type of mesa block, but one single wall, that would allow the slope to be stabilized is the goal here. Would that be the minimum variance necessary? They may be able to bring in as many hundreds of cubic yards of fill, but is that necessary? The minimum variance is what should be necessary and there are other methods to achieve the goal. The variance is substantial. Overall, they are asking for 300% variance in terms of feet above what is permitted. There are other large tall walls in the village, or in Purchase, and throughout Westchester, but how many of them are in an entirely residential dense neighborhood in back of someone's home. That should be the comparison, not whether it is in Purchase, or any other commercial or multifamily place. Even if there are one or two single family homes with larger or taller walls than what is permitted, that does not mean that this wall fits here. In terms of whether this was self-created, the need for this much of a variance is entirely self-created. The deterioration of the slope may not be the applicant's fault, but the need for a 300% variance is extreme. She would like the Board to weigh these factors in during their analysis of the five balancing factors and to ask the applicant if there are other feasible methods to achieve this, or is this really the minimum variance necessary. She respectfully requests that it is not.

Bob Fedigan, of Yonkers, NY, appeared representing his sister-in-law Geraldine Baldwin, the neighbor who lives at 66 Riverview Avenue. He read a statement into the record and presented some pictures which were distributed to the Board and made part of the record. His entire submission is attached as "Exhibit B".

Mary Fedigan, of Yonkers, NY, appeared representing her sister, Geraldine Baldwin, who lives at 66 Riverview Avenue. She read a statement into the record and distributed it to the Board Members. Her submission is attached as "Exhibit C".



Suzanne Bartolacci, 67 Miller Avenue, advised that she will not comment on everything that has been said this evening but there have been a number of inaccurate statements that have been made which she would like to touch on. Ms. Wilson said they were planning to build two -20 ft. walls which is flatly not correct. They had proposed one -20 ft. wall which has been reduced to 2 tiers which is the current plan before the Board. Ms. Wilson also keeps referring to Ms. Baldwin as the most impacted neighbor. They have two other neighbors that adjoin their property, one on the north and one on the south. She would argue that all the neighbors are equally impacted by this deteriorating retaining wall. Both of these neighbors to the north and south are very keen and have been urging them to get this wall repaired for some time now and she thinks that their consideration should be listened to as well. The other item that keeps being brought up is the original wall. There have been discussions about it being seven or eight feet tall. They have had multiple presentations over the years in terms of what the original wall was like. Former neighbors came and spoke at Zoning Board and Planning Board public hearings and described what the original wall was like. They described it as two stories high, that they used to climb it, and it was sort of 18, 19, 20 feet high railroad tie wall. They also showed photos and had neighbors talk about how the top of the wall was starting to fall off or collapse, which is why the wall today is about 8- or 9-feet high today. What you are left with is the slope that covers the topography of the land but it is not a natural steep slope, because there has been a failing retaining wall. She wanted to clarify one of the comments that Ms. Wilson made about some of the photos that they submitted which was also brought up in the Fedigan presentation this evening. The photos presented were in response to the Board's request which was to provide photos of what these walls typically look like and to provide examples of these walls which they have done. The request was not for specific retaining walls in Tarrytown. She also thinks it was quite interesting that of the six photos that they submitted along Miller and Riverview, they managed to admit the 93 Miller Avenue wall, which is a 16- or 17-foot retaining wall, in its rear yard, right on the property line. When she sees this kind of information omitted, it makes her a little bit suspicious. With regard to the landscaping, they put a lot of landscaping in at the request of the Planning Board. The Planning Board wanted them to screen the wall so that Ms. Baldwin wouldn't be able to see it, which is why they have such dense landscaping against it. All these other photos that they found have no landscaping and that is presumably because they weren't asked to do that as part of a board or land use approval process. They have engaged a landscape consultant to come up with a design and she feels confident since they have worked with their engineer many times, that they wouldn't suggest plantings that would in any way damage the integrity of the wall.

Peter Bartolacci, 67 Miller Avenue, did not want to belabor the point, but it is important to point out that they keep hearing that there's nothing like this in the neighborhood. His wife, Suzanne, pointed out that 5 houses down from Ms. Baldwin's home is a 16-foot-high stone wall right on the property line. Their proposal is for 7.5 feet from the property line. Directly across the street from them is a giant retaining wall on the school property which abuts a bunch of backyards on upper Miller Avenue. He noted that the Board has on record, an aerial picture of Tarrytown, indicating where the large retaining walls are in Tarrytown, more than six feet, and more than nine feet. This view shows that the



density of large retaining walls actually increases as you get closer to their property at 67 Miller Avenue. He does not think it is accurate to say that there is nothing like this in the neighborhood. There are many large retaining walls within close proximity of their house and the evidence in the record proves that. Tarrytown is built on a hill. Retaining walls are a reality and a way of life here. Many houses would not be able to have been built without some fairly significant retaining walls. He wants to make sure that the Board keeps this in mind and he encourages them to look through the record because there is an awful lot of evidence that shows the kind of different perspective that the Board has been given this evening by the most recent speakers.

Mark Fry, 36 S. Highland Avenue, returned to comment that as a land use planner, he deals with many site plan issues. Most people forget why the village has an ordinance on steep slopes. The most effective way to protect a steep slope is to build the retaining wall or a series of walls. All of Tarrytown is built on a very steep slope and a series of cuts and fills has been done to allow for the homes to be built. It is a technique that has been used to protect hillsides for thousands of years.

#### END OF PUBLIC COMMENT

Ms. Weisel thanked the people who spoke this evening and acknowledged that there is a safety issue here. In the time that she has been on the Board she has watched the deterioration and she understands the sense of urgency that cannot be disputed. Looking back at the history of this project, the applicant had originally asked for three walls that were 6 feet in order to comply with the code but in doing so, it was determined that there was not enough space between the walls for plantings. She understands Mrs. Fedigan's safety concerns with the plantings breaking the wall apart if they become too large over time. Mrs. Fedigan interrupted Ms. Weisel and said she is concerned about the fabric of the wall, and said, once the fabric goes, the wall goes. Ms. Weisel also acknowledged the wall that recently came down from the neighboring property. She believes the safety and landscaping issues will be addressed at Planning and asked Mr. Pennella to comment.

Mr. Pennella said the Planning Board will be reviewing the landscaping plan to make sure that there is sufficient greenery and they will also be looking at the global stability analysis of the walls for safety issues. They have a specialized engineer that is designing the wall, not just a site engineer. He looks forward to seeing what the engineer will present.

Ms. Weisel advised the public that the landscaping piece is not something that the Zoning Board will be looking at. In addition to the landscaping, the Planning Board will be looking at the safety issues. She noted that they have gone from the 3- 6 ft. walls to sort of a compromise of the 2 - 9.5 ft. walls in order to embrace the landscaping aspect. She cannot speak as to what plantings will go there but she noted that the Arborvitae in the drawings show a relative green block of how it could look. With regard to the requested variances, she was originally concerned about the 11 feet, but after reviewing the minutes, and understanding the comments from Mr. Pennella and the public, she



has a much better understanding that this is not a solid wall of 11 ft and that it tapers down gradually for about a 4 ft. span. She thanked the applicant for the photographs of the other backyards and the renderings. She feels that that there is a very different approach to steep slopes for houses that have been established than perhaps what was done at the Bartolacci property before they moved in, which may need to be approached in a very different way. She would like Counsel Addona to read the draft resolution to show the various pieces that they are trying to cover so that nothing is missed with regard to safety and code issues.

Counsel Addona noted at the direction of this Board at its June meeting, she prepared a draft Resolution for their consideration which has been made available to the applicant and members of the public. She noted that specifically with respect to the landscaping, there is a condition in the draft resolution that there must be landscaping to the satisfaction of the Planning Board and that it cannot be any less screening than was required by the prior Planning Board approval. This Board is not specifically going to look at the types of plantings or where they are going to go, there is a benchmark that this resolution sets which will be considered when the applicant is before the Planning Board. If there are no other comments from the public, the Board can close the public hearing before we get into the resolution. For the benefit of all the applicants this evening, there are only four members present so three out of four of the members would have to vote in favor to approve the application. The Board would consider entertaining a request to hold up a vote until there is a full complement of the Board at the applicant's request.

Ms. Weisel asked if anyone in the public wants to add anything or have any questions.

Kristen Wilson, ESQ, Attorney to Ms. Baldwin, noted that she only received the draft 50 minutes ago and is still reviewing it. She is not sure if there are any issues that she would want to raise. She respectfully requests that the Board hold off until there is a full Board here and to allow her an opportunity to provide any comments, clarifications or questions regarding the draft Resolution. Ms. Weisel asked Counsel's advice. Counsel Addona said that usually when a vote is put off it is at the request of the applicant because it could be a potential detriment to have a vote without the full complement of the Board.

Mr. and Mrs. Bartolacci advised that they are comfortable with going forward with a vote.

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

The secretary recorded the vote:

Acting Chair Weisel: Yes  
Member Rachlin: Yes  
Member Braun: Yes  
Alt. Member Jolly: Yes

All in favor. Motion carried. 4-0



Counsel Addona advised that this is a lengthy resolution, as there is a lot of history to this application. For the benefit of the public she read through the determinations of the Board starting on page 4 and noted that the draft resolution has been provided to the applicant and a complete copy will be included in these minutes attached as "Exhibit D".

Counsel Addona finished reading the draft Resolution. Ms. Weisel asked the Board if they had any questions.

Ms. Rachlin has no questions. She thinks it is important to remember that if this wall is not approved, the applicant is well in their right to build a three-level wall with no screening and it will be just as high. She thinks this is the better solution.

Mr. Braun added that he is familiar with construction cost and understands the cost concern of a poured concrete retaining wall versus this type of retaining wall that is proposed. Looking at this from the perspective of what was previously approved and what is proposed now, from what he can see, the changes are minimal, as it only relates to changing from the material type to reach this solution, in light of what was previously proposed.

Mr. Jolly thinks that a lot of time has gone by and meanwhile the backyard gets less safe. Something has to be done or there will be a tragedy.

Ms. Weisel noted that there have been many different incarnations over time. She asked about the stone wall at the property line. The neighbor was concerned about any damage that might be done to that. Counsel Addona said there is a condition in the resolution that addresses this and it is a carryover from the Board's 2017 resolution to make sure that any impacts are mitigated to the extent that they have the property rights to do so, which is beyond the scope of this Board.

Mr. Jolly asked about the replacement of the chain link fence and the clean-up of that entire area. Counsel Addona said that is something that will also be looked at. It is more of an acknowledgement by this Board, but will be reviewed in more detail by the Planning Board in terms of the technical aspects.

Mr. Jolly moved, seconded by Ms. Rachlin, to approve this variance application.

Ms. Weisel asked for a roll call vote:

Alt. Member Jolly: Yes  
Member Braun: Yes  
Member Rachlin: Yes  
Acting Chair Weisel: Yes

All in favor. Motion carried. 4-0

CONTINUATION OF PUBLIC HEARING – Matthew Cordone – 88 Main Street

Matthew Cordone, the project architect, appeared with his colleague, Kristine Magliano. Ms. Weisel noted that she and Ms. Rachlin, along with Mr. Gaito, Alt. Planning Board member were at the site visit for the balloon test and also had a chance to see the view from the neighboring property. Also, the fly over video that was sent in was very helpful and all of the Board Members had a chance to view it.

Mr. Cordone noted that the site visit revealed that with regard to the building toward the west, the 2D elevation actually had a lower height so the railing is at a lower level in regards to the gutter. In addition, the Board had the opportunity to see his hat and balloons from the second story window at the extent of the proposed deck as well.

Ms. Weisel thanked the neighbor for allowing entry and that it was helpful.

Mr. Cordone said his design concept made every effort to try to eliminate any type of blocking or disturbance of a Hudson river view from our neighbors and at the same time give their client, a better living condition on their home. He believes that their proposal, and how it relates to which is the side yard setback variance on an existing non-conforming building is appropriate and that the end goal would alleviate a better view of the customer from the neighbors said if we had to go within our zoning regulation which would be to build an interior bulkhead.

Ms. Rachlin asked if the applicant explored a glass or clear railing? Mr. Cordone said they are very open to that. They had showed a code compliant railing system that was which would have been a TREX, or a wood substitute, but they are more than happy to create a less of a barrier.

Ms. Weisel asked Mr. Cordone to describe how close the deck is to the back edge of the roof. The notes say that they are covering approximately two thirds of the roof and it starts and the ridge line and is closer to the west side as opposed to the east side. Mr. Cordone said the idea was to establish the structural points of the building so they can have the best load paths for the structure starting at the ridge, extending to the load bearing wall on the westerly extent of the building. The railing system will be sitting on the load bearing wall, which is approximately six or seven inches off of the overhang and eave and then the roof terrace will start from there. They want to stay on top of the existing walls for gravity connections. The southern wall is not a load bearing wall and they want to make sure that the gravity connections work. The terrace will be on the southern and western exposures.

