

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
January 8, 2007 8 p.m.

PRESENT: Chairwoman Lawrence; Members Jolly, Brown, Maloney; Counsel
Shumejda; Building Inspector/Engineer McGarvey; Secretary
D'Eufemia
ABSENT: Ms. James

APPROVAL OF MINUTES

Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that the minutes of December 11, 2006, be approved as submitted.

CONTINUATION OF PUBLIC HEARING – PUTNAM AVENUE HOMES, INC. –
HILLSIDE STREET

Chairwoman Lawrence stated the Zoning Board is still waiting for a recommendation from the Planning Board. That Board has hired an architectural consultant to review the plans and hopefully a recommendation will soon be forthcoming.

No one appeared to address the Board on this matter. The Board unanimously agreed to continue the hearing at their February meeting.

PUBLIC HEARING – 116 SOUTH BROADWAY, LLC – 116 SOUTH BROADWAY

The Secretary read the following Notice of Public Hearing:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 8:00 p.m. on Monday, January 8, 2007, in the Municipal Building, 21 Wildey Street, Tarrytown, New York to hear and consider an application by

116 South Broadway, LLC
116 South Broadway
Tarrytown, NY 10591

For a variance from Section 305-22.A of the Tarrytown Zoning Ordinance, which prohibits new construction and vegetation removal on areas containing steep slopes as defined in the Zoning Ordinance, to allow for construction of parking with an approximately 635 sq. ft. disturbance of steep slopes.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. The property is shown on the Tax Maps of the Village of Tarrytown as Sheet 15, Block 57, Lots 37 and 22A and is located in an R-10 (Residential) zone.

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.

The certified mailing receipts were submitted.

Chairwoman Lawrence noted Board members visited the property yesterday.

Mr. Al Collado, owner of the property, stated they are trying to put in a parking lot for approximately four cars in the rear of the property but they need to disturb the steep slopes. The notice of hearing called for an intrusion of 635 sq. ft.; however about 250 sq. ft. of that was man-made by the terracing of a backyard. This lot will allow for cars to turn around and exit whereas currently two cars park in the driveway and must back out onto Broadway, which is dangerous.

Mr. McGarvey stated this application went to the Planning Board for site plan approval, which was granted because that Board was concerned about the hazardous condition with cars backing out onto Broadway since there is a school in close proximity.

Upon inquiries from Chairwoman Lawrence and Mr. Jolly, Mr. Collado stated there will be landscaping, which was reviewed with neighbors, and that was a condition of site plan approval.

Upon inquiry from Ms. Brown, Mr. Collado stated the parking lot will be asphalt, and drainage will be added.

Chairwoman Lawrence questioned whether anyone wished to address the Board on this matter. No one appeared.

Chairwoman Lawrence reported receipt of the following memo dated January 8, 2007, from Kathleen D'Eufemia, Designated Environmental Review Officer:

“116 South Broadway, Inc. – 116 South Broadway

This application, which calls for an encroachment into the steep slopes in order to create a parking lot was reviewed by the Planning Board and a determination was made by them that the proposal poses no significant adverse environmental impacts. One of the findings by the Planning Board was that this is an existing building and safety conditions make this a special case. Currently the two cars in the driveway must back out onto Broadway and this property is located across the street from a school. Providing some parking in the rear would mitigate this safety issue.”

Mr. Jolly moved, seconded by Mr. Brown, and unanimously carried, that the Board having arrived at the following findings required by the ordinance:

1. That the benefit to the applicant outweighs any detriment to the health, safety, and welfare of the neighborhood
2. That the proposed variance will not create an undesirable change to the neighborhood or detriment to the neighborhood
3. That the benefit the applicant seeks to achieve cannot be achieved by any other feasible method
4. That the variance is not substantial in the Board's judgment
5. That the variance would not have an adverse environmental impact on the neighborhood
6. That the variance is the minimum one deemed necessary and will preserve and protect the character of the neighborhood and the health, safety and welfare of the community, particularly in allowing safer egress from this property

Therefore, grants the requested variance subject to:

1. Obtaining a building permit for the project within two years.
2. Approval of plans by the Building Inspector including the drainage plans.
3. Approval of the Landscaping Plan by the Village's Landscape Consultant.

PUBLIC HEARING – YAMAMOTO – 12 KERWIN PLACE

The Secretary read the following Notice of Public Hearing:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 8:00 p.m. on Monday, January 8, 2007, in the Municipal Building, 21 Wildey Street, Tarrytown, New York to hear and consider an application by

Kazuto and Renata Yamamoto
12 Kerwin Place
Tarrytown, NY 10591

For a variance from Section 305-14(7) of the Tarrytown Zoning Ordinance, which allows a fence or wall no higher than six feet to be placed on any property. Said application is to allow a 14 ft. high open partition attached to a deck.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. The property is shown on the Tax Maps of the Village of Tarrytown as Sheet 19A, Block 57, Lots 26-28A and is located in an R-10 (Residential) zone.

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.

The certified mailing receipts were submitted.

Chairwoman Lawrence noted Board members visited the property yesterday.