Ms. Weisel asked Mr. Cordone to clarify the height with the railing. Mr. Cordone referred to sheet A-101 which shows the elevations. The railing is 3 feet six inches above the traffic surface which is approximately three feet from the ridge itself. The elevations show the existing ridge at 28 feet. The new railing is at 33 feet 11 inches which puts the height at 5 feet 11 inches.



Ms. Weisel asked if they have considered any other design for this that might balance the deck over the east side as well as the west side. Mr. Cordone advised that from their site studies, they observed that the clearest corridor of the view of the river is the Northwest portion of this roof. They decided to set it back so that they were within an approximate tree line and back from the second story window on the neighboring building. They are here because the proposed staircase extends into the side yard setback. If they have to bring everything in they would have to build a bulkhead which would be another eight feet above the traffic surface of the terrace. They felt that this staircase solution would be the minimal obstruction of that view for the neighbors while giving his client an improvement to their life quality.

Ms. Weisel asked Mr. Pennella if he had any comment on the east/west design which may be more code compliant. Mr. Pennella said the property is approximately 36 feet wide and the deck is 13 feet, which leaves 23 feet that could be applied on either the east or west side. If you center the deck on the ridge, you would have a distance from the property line of 11.5 feet on either side. The staircase could still remain and the variances would be reduced to around 8.5 feet.

Mr. Cordone said that this solution would give his client a better view of the river. His sensitivity of putting the roof deck on the back was to prevent a view from other areas, not necessarily just from the east, but the due north elevation. The idea of setting that roof terrace back so it doesn't inhibit the urban fabric of Main Street. They were also trying to be sensitive, not just the immediate neighbors next to us, but also the folks who are walking from the train station every day, but center type facing it in the middle is something that they can certainly entertain.

Mr. Pennella said regardless of what you do, you are still building above the existing ridge so it is just a matter of taking it from one side and moving it into the center, shifting it to the north slightly to have your access. You still have the same area; it is just better balanced and makes the variances a lot less to the neighboring properties.

Mr. Cordone said he would be more than happy more center the deck to give his client a better view and if the Zoning Board does feel that that is an appropriate maneuver to reduce the variances, they will be happy to entertain.

Ms. Weisel said she thinks it would be a good alternative and they would like to see that plan to compare it to what has been proposed.

Mr. Braun said you mentioned part of moving it to the location where it is now was to provide some privacy to the neighbor. Mr. Cordone said their instinct was to move it towards the back since they felt that the value of the view would be toward the bridge and it prevents minimal impact of this terrace from the street and maintains the urban fabric of Main Street. If they do center the deck, they still have a considerable amount of distance from the front elevation and that is something that they will be more than happy to explore and present. Mr. Cordone said that shifting the deck to the north will not create and load bearing issues.



Mr. Jolly asked about the staircase. Mr. Cordone they would still have that staircase coming from the southernmost edge of the building, coming down and running down the eastern side of the building, which is needed to maintain the rise and run. The new stair would be following in behalf of the existing concrete steps that gets you to the apartment doors on the upper story. Ms. Weisel said in some ways it would be more visible if it was shifted for the neighbors. Mr. Cordone agreed because you would have more path.

Ms. Rachlin asked about occupancy and how many people are allowed on the deck. Mr. Pennella confirmed that New York State Code does require a 60 lb. live load score. Mr. Cordone said that the deck is not considered a place of assembly since this is a residential application, but he estimates that 8 to 10 people could be on the deck.

Ms. Weisel asked Mr. Cordone to go over the noise ordinance. Mr. Cordone said that there is a noise ordinance in the village which would apply to this property. They are not interested in having bands on the terrace. The purpose of the deck is to have their client enjoy the views, watch the sunset, like most people have done since the beginning of settling the river.

Ms. Weisel opened the meeting up for public comment.

Chris Simao, appeared on behalf of his parents, the owners of 3 Windle Park, which is on the eastern side of the property at 88 Main Street. He advised the Board that he never received the mailing for the original variance and has just reviewed the code. He is objecting to this proposal based on the side yard variance request. Currently, the side yard stands at 3.8 feet total for the property, while it requires 40 feet - 20 feet on the eastern and 20 feet on the western side. This proposal is bringing it down to 1 foot from the property line due to the staircase. This property at 88 Main Street is a 3 family with a very little side yard. It takes up the entire area and there is only one side yard because the western side is directly on the property line. The applicant is asking for a 95% variance based upon the current required setback of 20 feet. Since the building is a non-conforming building any addition to this would be a detriment to our property. He referred to Section 305-62 A.(2) of the village code which reads,

*“Nonconformity may not be increased or moved. No such land use building or structure which is nonconforming with respect to height, percentage of area of lot occupied, minimum yard sizes or minimum lot area per family shall be enlarged or altered in such a manner as to increase any such nonconformity or so as to substantially enlarge or increase the habitable or other useful area of such nonconformity, including, without limitation, the alteration of roof or floor levels or the addition of habitable or other useful area above or below such a nonconforming structure.”*

Mr. Simao said that this property is a non-conforming structure and the applicant is proposing to put a habitable space above it, which is not allowed in the code. He also would like to address the State Law 7-71B, which covers area variances. There are four points to consider here.



- 1) Does it produce a detriment to the neighboring property? Mr. Simao said it is a detriment to his parents' property by creating a one-foot clearance from a boundary line, basically a 95% reduction in the yard.
- 2) Can it be done any other way? Mr. Simao said no, in terms of the staircase access, because the building lot encompasses everything. It is fully utilized and there is really no space to create a staircase.
- 3) Is the variance substantial? Mr. Simao thinks the variance is substantial. The current code requires 20 feet and they are bringing it down to 1 foot. They are making a non-conforming building more non-conforming.
- 4) Does the variance have a negative effect on the physical condition of the neighborhood? Mr. Simao said that it affects our property but it's also highly unusual on Main Street. He has not seen any rooftop deck on Main Street. It will change the physical character of Main Street. You will be able to see the deck from Goldberg Hardware and coming up from the train. It does change the character.

With regard to the hardship created and if the condition was self-created, when the applicant purchased the property, this was the condition the property was in. Seeking an extra living space or more habitable space or wanting a river view is not a requirement. He and his tenants have enjoyed the views as well but it isn't a right to have a river view. He stated that this is a non-conforming building and the village code states that we can't alter a building that has non-conformity so he thanked the Board and respectfully asks that the request be denied.

Mark Fry, of Ossining, NY, lived in the village for 25 years, including across from 88 Main Street. He noted that the ground floor of the property is not considered a story so the building can be increased 1 story, as of right. It is also a pre-existing, legal non-conforming building as are most of the buildings on Main Street legally built years ago with zero side yard clearances. He feels that saying that a 20 ft side yard setback would be required today is a little disingenuous since it would be impossible to accomplish with no side yard clearances. It's important to note that the nature of the variance is not judged against how close you come up to the 20 feet. He feels the architects have done a masterful job. Instead of using the entire roof surface, and they could build an entire story there, which would completely obliterate the neighbor's views, the applicant is asking for a small, quarter of the roof area to be used within the existing footprint of the building. Counsel Addona interrupted and reminded Mr. Fry that the applicant would be compliant with the height only, not the setbacks. Mr. Fry agreed and said the deck itself is a light structure and it does not have a lot of visual weight. They could have also done a bulkhead but in his view, the exterior stairway is preferable and it will be one foot closer. Moving the deck toward the street a little bit would provide relief for the neighbor on the west. It will be visible walking up Main Street on either side, but the number one amenity these days is a rooftop deck which adds value to the home. Tarrytown should encourage river views and he would like to see the Love's enjoy their view. It will have some impact on the family next door, unequivocally, but he thinks the impact will be minimal and it is a reasonable proposition worthy of approval.

END OF PUBLIC COMMENT



Ms. Weisel said we have got some homework cut out for us. She would like to see another plan because this is a pre-existing legal non-conforming property. The variances are a significant issue. Mr. Fry stated that he thinks we should be encouraging views but that is actually something that she finds concerning because they may be setting a precedent in this area. She would like to examine this more closely and would like to see the plan to reposition the deck. She also wants to take into consideration what the neighbors have said this evening. This is unusual and they do not want to set a precedent so that everyone on Main Street thinks they can do this if they just get the variances. She also noted that this deck is not a need, it is something that is a little extra and is not necessarily a right. She feels that they need to slow down a bit and look at all the angles. She would like to continue this to the next meeting giving the applicant time to submit the additional information.

Mr. Cordone agrees with this path. He importantly pointed out that the roof deck is not considered habitable living space. It is not an interior closed space. He will explore the option of type setting the deck toward the center for the next meeting.

Ms. Rachlin moved, seconded by Mr. Jolly, to continue the public hearing at the August 9, 2021 meeting.

The secretary recorded the vote:

Alt. Member Jolly: Yes  
Member Braun: Yes  
Member Rachlin: Yes  
Acting Chair Weisel: Yes

All in favor. Motion carried. 4-0

CONTINUATION OF PUBLIC HEARING – Jim McFarland o/b/o Wildey Group –  
135-162 Wildey Street – Walgreens Location.

Ms. Weisel announced that the applicant is before the Board to appeal an interpretation of the Building Inspector's determination that the proposed medical use for collection of blood and urine specimens for offsite testing is not a permitted accessory use pursuant to 305-39 (B) of the Zoning Code, or in the alternative, grant a variance to allow this accessory use.

She advised that the Board is in receipt of a letter dated June 30, 2021. Jim McFarland appeared before the Board, on behalf of the Walgreens Store. He noted that he has reviewed the draft Resolution and is agreeing with the Board's conclusion on this matter that the proposed use is in fact a customary personal service incidental to retail sales.

Counsel Addona advised that the applicant is proposing to extend an existing collaboration with LabCorp at the Walgreens in Tarrytown whereby, in addition to their pharmacy, they would also be collecting urine, blood samples that will then be sent out



to a separate secondary location for testing. When the Village Engineer/Building Inspector received this application, it presented itself as a medical use which the Building Inspector determined not to be a permitted use or permitted accessory use in the zone. The applicant came before this Board to seek an interpretation. The initial interpretation only challenged the determination with respect to the accessory use and did not address the permitted use and whether or not what they were proposing could fit within that. The focus of the review last month was whether this could fit within that accessory use. Subsequent to that, in between the last two meetings and the applicant's submission, they took a step back and reviewed the possibility that the use is more a part of their permitted principal use permitted for the performance of customary personal services clearly incidental to retail sales. The applicant already stated at the last meeting and in the submission documents, that the Walgreens is providing COVID vaccines and flu shots. They already have consultation rooms where the pharmacist will sit with a type two diabetic patient, and help them on how to withdraw blood, and then do testing using the diagnostic equipment, and the testing equipment they receive at the pharmacy. In light of this, she was advised to prepare a draft resolution which has been provided to the applicant. The resolution synthesizes those two concepts of what was originally discussed, because it is important for the Board's record to make clear that the accessory use does not apply, because it does clearly state where the owner resides on the premises or not. With regard to the principal permitted use of retail sales, and the services that are customarily performed incidental to retail sales, there is some leeway for this Board to look at the specific facts which is that they have an existing pharmacy and are performing these other services which are similar to the proposed services. She advised that this is a draft resolution and is subject to the Board's review for input and to make changes.

Ms. Weisel said because this is an RR district there was no way to stretch it in any direction that would make apply to this situation. But, because there is an existing use for diabetes consultation, Covid and flu vaccines, it seemed very much like this is part of the retail aspect that is connected to the store.

Ms. Weisel asked the Board if they have any comment.

Mr. Jolly asked if the fact that they are doing this in other municipalities is something that the Board can consider. Counsel Addona advised that she has not researched other municipalities to see what zones the stores were in but it is referenced in the draft resolution that Walgreens and LabCorp have an existing relationship to perform these services in 27 states, including 15 locations in New York. It is certainly something the applicant pointed out that seems relevant to putting in the resolution, however, it is not dispositive and the Board is not compelled to grant the interpretation based upon this information. It demonstrates that there is a history of this relationship which has been ongoing in many locations and working, which is consistent with the definition of retail sales with customary services.

Mr. Jolly wanted to know if there is an issue with the parking if the old Chase Bank space becomes occupied. Mr. Pennella advised Mr. Jolly that as each application or

each tenant has moved out, the building department keeps a continuing traffic count of what spaces are allocated to each store, the number of variances granted, even including the last space that was filled with was Victor's Pizza. They have variances already granted on number of parking spaces. When a tenant comes in at the Chase location, they will have to provide a parking plan based on the code requirements. Mr. Pennella noted that the parking requirement at this location is 1 space per 300 s.f.

Counsel Addona advised that the parking requirement was not a consideration because the permitted use first had to be considered. She has included a condition in the resolution to address this issue with the Building Department. Should the applicant require a parking variance based on the square footage, it is possible that they would have to return to this Board to seek a parking variance.

Ms. Wiesel asked if anyone in the public had any comment. No one appeared.

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

The secretary recorded the vote:

Alt. Member Jolly: Yes  
Member Braun: Yes  
Member Rachlin: Yes  
Acting Chair Weisel: Yes

All in favor. Motion carried. 4-0

The applicant waived the reading of the formal Resolution. Counsel Addona read through parts of the draft Resolution. The entire Resolution has been made part of the record as follows:

Application by Jim McFarland on behalf of Wildey Group, LLC  
("Applicant") 162 Wildey Street, Tarrytown, New York 10591 (the  
"Property")  
Sheet 1.40, Block 9,  
Lot 13  
RR (Restricted Retail) Zoning District

WHEREAS, the Applicant, with the authorization of the owner, has appealed to the Village of Tarrytown Zoning Board of Appeals ("ZBA") from a determination by the Building Inspector dated March 29, 2021 and updated April 27, 2021 ("Denial Letter") that the Applicant's proposed interior alterations to convert existing retail space to a professional medical lab for the collection of blood and urine specimens for offsite testing is not (1) a permitted principal use under Zoning Code § 305-39(A) or (2) a permitted accessory use under Zoning Code § 305-39(B); and

WHEREAS, the Applicant submitted an application to the ZBA seeking an interpretation that the Denial Letter erred in finding the proposed use is not a permitted



accessory use is the RR zoning district and determining the use is a permitted accessory use in the RR zoning district, and

WHEREAS, under New York Village Law § 7-712-b(1), the ZBA “may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken;”

WHEREAS, a duly noticed public hearing was held at the regular meeting of the ZBA on June 14, 2021<sup>1</sup> and continued to the ZBA’s July 12, 2021 meeting,<sup>2</sup> and members of the public having the opportunity to attend and be heard, the public hearing was closed on July 12, 2021, and

WHEREAS, in its submissions and during the public hearing, the Applicant provided the following information regarding the proposed use:

1. Walgreens would collaborate with another entity, Laboratory Corporation of America (LabCorp), to convert existing warehouse space to provide a designated area in the Walgreens store near the existing pharmacy to be called “LabCorp at Walgreens” for the collection of blood and urine specimens.
2. Walgreens and LabCorp have an existing relationship as there are 263 Walgreens locations offering LabCorp services in 27 states, including 15 locations in New York.
3. A customer will come to Walgreens with a doctor’s order for blood and/or urine testing or an order from a potential employer for a drug screen collection. On occasion, a customer will collect the specimen at home and bring the specimen to Walgreens to be sent out for testing/screening.

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

<sup>2</sup> The State of Emergency expired on June 24, 2021 and therefore this public hearing was held in person in accordance with the Open Meetings Law.

4. Appointments can be made online in advance, which is how most appointments are made, and there will be kiosks for customers who have not made appointments to check in, in addition to checking in with the pharmacy staff.
5. There will be a designated restroom for the collection of urine, three service areas for the drawing of blood and a work area for the staff.
6. The blood collection will be done by a licensed phlebotomist.
7. Only collection of the specimens occurs at this location and no diagnostic testing or screening is done onsite. The specimens are picked up by a courier and brought

to a branch facility for shipment to a testing facility with other specimens picked up within the area.

8. All medical waste will be stored in designated containers and collected by a third-party vendor regularly after hours.

Collectively, items 1-8 above constitute the “Proposed Use.”

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

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

IT IS FURTHER RESOLVED, this Board hereby denies the Applicant’s interpretation that the use is a permitted accessory use in the RR zoning district under Zoning Code § 305-39(B) for the following reasons:

1. The only accessory uses permitted in the RR zoning district are “any other accessory use permitted in and as regulated in a multifamily residence district.” (Zoning Code § 305-39(B)(2)).
2. The only accessory use permitted in the multifamily residence districts that the Applicant contends is applicable, which the ZBA agrees, is: “Professional offices or studios of artists, architects, dentists, doctors or engineers **residing on the premises**, except that any doctor, dentist or other professional person maintaining regular office hours for visits of patients or clients shall be located on the ground floor only.” Zoning Code § 305-29(B)(1)(b) (M-4 Zone); 305-30(B)(1)(b) (M-3 Zone) (*emphasis added*).
3. The Code language is clear that this professional office use only applies to those professional persons residing on the premises. As the Property is a retail store, this is not applicable here, and therefore the Applicant’s proposed use does not fit within the accessory use permitted by the Code.
4. The Applicant contends that “the use of phlebotomy as an accessory use in the RR district conforms with the spirit and intent of 305-39(B)(2).” This Board disagrees.
5. The Zoning Board is not charged with, or authorized to, interpret the spirit of the Zoning Code. This Board is charged with interpreting the actual language of the Zoning Code. And the clear, actual language of the Zoning Code states that these professional offices are only permitted for those professionals residing on the premises. As that is not the case here, the Zoning Board has no discretion to read further into the intent or spirit of the Code. If the Village Board of Trustees wanted the accessory use to include all



professional offices, whether the professional resides on site or not, the Board of Trustees could have easily omitted this language. But as this limiting language was included in the permitted accessory use, its existence must be acknowledged and abided by.

6. The Board also rejects the Applicant's argument that the use could be permitted because it is not expressly prohibited. The Applicant cites the relevant Code provisions in section 305-11(B), which states that (1) "No use or uses shall be permitted in any district unless said use is specifically listed or referenced on the schedule, and only then in the district in which it is noted" and (2) "No use of land or existing or proposed buildings or structures shall be permitted in the Village unless expressly listed on the schedule or interpreted as listed on the schedule of the Zoning Board of Appeals in cases of unclarity." The Code is clear that a use is not permitted unless it is clearly listed, which it is not, and there is no unclarity with respect to whether this is a permitted accessory use because the Code clearly states that professional offices are only permitted accessory uses for professionals who live on the premises, which is undisputedly not the case here.
7. Therefore, the Board denies the Applicant's interpretation that the use is a permitted accessory use in the RR zoning district.

BE IT FURTHER RESOLVED, by the authority vested in the Zoning Board pursuant to New York Village Law § 7-712-b(1) to "make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made," the Board hereby determines that the Applicant's proposed use is permitted as part of its permitted principal use under Zoning Code § 305-39(A) based upon the following:

1. The Board relies upon and incorporates Items 1-8 on pages 1-2 describing the Proposed Use.
2. Zoning Code § 305-39(A)(6) identifies as a permitted principal use "fully enclosed structures for the sale of goods at retail or the performance of customary personal services clearly incidental to retail sales, . . ." This is the use pursuant to which Walgreens currently operates.
3. In addition to being a retail store, Walgreens also contains a pharmacy for the sale of prescription drugs and medication.
4. The Pharmacy has an existing waiting area for its customers and those customers seeking LabCorp services can utilize this waiting area and have the option of checking in with Pharmacy staff.
5. Of the total 16,151 square feet of interior usable area of Walgreen's, only 2.1% of this area (228 square feet) will be designated for this proposed use with no more than 4 customers and 1 LabCorp staff at any given time. The Applicant will see at most 60 customers per day for this service, but based upon regional Walgreens

markets the Applicant estimates that it will be approximately 30 customers per day. Walgreens

currently has an average of 786 customers per day with 205 utilizing the Pharmacy services.

6. As part of its existing Pharmacy use, the Applicant provides the following services: COVID-19 vaccines and flu shots. In addition, the Pharmacy also has an existing consultation area. When a customer is prescribed medication and diagnostic equipment for Type 2 diabetes, the customer can meet with the pharmacist in the consultation area to receive practical direction/assistance on how to draw blood with a needle to test the glucose levels in the blood.
7. While none of these services are exactly the same, they are all services that are clearly incidental to the pharmacy retail use and involve needles to insert materials into or extract materials from the customer. In addition, with respect to the diabetes customers, like the Proposed Use, there is an extraction of blood. But unlike with the diabetes customers where the blood is tested on site with the diagnostic equipment, for the Proposed Use the specimens are sent to a secondary facility for testing.
8. In addition, Walgreens already has bathrooms for customer use, only now it will have an additional bathroom in the LabCorp area for collecting urine specimens.
9. As a result of the existing service uses, there are currently procedures, locations and contractors in place for the disposal and removal of medical waste that will also be used for the Proposed Use.
10. In light of the foregoing, this Board finds that under the specific circumstances and facts of this Application and applying the relevant Zoning Code provisions to this specific Application, the Applicant's Proposed Use of collecting blood and urine samples from customers to be tested at a secondary location is a "customary personal service clearly incidental to retail sales" and therefore the Proposed Use is permitted as part of the Applicant's permitted principal use.
11. This interpretation is specific to this Application, the Applicant's proposed use and applying the relevant Zoning Code provisions to this specific Application. This determination does not set a precedent that can be applied to other properties or uses as each application's facts must be reviewed independently in conjunction with the relevant Zoning Code provisions for the district in which the Property is located.
12. This interpretation is made subject to the accuracy of the representations made by the Applicant and its representatives to the ZBA in its written submissions and during the public hearing and if any material representation, whether or not it is included in this Resolution, is found to be inaccurate, at the ZBA's discretion this interpretation may be deemed null and void, and in which case the Applicant must



make a new application to the ZBA for an interpretation based upon those actual facts.

BE IT FURTHER RESOLVED, this determination is solely with respect to whether the Proposed Use is permitted under the Zoning Code and does not address whether any other permits or approvals are needed in order for the Applicant to implement the Proposed Use, including but not limited to parking, and to that end, the Applicant is directed to provide the Building Inspector

with any and all plans, materials and information the Building Inspector determines is necessary to assess what, if any, additional approvals or permits may be necessary for this project; and

BE IT FURTHER RESOLVED, in light of the ZBA's determination that the Proposed Use is permitted, the ZBA does not address the Applicant's alternative requested relief for a use variance.

Dated as of July 12, 2021

Mr. Braun moved, seconded by Mr. Jolly, to approve this interpretation application.

The secretary recorded the vote:

Alt. Member Jolly: Yes  
Member Braun: Yes  
Member Rachlin: Yes  
Acting Chair Weisel: Yes

All in favor. Motion carried. 4-0

NEW PUBLIC HEARING - John Smith – 26 Union Avenue

The following public notice has been made part of the record:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at **7:30 p.m. on Monday, July 12, 2021**, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

John M. Smith  
26 Union Avenue  
Tarrytown, NY 10591

For variances from Chapter 305 of the Village of Tarrytown ("Zoning Code") for the installation of a tool shed in the rear corner of the property.



The property is located at 26 Union Avenue and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.80, Block 51, Lot 19 and is located in the R-10 Zone.

**The variances sought are as follows:**

<b>Code Section §305-20, Attachment 5:1</b>	<b>Required</b>	<b>Proposed</b>	<b>Variance</b>
Column [16] - Side yard setback	12.0 feet	1.0 foot	11.0 feet
Column [17] - Rear yard setback	12.0 feet	2.0 feet	10.0 feet

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

By Order of the Zoning Board of Appeals

Lizabeth Meszaros  
Secretary to the Zoning Board

Dated: July 2, 2021

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

Ms. Weisel confirmed that some Board Members were at the site visit and saw the location of the proposed shed.

Mr. Smith appeared and advised the Board that he sent out the certified letters to his neighbors and he also referred to a letter from, Julia Streit, who owns the property to the west, at 18 Union Avenue. Julia Streit identified herself in the audience and is in favor of this project.

Ms. Weisel read Ms. Streit's letter into the record as follows:

*"To Zoning Board Members of the Village of Tarrytown:*

*I would like to submit the following comments regarding the variance application for 26 Union Avenue. In addition, I plan to attend the Monday to July 12 meeting, to offer my support in person. Overall, I'm very supportive of this application from Mike and Laurie Smith. Mike and I met at his house on Thursday, July 8<sup>th</sup>, to discuss the location design and visual impact for 18 Union Avenue. I have a very good neighborly relationship with Mike and Laurie. They were extremely supportive during my construction efforts to rebuild 18 Union Avenue, after a massive fire a few years ago, and I'm happy to help them receive village approval for this project location. I'm not*

*concerned about the current proposed location, it matches up with a fence and a shed in my yard. As long as the rear variance is granted, and it remains close to the southern property line, the impact of my house is minimal. Design: Overall, I'm not concerned with the design, the 9 ft. height is not ideal. I do not want it to be any taller in that small chance that the roofline is a problem an Evergreen on my side of the fence will provide sufficient screening. I asked Mike to purchase the shed with dark and natural black and brown roof tiles so that everything will blend through the forest, and he agreed with that. Miscellaneous: I asked Mike about power lighting. He said there would possibly be interior lighting, he has no plans for exterior lighting which I appreciate. With this location and this design, I do not see the Smith project posing any practical or aesthetic problems for my house. Thank you for your consideration, Julia Callahan Streit, owner at 18 Union Avenue. Thank you."*

Mr. Smith advised the Board that the location of the proposed shed is in the back west corner of the property. Behind his property is the Tarrytown School District property and there is a wooded buffer zone that goes up to the Tappan Hill Mansion. The north side of the shed will match up with the existing shed line next door. There is a huge pine tree that blocks the view from the road, so the shed will not visible to anyone when driving by. He would like to place the shed in this area instead of putting it in the middle of the yard so that he can make the best use of the property and there is nothing behind him.

Ms. Weisel commented that Mr. Smith does have a large yard and it seems that both of the neighbors have sheds that they have moved off to the side so they are not planted in the middle of their properties.

Mr. Smith advised that there is an old concrete slab where the old shed was and he is going to have that removed and have another slab installed, approximately four inches above the ground, to protect the shed from any water.

Ms. Weisel was concerned about the Locust tree located in the forest area, which is on the Tarrytown school property. Mr. Smith advised that the company, Save A Tree, has evaluated the tree and they are recommending that it be removed because of wood rot and deterioration. Ms. Weisel was concerned that the tree will destroy the shed if it came down. Mr. Smith said the tree is on the school property and he has not been in touch with the school yet. He is going to get another review of the tree and then communicate with the School District at that time.

Ms. Weisel said the setback is very close to the fence. Mr. Smith said it is 2 feet from the property line on each side. Ms. Rachlin asked about the height. Mr. Smith said it is a 9 ft. 4 inches to the ridge with the concrete slab.

Mr. Pennella asked why he needs a concrete slab and why not just use four piers at each corner, since it is less work. Mr. Smith said the concrete will provide support there in the middle, otherwise he will need a post in the middle and it is the same cost to have it dug out. They are only going about 2 to 3 inches into the ground, it is not a great depth.



Ms. Weisel said the neighbor's shed is much smaller but is it blocked by the stockade fence. Mr. Smith said that the north side of his shed will line up with the north side of the shed on the adjoining property.

Mr. Weisel asked if any Board Members had any comments or questions.

Mr. Jolly asked if there was a legal shed there when he bought the house. Mr. Smith said the shed that was there was an old shed in very bad condition and unusable. He bought the house through an estate and does not know if it was legal. Mr. Smith said that he removed the shed 6 months after he bought the house. Mr. Pennella said that Mr. Smith needs the requested variance to place the shed at this location.

Ms. Weisel asked if anyone in the public would like to speak.

Ms. Julia Streit, owner of 18 Union Avenue, approached the Board and said that she is in support of the project as it does not have any bearing on her property.

There was no more public comment.

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

The secretary recorded the vote:

Alt. Member Jolly: Yes  
Member Braun: Yes  
Member Rachlin: Yes  
Acting Chair Weisel: Yes

All in favor. Motion carried. 4-0

Mr. Pennella noted that the applicant is requesting a lesser variance than what was noticed. Mr. Smith is requesting a 2 ft. variance from the rear yard and a 2 ft. variance from the side yard.

Ms. Weisel asked about the removal of the Locust tree. Mr. Pennella said the School District will have to get a tree removal permit and the Tree Commission will have to approve the removal before it can be taken down.

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

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. *Ms. Weisel stated that there does not seem to be any undesirable change that will be produced in the neighborhood since the shed is tucked away in the back and there is no objection from the adjacent neighbor who also has a shed.*

2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Ms. Weisel said the location of the shed was well planned and is in line with the neighbor's shed on the adjacent property.*
3. That the requested area variance is not substantial. *Ms. Weisel said that the variance request is not substantial.*
4. That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Ms. Weisel stated that the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.*
5. That the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Ms. Weisel stated that it may be self-created but the proposed shed is in line and matches with the shed that is on the neighbor's property.*

Ms. Rachlin moved, seconded by Mr. Braun, to approve the variances and authorize Counsel Addona to prepare a resolution with the standard general conditions based upon the general discussion this evening to include the lesser variances that have been discussed.

The secretary recorded the vote:

Alt. Member Jolly: Yes  
Member Braun: Yes  
Member Rachlin: Yes  
Acting Chair Weisel: Yes

All in favor. Motion carried. 4-0

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

The following public notice has been made part of the record:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing on Monday, July 12, 2021 at **7:30 p.m.** at the Municipal Building, One Depot Plaza, Tarrytown, New York, to hear and consider an application by:

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



To request an additional two (2) year extension to the December 11, 2017 Zoning Board approval of variances necessary to convert an existing warehouse facility into a self-storage facility with a retail component.

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

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

By Order of the Zoning Board of Appeals.

Lizabeth Meszaros  
Secretary to the Zoning Board

DATED: July 2, 2021

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

Paul Ferraro, owner of 29 South Depot Plaza, appeared before the Board to request an additional extension to variances that were originally granted by this Board back in 2017. There have been no changes to the plan, they are just requesting an extension.

Counsel Addona advised that this was noticed for at 2-year extension and wanted to confirm that the applicant is requesting a one-year extension to the variances, which would expired on December 11, 2022, as indicated in their letter to the Board. She advised the Board that the current approval does not expire until this December of 2021 and the applicant would like to get the extension granted until December of 2022 which is approximately a year and one half from now, not two years. In accordance with the code, the Board can authorize this extension. Counsel Addona advised that the applicant is working with the village on other alternatives for this site and they would like to make sure that these approvals remain in place should the other project not move forward.

Ms. Weisel asked if any Board Members have any questions or comments.

Mr. Jolly asked if there was a relationship with the Wildey Street self-storage facility. Mr. Ferraro advised that he owns the Wildey Street business. He is here this evening to secure an extension to his approval for the Depot Plaza self-storage project should the mixed-use project not move forward. This extension will allow him to still be able to build the approved self-storage facility.

Counsel Addona advised the Board that they cannot do both projects and at some point, a decision will be made. There can be a condition in the approval that would ask the applicant to relinquish this approval should they get the mixed project approved.

Ms. Weisel commented that, essentially, they are just extending an approval with no changes to the plan and asked if anyone in the public would like to comment on this application.

Mark Fry, of Ossining, has followed this application since 2017 and noted the project meeting minutes he brought with him. The applicant has been working with the village to do a new neighborhood in this area and members of the Planning Board asked the applicant to do something entirely different. Since 2017, the applicant has gone down a very long path that has involved other proposals and he feels sorry for him. He thinks that keeping this alternative open is good for Mr. Ferraro and Mr. Collins who are worthy of pursuing other options on this property. He thinks the Board should grant this extension of the variances with no changes.

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

The secretary recorded the vote:

Alt. Member Jolly: Yes  
Member Braun: Yes  
Member Rachlin: Yes  
Acting Chair Weisel: Yes

All in favor. Motion carried. 4-0

Ms. Rachlin moved, seconded by Mr. Braun, to extend the variances for a one-year period from the current expiration of December 11, 2021. The variances will expire on December 11, 2022.

The secretary recorded the vote:

Alt. Member Jolly: Yes  
Member Braun: Yes  
Member Rachlin: Yes  
Acting Chair Weisel: Yes

All in favor. Motion carried. 4-0

**ADJOURNMENT:**

Ms. Weisel moved, seconded by Ms. Rachlin, to adjourn the meeting at 9:58 p.m.

The secretary recorded the vote:

Alt. Member Jolly: Yes  
Member Braun: Yes  
Member Rachlin: Yes  
Acting Chair Weisel: Yes

All in favor. Motion carried. 4-0



**EXHIBIT A**  
**67 Miller Avenue Application**  
**Kristen Wilson - Blanchard & Wilson**

## BLANCHARD & WILSON, LLP

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



July 12, 2021

### Via Hand Delivery

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

Re: Expiration of Variances Granted for 67 Miller Avenue – Bartolacci Residence  
Parcel ID # 1.70-40-4

Dear Honorable Members of the Tarrytown Zoning Board of Appeals,

By now, you are aware of the everlasting visual and environmental impacts to Ms. Baldwin's home. This is an impact that does not slowly blend into the environment or is one to which you can become accustomed, nor should it be. As you stood in Ms. Baldwin's backyard, you could well imagine the magnitude of the change to her view and the Applicant has done **nothing** to mitigate this impact. We understand there is a need to stabilize the slope but there are other means and methods to do so that are much less impactful.

First, the undesirable change is undeniable. The only properties that have a meaningful view of these two fortress like walls are those that are downgradient. The most significantly impacted property owners are those for which this Board should take special concern. My client, Ms. Baldwin, will have to look at this shockingly different view everyday outside her kitchen windows. She may be the most impacted property owner.

Second, there are other methods that could be equally effective but not nearly as disruptive. A consideration of whether this factor alone leads this Board to find that the variances should not be granted. Has the Applicant (or this Board) tasked the Applicant to consider alternatives for a shorter single wall? Again, as we asked last time, what is the minimum height necessary to stabilize the slope?

Third, the variances are undoubtedly substantial. Again, Mr. Bartolacci's requests for variances to allow for: 1) an **11' tall wall** along the southerly property line; 2) an **11.5' tall wall** along the northerly property line; and 3) a **combined 18.5' variance** along the westerly property line is both substantial in terms of percent of variance needed (**over 300 %**) and in terms of impact. The Village Code has numerous height restrictions on structures and buildings to protect views



and to prevent one property from over-powering another property. Here, if this Board grants the variances, it will negate any height restrictions this Village has legislated for and enforced throughout the Village.

Finally, as far as whether the need for the variances is self-created, the Applicant simply fails to meet this criteria. Here, the need for a larger retaining wall is **entirely self-created**. There has never been a plan showing a single wall of the approximate height of the prior railroad tie wall.

In summary, considering the five factors set forth in the Tarrytown Village Code § 305-118, the Applicant has failed to meet any of them. Moreover, the Applicant has not tried to mitigate the impacts in any meaningful way.

We implore this Board to hold this Applicant to the standards with which all other property owners are required to comply.

Respectfully submitted,

*Kristen K. Wilson*

Kristen K. Wilson



cc: Geraldine F. Baldwin  
Katherine Zalantis, Esq.

**EXHIBIT B**  
**67 Miller Avenue Application**  
**Robert Fedigan – o/b/o Geraldine Baldwin**

Submitted by:  
Bob Fenigian -  
ZBA  
mtg

Statement of Geraldine F Baldwin to the Village of Tarrytown Zoning Board of Appeals (ZBA) re Application of 67 Miller Ave. for Variances to Build two Huge Walls on a Steep Slope July 12, 2021

1. Walls in the Miller Park/Benedict Park Neighborhood

See the Pictures labelled Appendix B-B3 of the walls along the rear of the properties along Miller Avenue and Riverview Avenue.

All of walls are less than 9.5-10 feet high-- regardless if made of wood, concrete or stone. None resemble in any way the fortress Applicant proposes.

2. Artist's Rendition of Applicant's 2 Huge Walls Proposed on a Steep Slope

At the last meeting, the acting Chairperson Victoria Wiesel requested that the Applicant provide pictures /renderings of how the proposed walls would actually look. Applicant responded that the "Plan" showed the facings of the walls.

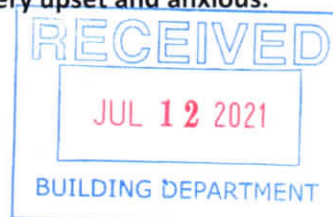
Accordingly, in order for the ZBA to view the fortress-like walls proposed by the Applicant, several pictures are submitted herewith. See the first picture of the view from my back yard in the summer -- the beautiful green steep slope has been home to woodchucks, squirrels and deer as well as pollinators of all sorts and birds since the house on Miller Avenue was built in the 1950s.

The next picture is an Artist's rendition of the two concrete block walls, totaling 18 feet high, rendered by a Licensed Architect Luigi DeMassi (who has appeared before this ZBA numerous times). The rendition is based on Applicant's Site Plan with the walls superimposed, according to the Plan, on a photograph of the slope as seen from my back yard.

Consideration of these two pictures together clearly demonstrates that Applicant's proposed huge walls will obliterate the steep slope and create a fortress-like view as seen from my yard and my neighbor's yard.

Additionally, construction of the proposed walls is stated to require 475 cubic yards of fill to be imported onto the property. Based on the average capacity of a dump truck of 10 to 14 cubic yards--- that much fill would require 34 to 48 Large dump trucks or twice that number, i.e., 68 to 96, if only smaller trucks could be used in the tight fit of the small roads in our residential neighborhood and especially the side yard between 67 Miller Ave and the neighbors to the North and South.

Consideration of all the pictures and Applicant's "plan" further demonstrates that the proposed walls will create a significant negative impact for this small residential neighborhood. Not only will it negatively impact the aesthetic and "natural ecology" of the neighborhood—but more importantly should the trucks bringing the fill slip or the walls fail once built—the weight of fill, generally about 2,200 lbs. per cubic yard or 1,045,000 coming downhill will overwhelm my and my neighbor's homes below. Not so far- fetched. A single 8-9-foot-high Mafia-block wall from the yard next to 67 Miller Ave collapsed in Dec 2019 and fell into my neighbor's yard at 80 Riverview. Fortunately, no one was physically hurt but it has left my neighbors Lin and Scott very upset and anxious.





### **3. The Tarrytown Village Code Requires Conservation of Steep Slopes**

In order to maintain the ambience of the Village which makes it one of the prettiest along the river (according to Forbes magazine), the Village Code endeavors to preserve certain landscape features, especially steep slopes and hilltops.

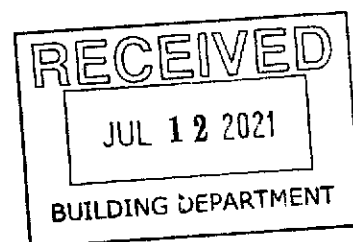
You have been told your only consideration should be limited to the height of the variances you are asked to grant which are stated to be only 3.5 feet above the Code limit of 6 feet. This ignores both the fact that the walls will obliterate a steep slope and that the height of the two walls so close together in the small space available actually will act as a single 18.5-foot-high wall in place of the steep slope (as stated by the current Village Engineer, Donato Pennella in his Letter of March 24, 2021 denying a Building Permit).

The retired Village Engineer, Mike Mc Garvey, made a site visit and established that Applicant's wall was never more than 7-8 feet-high. I have no problem supporting a variance that allows Applicant to replace the existing wall and obtain a variance for a single wall, in the same place 15 to 18 feet from the property line as the original wall, even 2 or 3 feet-higher than Mr. Mc Garvey's assessment. However, to approve a variance for walls that the current Village Engineer Donato Pennella has classified as 18.5 feet-high and 7.5 feet from the property line is totally UNREASONABLE AND UTTERLY RIDICULOUS in view of the Village Code limit of 6 feet-high!!!

Moreover, given the fact that Applicant requests not a single wall to replace the single original wall of 7-8 feet high but rather demands two huge walls of each 9.5 feet along the westerly portion of the property – the actual variance requested is twice 3.5 or actually 7 feet!!! This is NOT reasonable!!!

Additionally, Applicant requests two walls—one on the North and one on the South property line of 11.5 feet-high and 11 feet-high—for no other reason than “that is the way the design came out”. To grant such variances which are essentially two time the Code limit for no rational reason would be absolutely UNREASONABLE.

I understand that at the last meeting, you requested a draft Resolution for approval to be prepared for tonight's meeting. In light of the foregoing, I respectfully urge you to deny this Application until and unless it is revised to request a single, reasonably- sized wall in place of the present single deteriorated wall.



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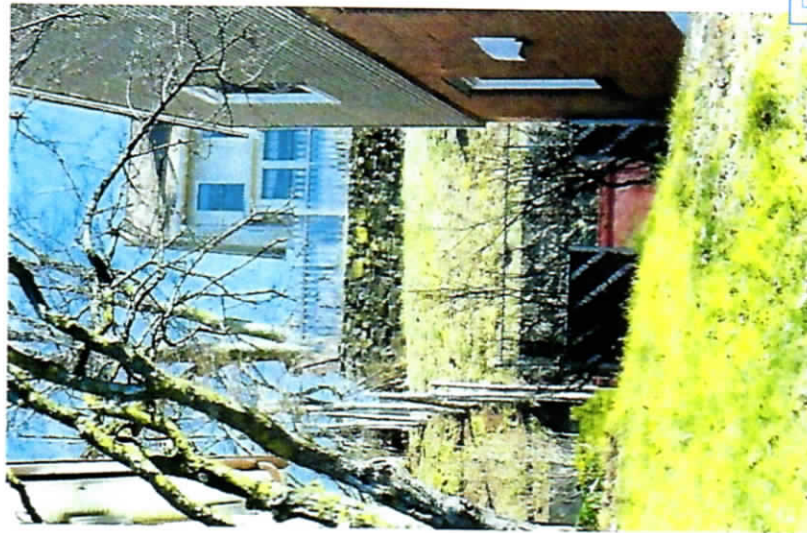
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Furness

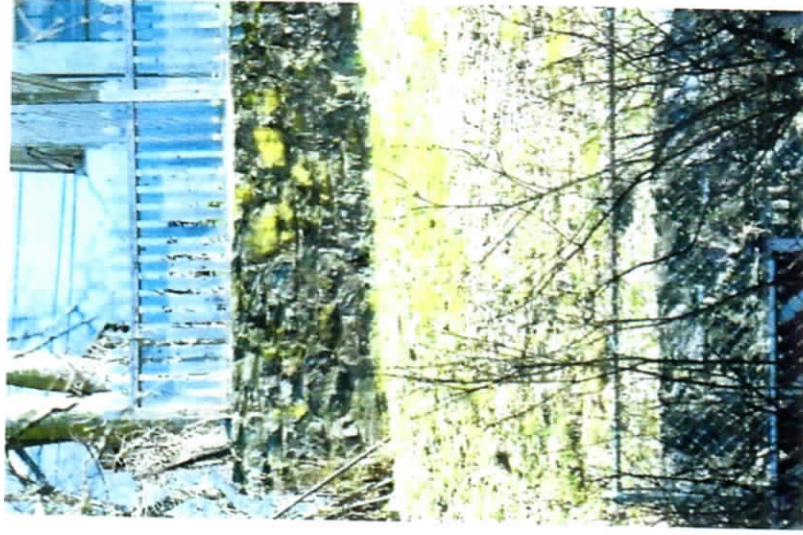
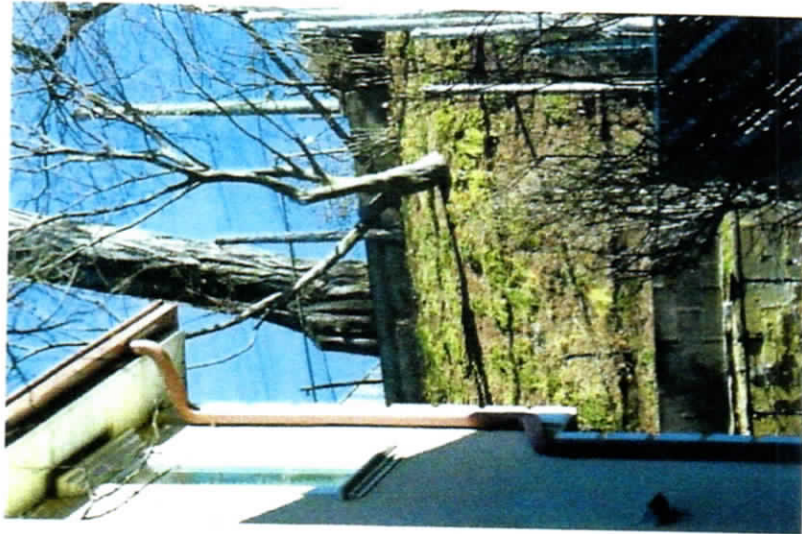
## APPENDIX B

PICTURES: REAR PROPERTIES OF MILLER AVE VIEWED FROM RIVERVIEW AVE

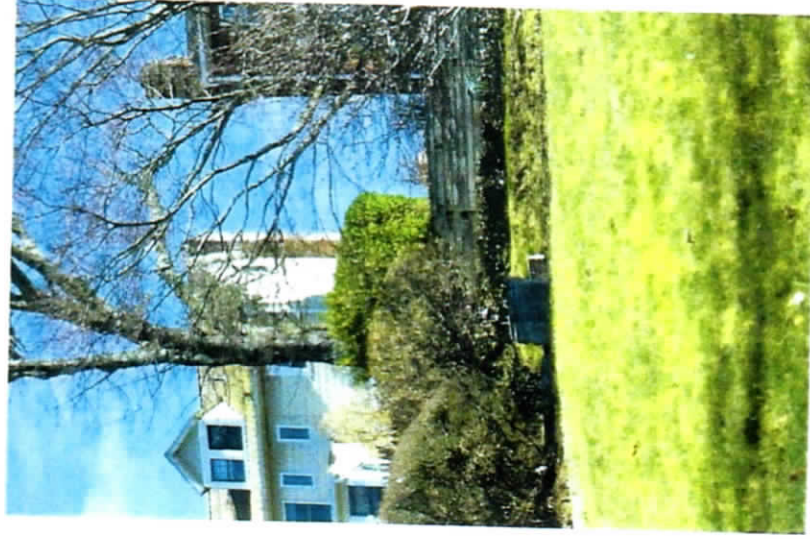




APPENDIX B2



APPENDIX B3



RECEIVED  
JUL 12 2021  
BUILDING DEPARTMENT





Fountain #2





Donor #13



**EXHIBIT C**  
**67 Miller Avenue Application**  
**Mary Fedigan – o/b/o Geraldine Baldwin**

Submitted by  
Mary Pedersen @  
284 mly

**Rebuttal by Geraldine F Baldwin to Applicant's Submission for 67 Miller Avenue dated July 2, 2021**

For the following two important reasons set forth below, it is respectfully submitted that Applicant's submissions are so absurd that they have no relation to reality and should be dismissed.

- A. Applicant's Rendition of the Proposed 2 Huge Walls with 2 rows of more than 14 or 15 Huge Arbor Vitae Cannot be Built as Shown without Seriously Damaging the Integrity of the Proposed Mesa Block Walls.
- B. None of the Walls Applicant Submitted are located in the Relevant Small Residential Neighborhood and hence have no Relevance to the Criteria Necessary to Support the Extremely High Variances Requested
- A. Applicant's Rendition Demonstrates a Complete Lack of Concern for the Safety of the Downslope People and Properties

Despite repeated statements by Applicant's Engineer at earlier meetings e.g., in April 2017, that no large trees could be planted between the Mesa Block walls— Applicant's current Rendition of the West facing walls depicts a monoculture of huge non-native Green Giant Arborvitae [ a hybrid of *Thuja plicata* or Western Red cedar and *T. standishii*, a Japanese cedar] with 14 in the 7.5 feet between the short drystone wall on the shared property line and the lower wall and 17 Green Giant Arborvitae in the 6 feet between the two Mesa block walls. The trees are depicted as well over the 9.5-foot-high walls— all to "hide" the huge fortress of walls.

If Arborvitae plants larger than small shrubs were planted between the two walls, they would have root balls large enough to entail cutting holes in the geogrid fabric intended to hold up the lower wall. Moreover, should the trees live, the roots would not stay in one place. Rather the roots would expand in all directions to support the increasing above-ground growth. For this reason, block manufacturers recommend a minimum distance of 5 feet from a wall for small trees and 10 feet from a wall for large trees like Green Giant Arborvitae. They know continued growth will further compromise the integrity of the geogrid fabric

These non- native trees need full sun and protection from freezing winter winds. Full sun will not be available in the tight space between the walls. Nor will these non-native plants provide any habitat or food for pollinators, birds or other animals. They will just become an ecosystem desert.

Most importantly, Green Giant Arborvitae plants are known to grow to 50 or 70 feet -high and 20 feet in width and in order to do so will need to have seriously expanded root structures that will surely compromise any geogrids needed to stabilize the walls not already compromised by the process of planting.

Unfortunately, only the geogrids beneath the walls will hold the walls upright and in place. Once the geogrids are compromised, the stability of the walls will be gone and the walls and all the added 475 cubic yards of fill, weighing about 2,200 lbs. per cubic yard will descend on the people and properties below.





M. Fadiyan  
7/12/21 ZBA

**B. None of the Walls Submitted by Applicant are Located in the Relevant Neighborhood and hence have no Relationship to Criteria this ZBA Board Needs to Consider**

The Village Code makes clear that when considering the criteria for justification of a Variance, the only walls that are relevant are those in the neighborhood of the proposed new walls.

Although the Village Code uses the "neighborhood" in a number of important contexts, it does not appear to have a specific definition of this term. From a contextual use, one can deduce a meaning of the term. For example, in stating the purpose of FAR Caps, Section 305-23 of the Code recites that, in order to preserve the neighborhood character, the cap is "to encourage both new houses and expansions . . . to have a consistent scale with the nearby residences on both sides of the street" (emphasis added)

Thus, the Village Code uses the term "neighborhood" to refer only to those nearby residences on a particular street.

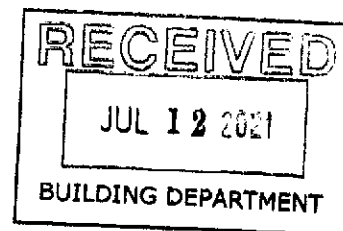
Additionally, given the fact that the Land Use Boards require that only residences within 100 feet of an applicant's residence receive Notice of a Public Hearing, it is clear that an applicant's neighborhood encompasses only a very local area.

The 67 Miller Avenue residence is located in an R7.5 single family residential district—plots are small, 75 feet x 100 feet or less. It is within the Benedict Park subdivision developed by Miller Bros. in 1924. The Benedict Park neighborhood encompasses only Riverview, Miller, Park and Independence Avenues as well as Bridge and Glenn Streets. It is for this reason that the 6 walls I submitted to illustrate the relevant neighborhood are along Riverview and Miller Avenues.

The residential Benedict Park neighborhood does not encompass residences in the R10 or R20 Districts which have much larger properties; nor does it encompass multifamily residences or non-residential or commercial properties.

Of the nine walls submitted by Applicant on July 2, 2021, only 5 are even located in the Village of Tarrytown – the rest are from other towns in New York, and based on the website indicated presumably from out of the state. It is of interest to note, that of any of the instances where more than a single wall is shown—NONE have huge plants like the Giant Arborvitae in Applicant's Rendition.!!!

Of the 5 walls in Tarrytown submitted by Applicant, as shown below, NONE is relevant to the present character of Applicant's small single family residential neighborhood.



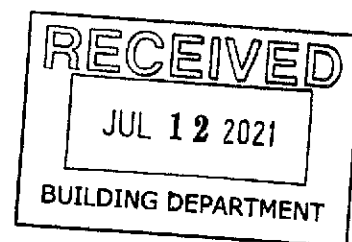
*M. Fedigan*  
7/12/21  
ZBA

**Tarrytown Walls Submitted by Applicant July 2, 2021**

Wall Location	Type Property	Size Property	Date Wall Built	Wall
104 Grove Street Tarrytown	House built 1893, converted to multifamily	0.4 acres or 17,424 square feet	?	No visible trees in front of the wall
3 Riverview Place, Tarrytown	Multifamily complex, wall around swimming pool and mechanics for same	Subdivision	?	Not a retaining wall on a slope – nothing to suggest blocks held up by geogrids
21 Union Ave, Tarrytown	Single family large residence	R 20 District; 0.5 acre or 21,780 square feet	2005	Walls built without Planning Bd approval—no trees between the walls
65 Castle Heights Ave Tarrytown	Single family large residence	R 20 District 1.2 acres or >50,000 square feet	2015	4 walls each 4-5 feet high maximum—no trees between the walls
Sisters of the Sacred Heart, Tarrytown	Commercial property—not residential per Village Engr and Village Attorney Planning Bd Meeting May 27, 2015		2015	2 walls, each less than 6 feet-high built to allow access by Emergency vehicles—no trees between the walls

In sum, Applicant's Submission provides no information at all relevant to the criteria the ZBA must consider in granting the huge requested variances. Reliance on such submission would in no way be reasonable or rational.

Again, in light of the foregoing, I respectfully urge you to deny this Application until and unless it is revised to request a single, reasonably- sized wall in place of the present single deteriorated wall.



**EXHIBIT D**  
**67 Miller Avenue Application**  
**Draft Resolution**



## **ZONING BOARD OF APPEALS RESOLUTION**

Application of Peter Bartolacci (the "Applicant")  
67 Miller Avenue, Tarrytown, NY 10591 (the "Property")  
Sheet 1.70, Block 40, Lot 4  
R-10 Zoning District

WHEREAS, by resolution dated September 11, 2017 and filed with the Village Clerk on September 14, 2017, the Village of Tarrytown Zoning Board of Appeals ("ZBA") granted the Applicant a variance for a two-tiered retaining wall in the rear of his property that did not exceed 9.5 feet in height where the Village of Tarrytown Zoning Code ("Zoning Code") § 305-47(B)(7) allows retaining walls to be a maximum of 6 feet high ("2017 Approval" attached as Exhibit "A" hereto); and

WHEREAS, the 2017 Approval was challenged by the neighboring property owner to the west/rear of the Applicant's Property in an Article 78 proceeding entitled *Geraldine Baldwin v. Village of Tarrytown Zoning Board of Appeals et al.* (Westchester County Supreme Court Index No. 67255/2017); and

WHEREAS, by Decision, Order and Judgment dated December 20, 2018 and filed with the Westchester County Clerk on December 26, 2018, the Court (Schwartz, A.J.) upheld the 2017 Approval and denied and dismissed the Petition ("2018 Judgment" attached as Exhibit "B" hereto), and in doing so made the following findings:

The Court has reviewed the transcript of the August 14, 2017 public hearing, which reveals that the ZBA determined to grant the area variances application only after receiving substantial testimony and evidence in favor of and in opposition to the variances. The ZBA heard from individuals in favor of the application, including engineer Paul Berte [from Fusion Engineering], Suzanne Bartolacci, as well as from the petitioner [Baldwin], her sister, and petitioner's counsel.

The colloquy between members of the ZBA and these individuals reveals its consideration of the pertinent factors under Village Law § 7-712-b in connection with the application for the area variances. Many of the exchanges surrounded the benefits and downsides of the project, with discussions about its necessity and potential effect on the character of the neighborhood.

The Court's review of the parties' submissions, including the transcripts of the relevant ZBA proceedings, reveals that the ZBA properly considered and weighed the relevant statutory criteria and that its determination was supported by substantial evidence and had a rational basis. The ZBA's Resolution includes findings that, *inter alia*, the variances sought by [Respondent Bartolacci] are not substantial, that granting the variances would not cause an undesirable change in the character of the surrounding area, the hardship was not self-created and that the Board was granting the minimum variance necessary....

WHEREAS, while Ms. Baldwin filed a Notice of Appeal from the 2018 Judgment, by letter to the Appellate Division, Second Department dated September 25, 2019, Ms. Baldwin withdrew her appeal; and

WHEREAS, the Village of Tarrytown Planning Board granted site plan approval for the proposed two-tiered wall to be constructed of poured concrete, not to exceed 9.5 feet in height consistent with the 2017 Approval, by resolution dated September 30, 2020 and filed with the Village Clerk on October 1, 2020 ("2020 Planning Board Approval"); and

WHEREAS, after obtaining approval from the ZBA and Planning Board and seeking estimates for the construction of the poured concrete retaining wall based upon the approved plans, the Applicant learned that the cost to construct this plan would be cost-prohibitive, and as a result reinvestigated the original modular block wall design as an alternate design to reduce the cost while still adhering to and implementing, to the greatest extent practicable, what the ZBA and Planning Board had approved; and

WHEREAS, the Applicant submitted to the Building Department a building permit application on March 2, 2021 with a plan that in limited areas exceeded the heights approved by the ZBA in the 2017 Approval, and as a result the Village Engineer/Building Inspector issued a Letter of Permit Denial dated March 24, 2021; and

WHEREAS, the Applicant now appeals to the ZBA seeking the following variances from Zoning Code § 305-47(B)(7) that permit a maximum retaining wall height of 6 feet:

- Lower wall (closer to the rear/west Property line):
  - A variance of 5.5 feet for the north section where the maximum height of a portion of the wall is proposed to be 11.5 feet
  - A variance of 3 feet for the west section where the maximum height of the wall is proposed to be 9 feet
  - A variance of 5 feet for the south section where the maximum height of a portion of the wall is proposed to be 11 feet
- Upper wall (closer to the Applicant's house):
  - A variance of 3.5 feet for all sections where the maximum height of the wall is proposed to be 9.5 feet

WHEREAS, in support of this application, the Applicant submitted, among other materials, the following:

- Signed and sealed plan prepared by Paul A. Berte, P.E. from ARQ, Architecture, P.C. dated March 25, 2021, marked last revised April 10, 2021 and received by the Building Department on June 4, 2021 consisting of: Location Map, Site Plan, Section A-A, Section B-B, Section C/C, Section D-D, Steep Slopes Plan Slopes 25% and Greater and Cut and Fill Map (Drawing 1 of 1), which plan notes that it was based upon a survey by Riley Land Surveyors, LLP dated April 1, 2019 (referred to herein as the "Site Plan")

- Signed and sealed plan set prepared by Randall H. Bragdon, P.E. from SVE, Souhegan Valley Engineering, LLC dated January 5, 2021 consisting of:
  - Retaining Wall Design Sheet 1 containing (1) Wall Parts Detail – Reinforced – Tiered Wall, (2) Drain Detail – Typical, (3) Post Detail 1, (4) Typical Unit and (5) Outside 90° Corner Detail;
  - Retaining Wall Design Sheet 2 containing (1) Vicinity Sketch, (2) Geosynthetic Placement – Outside Corner and (3) Tensar (HDPE) Geosynthetic Installation Detail; and
  - Retaining Wall Design Sheet 3 containing (1) Wall Face Drawing Wall #1 – Lower Tier and (2) Wall Face Drawing Wall #2 – Upper Tier (referred to herein as the “Wall Plans”, the Site Plan and the Wall Plans are collectively referred to herein as the “Approved Plans”)
- The Certified Record before the Court in the 2017 Article 78 proceeding
- List of 59 retaining walls within the Village of Tarrytown that are over 6 feet in height sorted by (1) height, (2) distance from the Property and (3) property type and then by distance from the Property
- “Retaining Walls > 6 Feet Throughout the Village of Tarrytown Identified by Peter and Suzanne Bartolacci” with photographs and measurements
- “Examples of Engineered Concrete Block Retaining Walls in Tarrytown and Other Locations” prepared by the Applicant
- Photographs of the southwest corner of the Property in 2012 and 2021 showing the erosion that has occurred
- Photographs of the northwest corner of the Property in 2017 and 2021 showing the structural degradation of the existing retaining wall
- Presentation entitled “67 Miller Avenue – Retaining Wall and Property Photos” with narrative and providing a history of the existing retaining wall on the Property
- “Renderings of 67 Miller Proposed Retaining Walls” prepared by the Applicant

WHEREAS, a duly noticed public hearing was held on this application at the regular meeting of the ZBA on April 12, 2021,<sup>1</sup> and continued to the ZBA’s June 14, 2021<sup>2</sup> and July 12, 2021<sup>3</sup> meetings, and members of the public having had the opportunity to attend and be heard on this application, the public hearing was closed on July 12, 2021; and

WHEREAS, the Applicant’s immediate neighbors to the north (Alexander H. Roberts, 63 Miller Avenue) and south (Monica Shepherd, 71 Miller Avenue) of the Property, the sides on which the retaining wall is proposed to be higher than the 9.5 feet previously approved in the 2017 Resolution, submitted letters in support of the application, with Mr. Roberts noting that “due to the rotting of the [existing] retaining wall, there is significant encroachment on my property and imminent danger of catastrophic failure...” and Ms. Shepherd noting that currently the area where

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

<sup>2</sup> Due to the COVID-19 pandemic, this public hearing was duly held via videoconferencing in accordance with the Governor’s Executive Orders 202.1 and 202.15, as subsequently extended.

<sup>3</sup> The State of Emergency expired on June 24, 2021 and therefore this public hearing was noticed and held in person in accordance with the Open Meetings Law.



her property abuts the Applicant's Property is not safe, especially for children, but the proposed retaining wall would improve that condition; and

WHEREAS, Ms. Baldwin and her attorney, Kristen Wilson, Esq. of Blanchard & Wilson LLP, submitted materials in opposition to the application, which are addressed herein; and

WHEREAS, several members of the ZBA are familiar with this Property from sitting on the Board during the 2017 application and the ZBA members also attended a site visit during the course of the current application and were able to observe the condition of the existing dilapidated retaining wall on the Property and the erosion of the sloped area in the rear of the Property where the two-tiered retaining wall is being proposed to stabilize the site; and

WHEREAS, this Board, after duly considering all the proofs and evidence before it, determines as follows:

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

IT IS HEREBY FURTHER RESOLVED, the Board hereby grants the requested variances based upon the following findings:

1. There will be no undesirable change produced in the character of the neighborhood or detriment to nearby properties as a result of the variance requested. The Applicant introduced numerous examples of walls in the neighborhood that, as a result of the generally sloped topography of Tarrytown, exceed the maximum height proposed by the Applicant, including several that are also single-family residences and that are on Miller Avenue, like the Applicant's Property. Further, there was evidence produced that there had previously existed a fairly significant wall in the Applicant's rear/west yard (and there are existing portions of said wall on the Applicant's property currently that have since deteriorated into an unstable condition). As detailed below (Point 2), the proposed two-tiered wall allows for more robust and larger-sized plantings in front of each of the proposed tiered walls that will afford greater screening to the neighboring properties, particular Ms. Baldwin's property to the west/rear of the Property. And as noted above, the neighbors to the north and south of the Applicant's Property, the only sides where the walls are proposed to be higher than what was previously approved in the 2017 Approval and upheld by the Court in the 2018 Judgment, participated in the public hearing process to express their consent to and desire to see the application approved and the proposed retaining walls constructed.
2. The benefit sought cannot be achieved by some method feasible for the Applicant to pursue other than seeking the area variances. As detailed in the 2017 Approval (Exhibit "A") and the Certified Record in the 2017 Article 78 proceeding that is part of the record in this application, prior to the 2017 Approval, the Applicant explored several variations of a retaining wall before the Applicant and the land use boards determined that the proposed two-tiered design, with the necessity of height variances, was the preferred design to achieve the desired benefit of the Applicant to stabilize the site and

provide a functional backyard while providing adequate screening to benefit Ms. Baldwin.

Initially, the Applicant appeared before the Planning Board proposing a 3-tiered design that was a zoning-compliant six feet high. However, because of the close proximity of the walls with this engineered design, it afforded minimal opportunity for landscaping/screening between the walls, particularly the walls that were at a higher elevation and would be more visible from Ms. Baldwin's property. As an alternative, the Applicant then proposed a single wall, which would allow for more screening, but which was found to be too substantial of a variance at 20 feet in height. As a substantially improved middle-ground from the single 20-foot high wall, the ZBA approved a two-tiered wall that would require a height variance but would also have a sufficient distance in between the walls to allow for landscaping to screen the walls.

However, as a result of the poured concrete wall design being cost-prohibitive, the Applicant is now proposing a slightly modified design consisting of modular concrete blocks that would increase the height of the walls on portions of the north and south sides to a maximum of 11.5 feet in limited areas. The Village Engineer advised the Board that the height is necessary in order to have a return and the only way to reduce the height would be to encroach upon the neighboring property to the north, which is not permitted. Other than those designs provided by the Applicant and his design professionals, no other engineering designs have been provided to the Board to support the position that the retaining wall could be a lower height. Therefore, any suggestion that there are other feasible alternative designs that have not been considered is general speculation that this Board cannot rely upon.

Therefore, this Board finds the benefit sought cannot be achieved by some method feasible for the Applicant to pursue other than seeking the area variances.

3. The variance is not substantial and as noted above, prior to the 2017 Approval the Applicant substantially reduced the size of a proposed single retaining wall that was 20 feet to a two-tiered retaining wall that is now proposed to be 11.5 feet at its highest point. It is important to note that only limited portions of the proposed retaining walls will exceed the 9.5 feet previously approved by the ZBA. With respect to the northern wall, the maximum height is 10.8 feet and then over the course of approximately four feet in length the wall reduces in height to nine feet along the grade; and with respect to the southern wall, the maximum height is 11 feet and then over the course of approximately four feet in length the wall reduces in height to nine feet – which nine feet is less than the variances granted in the 2017 Approval and upheld in the 2018 Judgment. In addition, as noted above, the height of the retaining wall on the west/rear side of the Property abutting Ms. Baldwin will not exceed the 9.5 feet allowed by the 2017 Approval.

Notwithstanding such, to the extent the variances could be considered substantial, where the granting of the variances will not produce an undesirable change in the character of the neighborhood, will not have an adverse impact on the physical or environmental conditions of the neighborhood and there is no feasible alternative to the

granting of the variances, as the Board has determined is the case in this Resolution, the substantiality of the variances is not a basis to deny the application.

4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The Applicant proposes to erect a retaining wall and there was evidence presented that there had been a wall in some form on the property for many years. The proposed two-tiered retaining wall is intended to improve the adverse conditions created by the existing, dilapidated retaining wall that is a hazard and is not adequately stabilizing the Property. In addition, as a condition of this approval the Applicant is required to install landscaping that will screen the walls and provide for a more natural setting with an emphasis on native plantings to the same or greater extent than was required by the 2017 Approval, which will be determined before the Planning Board during site plan review. The Planning Board will also require a global stability analysis, which will be reviewed by the Planning Board and its technical consultants, to ensure the retaining wall is safe. In addition, the Applicant has two licensed engineers, one for the site plan and one that specializes in constructing retaining walls, which will certify to the integrity of the design of the wall. Accordingly, any suggestion that the wall will not be structurally sound is general speculation without any engineering support that defies the requirements of the Planning Board, the Building Department and State Law and cannot be relied upon by this Board.

While there were questions raised by Ms. Baldwin about the submission of a survey, the Site Plan references the survey prepared by Riley Land Surveyors, LLP dated April 1, 2009 that was relied upon in preparing the plan. In addition, the rear/west retaining wall is proposed to be 7.5 feet from her property line (the same distance as was proposed in the 2017 Approval) and there is no claim that there would be any encroachment on her property. To the extent there is a stone wall that straddles the Applicant's and Ms. Baldwin's rear property lines, that is not relevant to the existing or proposed retaining walls or the variances being sought by the Applicant. To the contrary, both the Applicant and Mr. Roberts (63 Miller Avenue) advised that currently the existing retaining wall is encroaching upon Mr. Roberts' property and the Applicant's plan proposes to rectify that by removing the existing encroaching retaining wall and placing the new retaining wall entirely upon the Applicant's Property. Lastly, the Village Engineer advised that as part of the building permit and construction process, the Applicant will have to put monuments on the boundaries of his property based upon the survey to demonstrate that all work is being performed in the confines of the Applicant's Property. Therefore, the Board is satisfied that there are sufficient controls in place to ensure that the property line boundaries area adhered to and the submission of a survey, which is not required by the Code but is included in the ZBA's application package as a general practice but is often waived in appropriate circumstances, is not necessary.

5. The hardship is not self-created as the conditions of the site and the need for variances are the result of preexisting, nonconforming conditions on the site and the topography of the site. The need for the retaining wall is evidenced by the fact that there is an existing retaining wall on the Property and that there are other retaining walls of greater



height along Miller Avenue. But to the extent the hardship can be considered self-created, this factor does not preclude the granting of the variance.

6. This Board is granting the minimum variance necessary for the Applicant to achieve his benefit in a manner that is not cost-prohibitive and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community as only through a variance grant can there be sufficient screening. The zoning-compliant plan would require another tiered level of retaining wall and there would be insufficient room between the tiers to afford sufficient screening. In addition, to the extent there has been objection to the Applicant not providing the cost of constructing the wall in making this application, the Village Engineer advised the Board that the cost estimate is required in order to set the building permit fee for actual construction. While the Applicant submits a building permit application in order to obtain a denial letter to go to the land use boards for the requisite approvals, this is not the same as a building permit application needed to set the building permit fee and commence construction. A comprehensive building permit application requires much more detailed construction plans that would not be prepared until the Applicant receives the land use approvals. Until the land use approvals are issued and the contractors know what is being constructed, it is not feasible or reasonable to expect that a cost analysis be prepared. The Applicant has represented to this Board, and as a condition of this approval the Board accepts and relies upon the truth and validity of all statements made before this Board, that the cost of the current design, which will minimally increase the height of the north and south portions of the retaining wall, is significantly less than what would have been required by the prior approvals.

AND IT IS FURTHER RESOLVED based upon the foregoing findings, the application is granted subject to the following conditions:

1. Except as otherwise set forth herein, the variances are granted solely in connection with the Approved Plans (and incorporated herein by reference). If any changes are made to the Approved Plans (other than those deemed by the Building Inspector to be minor field changes or other than changes made by the Planning Board in connection with its site plan review) this variance grant becomes void and the Applicant must make a new application to the ZBA for approval of any and all variances. Notwithstanding the foregoing, these variances shall be deemed null and void even if changes are made in connection with a plan approved by the Planning Board if such plan: (1) is not consistent with the two-tiered wall design presented to the ZBA as the ZBA is not granting a variance for anything other than two-tiered walls; (2) is not consistent with the proposed tow/base of the west/rear wall of the proposed two-tiered wall being located a minimum distance of 7.5 feet from the rear property line; and/or (3) increases the degree or number of variances needed beyond what is approved in this Resolution.
2. The variances are granted subject to the Property continuing to be used as a single-family home.
3. The variances are granted subject to the Planning Board approving a landscape plan (after input from the Village's landscape architect), which landscape plan shall not

propose any less screening than the landscaping required by the 2020 Planning Board Approval.

4. This variance is granted subject to the Planning Board reviewing and approving a Construction Management Plan that will provide for staging of construction of the proposed walls and ensure the protection of adjoining and neighboring properties, including protection of existing mature trees.
5. Upon review and determination by the Planning Board and the Village Engineer, the Applicant shall make any improvements, repairs and/or modifications to the chain link fence and/or stone wall on or near the rear property line in order to improve the health, safety and welfare of the Applicant, his family and the public, but only to the extent the Applicant is authorized to do so by law and has the legal ownership right to do so.
6. This Resolution does not, by its terms, invalidate or supersede the 2017 Approval. However, upon the issuance of a building permit based upon the plans associated with the 2017 Approval or this Resolution, the other will automatically become null and void and be of no force and effect
7. The granting of this application shall not be deemed to relieve the Applicant of the need to obtain approval or permit of any other board or agency or officer prescribed by law or ordinance with regard to the Approved Plans or construction or any other phase of the project. The granting of this application shall not be deemed to relieve the Applicant of the need to comply with any and all other local, state and federal requirements, including but not limited to compliance with the New York State Uniform Fire Prevention and Building Code.
8. This variance is granted subject to the accuracy of the representations made by the Applicant and its representatives to the ZBA in its written submissions and during the public hearing and if any material representation, whether or not it is included in this Resolution, is found to be inaccurate, the variance grant is deemed null and void, and in which case the Applicant must make a new application to the ZBA for approval of any and all variances.
9. The failure to observe and perform these conditions shall render this resolution invalid.

Dated as of July 12, 2021

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Acting Chairwoman Weisel

In Favor:

Opposed:

Abstain:

Absent:

**FILED: WESTCHESTER COUNTY CLERK 10/13/2017 05:47 PM**  
 NYSCEF DOC. NO. 18

RECEIVED NYSCEF: 10/13/2017

FILED 9/14/17  
 VILLAGE CLERKS OFFICE

**ZONING BOARD OF APPEALS RESOLUTION**

Application of Peter Bartolacci (the "Applicant")  
 67 Miller Avenue, Tarrytown, NY 10591 (the "Property")  
 Sheet 1.70, Block 40, Lot 4 (R-10 Zoning District)

*Chap OB*

WHEREAS, the Applicant has appealed to the Village of Tarrytown Zoning Board of Appeals ("ZBA") from a determination by the Building Inspector that the proposed retaining wall does not comply with the requirements of Chapter 305 of the Village of Tarrytown Zoning Code ("Zoning Code"), and

WHEREAS, the Applicant originally sought a variance of 14 feet to allow a proposed single wall/retaining wall of 20 feet where Zoning Code § 305-47B; 305-47B (7) only allow for a 6-foot high retaining wall, and

WHEREAS, a duly noticed public hearing was held on this application at the regular meeting of the ZBA on June 12, 2017, and

WHEREAS, at the June 12, 2017 meeting, the Applicant presented the history of the application (that originally began in 2013), including that there had been various proposals in connection with the proposed wall ranging from a single tier to multiple tiers, and

WHEREAS, the Applicant has previously appeared before the Village of Tarrytown Planning Board and presented at the April 2017 Planning Board meeting a three-tier design that did not require any variances as none of the three tiers exceeded 6 foot in height, but the Applicant advised the ZBA that the Planning Board expressed concerns in connection with the three-tiered (zoning compliant) proposal as with the three-tiered design there was limited opportunity for screening/landscaping, and

WHEREAS, after consideration of the Planning Board's concerns about the lack of landscaping/screening in the three-tiered design, the Applicant presented a one-wall design that afforded a significantly greater planting area than the three-tiered design and required the installation of substantially less fill, and

WHEREAS, after hearing input from neighbors and the public, the ZBA requested that the Applicant consider a different design with a lower wall than the proposed 20-foot wall and continued the public hearing until July 10, 2017 and then until August 14, 2017, and

WHEREAS, at the July 10, 2017 public hearing, the Applicant presented a concept plan for a two-tiered wall in which each wall did not exceed 9.5 feet and before the August 14, 2017 meeting presented a more-developed plan for said two-tiered wall design entitled "Site Plan Peter & Suzanne Bartolacci" dated January 24, 2017 and last revised July 28, 2017 (hereinafter "Approved Plan"), and

WHEREAS, members of the public having had an opportunity to speak on the application, the public hearing was closed on August 14, 2017 and the Board directed that counsel prepare a draft resolution for it to consider at its September 11, 2017 meeting, and



WHEREAS, this Board deliberated at its September 11, 2017 meeting and after having the opportunity to visit the Property and after duly considering all the proofs and evidence before it, determines as follows:

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

IT IS HEREBY FURTHER RESOLVED, the findings of this Board are as follows:

1. There will be no undesirable change produced in the character of the neighborhood or detriment to nearby properties as a result of the variance requested. The Applicant introduced numerous examples of walls in the neighborhood and surrounding community exceeding 9.5 feet in height. Further, there was evidence produced that there had previously existed a fairly significant wall in the Applicant's yard (and there are existing portions of said wall on the Applicant's property currently). The proposed two-tiered wall system allows for more robust and larger sized plantings in front of each of the proposed tiered walls that will afford greater screening to the neighboring properties.
2. The benefit sought cannot be achieved by some method feasible for the Applicant to pursue other than seeking the area variance. Although the Applicant could erect a zoning-compliant three-tiered wall system (with each wall not exceeding 6 feet), the zoning-compliant three-tiered plan would provide very limited plantings that would not provide sufficient screening. While a variance is needed for the two-tiered design as the walls at their highest points exceed 6 feet (but not 9.5 feet), there is opportunity for significant plantings that will afford screening. The benefit to the Applicant in pursuing this application is not simply to stabilize the slope but to make Applicant's backyard safer with more usable space. Just like numerous applicants that appear before this Board seeking variances, the Applicant is attempting to improve his property and expand the usable area of his property. This Board does not agree that the only benefit that the Applicant can seek to attain is to stabilize the rear slope. Due to the existing elevations and the property's topography, the Applicant cannot provide a zoning-compliant wall system that will also allow for sufficient landscaping to provide screening. This Board recognizes that while the Applicant has the right to erect the zoning-complaint three-tiered design without any approvals from this Board, such zoning-complaint erection with its minimal plantings would not effectively screen the walls and therefore, would be more visually impactful on the neighbors. As a result, the Approved Plan that proposes substantial plantings and trees with larger roots, it more beneficial to the neighbors.
3. The variance is not substantial and in fact, during the course of the Zoning Board's review and in response to comments from this Board and the public, the Applicant substantially reduced the scope of the requested variance from 14 feet (to allow for a 20-foot wall) to 3.5 feet (to allow for two 9.5 foot walls). In addition, the proposed walls are not 9.5 feet for to the full length of the wall but rather the height ranges from six feet to 9.5 feet.

4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. There is nothing in the record to suggest there will be any adverse impacts provided that this Board's conditions (set forth below) are adhered to. The landscaping proposed will screen the wall and provide for a more natural setting and emphasis on native plantings. The Applicant proposes to erect a wall and there was evidence presented that there had been a wall in some form on the property for many years.
5. The hardship is not self-created as the conditions of the site and the need for variances are the result of preexisting, nonconforming conditions on the site and/or topography of the site. And to the extent the hardship was self-created, this factor does not preclude the granting of the variance.
6. This Board is granting the minimum variance necessary for the Applicant to achieve his benefit and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community as only through a variance grant can there be sufficient screening. The zoning-complaint plan would require another tiered level and there would be insufficient room between the tiers to afford sufficient screening. The Applicant has substantially reduced the scope of the variance request (from a proposed 20-foot wall requiring a 14-foot variance to a 9.5 foot wall requiring a 3.5 foot variance) and this Board finds that the 3.5 foot variance is the minimum necessary to obtain the benefit of a screened wall.

AND IT IS FURTHER RESOLVED based upon the foregoing findings, the application is granted subject to the following conditions:

1. Except as otherwise set forth herein, the variances are granted solely in connection with the Approved Plan (and incorporated herein by reference). If any changes are made to the Approved Plan (other than those deemed by the Building Inspector to be minor field changes or other than changes made by the Planning Board in connection with its site plan review) this variance grant becomes void and the Applicant must make a new application to the ZBA for approval of any and all variances. Notwithstanding the foregoing, this variance shall be deemed null and void even if changes are made in connection with a plan approved by the Planning Board if such plan: (1) is not consistent with the two-tiered wall design presented the ZBA as the ZBA is not granting a variance for anything other than two-tiered walls; or (2) is not consistent with the proposed two/base of the first wall of the proposed two-tiered wall being located a minimum distance of 7.5 feet from the rear property line.
2. The variance is granted subject to the Property continuing to be used as a single home.
3. The variance is granted subject to the Planning Board approving a landscape plan (after input from the Village's landscape architect), which landscape plan shall not propose any less opportunity for screening than the concept landscape plan presented to the Zoning Board (as depicted on the Approved Plan) and the Zoning Board

requests that the Planning Board require robust plantings that will provide the greatest opportunity to screen the proposed two-tiered wall.

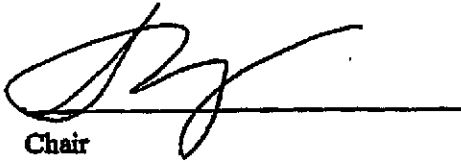
4. This variance is granted subject to the Planning Board reviewing and approving a Construction Management Plan that will provide for staging of construction of the proposed walls and ensure the protection of adjoining and neighboring properties, including protection of existing mature trees.
5. Upon review by the Planning Board and the Village Engineer, the Applicant shall make any improvements, repairs and/or modifications to the chain link fence and/or stone wall on or near the rear property line in order to improve the health, safety and welfare of the Applicant, his family and the public, but only to the extent the Applicant is authorized to do so by law and has the legal ownership right to do so.
6. This variance is granted subject to and based upon the Applicant's representation that the proposed two-tiered wall will not be 9.5 feet high for the full length of each of the tiers, but rather, the heights will range from 6 feet to 9.5 feet over the length of each wall.
7. The granting of this application shall not be deemed to relieve the Applicant of the need to obtain approval or permit of any other board or agency or officer prescribed by law or ordinance with regard to the Approved Plan or construction or any other phase of the project. The granting of this application shall not be deemed to relieve the Applicant of the need to comply with any and all other local, state and federal requirements, including but not limited to compliance with the New York State Uniform Fire Prevention and Building Code.
8. This variance is granted subject to the accuracy of the representations made by the Applicant and its representatives to the ZBA in its written submissions and during the public hearing and if any material representation, whether or not it is included in this Resolution, is found to be inaccurate, at the discretion of the ZBA the variance grant may be deemed void, in which case the Applicant must make a new application to the ZBA for approval of any and all variances.
9. The Applicant shall procure a building permit from the Building Department within one (1) year of the date of this Resolution or one (1) year from obtaining the last required land use board approval (i.e. planning board or architectural review board), whichever is later, and all work shall be completed within one (1) year from the date of the building permit, otherwise this variance grant becomes void; and any request to extend the time within which to obtain said building permit or complete said work shall be filed no less than sixty (60) days prior to the expiration of the one (1) year period.
10. The failure to observe and perform these conditions shall render this resolution invalid.



**FILED: WESTCHESTER COUNTY CLERK 10/13/2017 05:47 PM**  
NYSCEF DOC. NO. 18

INDEX NO. 67255/2017  
RECEIVED NYSCEF: 10/13/2017

Dated as of September 11, 2017

  
Chair

<u>In Favor:</u>	3
<u>Opposed:</u>	1
<u>Abstain:</u>	0
<u>Absent:</u>	1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER-----X  
GERALDINE F. BALDWIN,Petitioner,  
-against,DECISION, ORDER &  
JUDGMENT

Index No. 67255/2017

VILLAGE OF TARRYTOWN ZONING BOARD OF  
APPEALS, PETER BARTOLACCI and SUZANNA  
BARTOLACCI,

Respondents,

For a judgment, pursuant to Article 78 of the  
Civil Practice Law and Rules.-----X  
SCHWARTZ, J.

Petitioner GERALDINE F. BALDWIN ("Petitioner") commenced this CPLR Article 78 proceeding seeking an order and judgment annulling the Village of Tarrytown Zoning Board of Appeals' Resolution granting two 3.5-foot area variances to permit two 9.5-foot walls to be constructed. The Respondents oppose.

The Court has considered the following papers: the NYSCEF documents numbered 42-70.

In a resolution filed September 14, 2017, the ZBA approved the above variances. Petitioners argue the denial by was arbitrary and capricious and should be annulled because the ZBA failed to make the necessary finding to support its grant of the variances and because the ZBA had insufficient information before it to make its decision.

Relevant Law

Local zoning boards have broad discretion in considering applications for variances, and judicial review is limited to determining whether the action taken by the board was illegal, arbitrary or an abuse of discretion (see *Matter of Fuhst v Foley*, 45 NY2d 441, 444 [1978]). Thus, a determination of a zoning board should be sustained upon judicial review if it has a rational basis and is supported by substantial evidence (see *Matter of Sasso v Osgood*, 86 NY2d 347, 384 n 2 [1995]; see also *Matter of Doyle v Amster*, 79 NY2d 592, 596 [1992]; *Fuhst*, 45 NY2d at 444). Although scientific or other expert testimony is not required in every case to support a zoning board's determination, the board may not base its decision on generalized community objections (see *Matter of Twin County Recycling Corp. v Yevoli*, 90 NY2d 1000, 1002 [1997])." *Ilfrah v Utschig*, 98 NY2d 304, 308 [2002]. "Courts may set aside a zoning board determination only where the record reveals that the board acted illegally or arbitrarily, or abused its discretion, or

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Schwartz, J.

that it merely succumbed to generalized community pressure." *Pecoraro v Bd. of Appeals of Town of Hempstead*, 2 NY3d 608, 613 [2004] [internal citations omitted].

"Judicial review of local zoning decisions is limited; not only in our court but in all courts. Where there is a rational basis for the local decision, that decision should be sustained. It matters not whether, in close cases, a court would have, or should have, decided the matter differently. The judicial responsibility is to review zoning decisions but not absent proof of arbitrary and unreasonable action, to make them". *Cowan v. Kern*, 41 NY2d 591, 599 [1977].

Village Law § 7-712-b(3) provides:

Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such local law, to grant area variances as defined herein. (b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (3) whether the requested area variance is substantial;
- (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

(c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.



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Schwartz, J.

### Discussion

Petitioners' assertion that the ZBA's determination was arbitrary, capricious, an abuse of discretion, violative of law and lawful procedure and unsupported by the administrative record is belied by the resolution and transcripts submitted in connection with the instant application for area variances.

The Court has reviewed the transcript of the August 14, 2017 public hearing, which reveals that the ZBA determined to grant the area variances application only after receiving substantial testimony and evidence in favor of and in opposition to the variances. The ZBA heard from individuals in favor of the application, including engineer Paul Berte, Suzanne Bartolacci, as well as from the petitioner, her sister, and petitioner's counsel.

The colloquy between members of the ZBA and these individuals reveals its consideration of the pertinent factors under Village Law § 7-712-b in connection with the application for the area variances. Many of the exchanges surrounded the benefits and downsides to the project, with discussions about its necessity and potential effect on the character of the neighborhood.

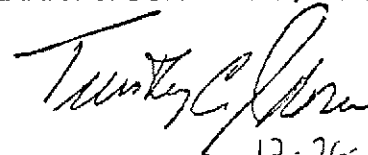
The Court's review of the parties' submissions, including the transcripts of the relevant ZBA proceedings, reveals that the ZBA properly considered and weighed the relevant statutory criteria and that its determination was supported by substantial evidence and had a rational basis. The ZBA's Resolution includes findings that, *inter alia*, the variances sought by Petitioners are not substantial, that granting the variances would not cause an undesirable change in the character of the surrounding area, the hardship was not self-created and that the Board was granting the minimum variance necessary. These findings are consistent with the transcripts of the proceedings and need not be recited at length therein in an exhaustive fashion in order to constitute a rational basis. Furthermore, the transcripts do not reveal that the board acted illegally or arbitrarily, abused its discretion, or merely succumbed to generalized community pressure. This is so even if the Court may have decided the matter differently (*see Cowan* at 591). Given these circumstances, the Court will not disturb the ZBA's determination. Accordingly, it is

ORDERED and ADJUDGED that the petition is denied in its entirety and is hereby dismissed.

This decision constitutes the order and judgment of the Court.

Dated: White Plains, New York  
December 20, 2018

  
HON. LARRY J. SCHWARTZ, A.J.S.C.

  
12-26-2018