Mrs. Yamamoto issued the following statement: "My husband and I are the owners of 12 Kerwin Place where we have raised our family and lived for over 32 years. I would like to submit to the Board a petition to grant a variance signed by Tarrytown residents and neighbors who, for the most part, have lived in the Crest longer than we have. I am also submitting an article from today's Journal News about New Castle joining the battle against McMansions, which may serve as food for thought. We are here tonight to protect and retain some of the privacy that we used to enjoy in our home that since 2004 has been invaded by the new dwelling at 6 Kerwin Place. This construction includes two first floor and four second floor windows as well as an elevated deck that afford the neighbor – Mr. Desimini who initiated the complaint – his family and guests and any subsequent owner of that property, unobstructed views into our living room, dining room, and backyard. While Tarrytown is to be commended for changing the zoning laws in December 2003 as a direct result of the 6 Kerwin Place construction and because of neighborhood concerns, it was too late for this homeowner and taxpayer as well as for our neighbors on Kerwin Place, Union Avenue, Barnes Road and Crest Drive. After living for over three decades at 12 Kerwin Place, it had now become necessary to protect the very reason why we had bought the property in the first place. We chose 12 Kerwin Place because of its location, neighborhood feel, view and especially its privacy. We enjoyed the openness of our backyard through a large picture window. In 31 years there had never been a need for a deck. Walls, fences or partitions were never part of the landscape. I can assure you, we do not enjoy looking at the neighbor's 2-1/2 story dwelling or the open partition that we put up to shield us. Yet in order to protect our privacy we had to build a deck for the sole purpose of supporting this partition, losing the picture window in the process. For us there is no benefit – the deck remains an expansive and unwanted byproduct that will continue to cost us well into the future in terms of added school taxes, town taxes, maintenance and building expenses. Yet this is the price we are paying to try to retain at least part of our pre 2004 privacy, which was taken when the elevated modular dwelling and deck went up next door. Thank you very much for considering our request for a variance allowing us to maintain a sense of privacy, having already lost our view, quality of life and property value."

Mr. Scott Brown, 18 Kerwin Place, stated he and his wife Cathleen live immediately to the south of the Yamamotos' residence. Mr. Brown expressed support for the Yamamotos' application stating when a three-story residence was put in a neighborhood with one-story residences, the privacy and view enjoyed by this family for over thirty years was destroyed. He stated he and his wife have also had their view and quality of life affected. Mr. Brown submitted a photograph of the property at 6 Kerwin Place noting there is garbage, construction material and piles of wood which are all within full view of the neighbors.

Ms. Maika Yamamoto stated, "I was born at Phelps Memorial and spent an idyllic childhood living on 12 Kerwin Place in Tarrytown. I attended the public schools, from John Paulding to Sleepy Hollow High School. I grew up knowing all of our neighbors and playing with the other children in the community. I have always experienced friendly and helpful interactions with the people in this town. I have been an active member in the community, working at the Warner Library, life guarding at various pools, and babysitting for neighbors. My point is, basically, that my family and I have a long history in this village. Since moving out, I have always enjoyed coming home to visit my parents in the Crest. There has been that sense of continuity, familiarity, and community that has made coming home to Tarrytown a true joy. This feeling has ebbed since 2004, when Mr. Desimini tore down 6 Kerwin Place. People in the neighborhood were unsettled by the major change, and I saw this most with my family. Not only did he tear down the house, he installed a giant modular home that is completely out of place on Kerwin Place, a street of mostly 1950s ranch homes. This was not done with a sense of community or neighborly sentiment. Everyone I have spoken to regarding this construction lends us only their pity and sympathy for being subjected to the monstrosity next door. With each phone call and visit home I hear the stress and frustration my parents feel dealing with unfortunate developments next door. We never felt a need to have a deck in the backyard. As kids, my brother and I and our friends from the neighborhood enjoyed playing and running around in the yard and the woods beyond. My parents only built the deck to support the partition in order to maintain some of the comfort and privacy that had been undisturbed for more than 31 years. As Mr. Desimini is concerned with his property value, so are my parents. The house next door has seriously affected not only view and privacy, it has also affected our property value and quality of life. Now instead of looking out onto trees and hearing birds, we look at 2-1/2 stories of beige siding and roof shingles, hear the constant whirr of their air conditioning and heating units, and smell the exhaust from their laundry. I understand that the only constant in life is change, and we have little recourse to the building next door. However, we have built the partition in response to maintain a degree of our own peace and quiet. Please take into account that our family has been members of the community for over three decades and we have respected our neighbors and village, which is something that Mr. Desimini has not. Instead it is because of his complaint that we have to stand here tonight."

Ms. Kathleen Hannon, 36 Kerwin Place, stating allowing the house at 6 Kerwin Place to be constructed destroyed the character of the neighborhood and "I have to think this Board didn't care because you allowed it to happen." Chairwoman Lawrence stated that house was never before the Zoning Board of Appeals. Ms. Hannon stated, "That is sad. This house should not be there. I understand it may be within the letter of the law but not the spirit of the law. You should allow the Yamamotos to have this variance."

Ms. Tamar Bauer, 206 Crest Drive, stated the Yamamotos should be given permission to keep the partition. What happened to them is sad and the house at 6 Kerwin Place was

clearly an error and should not have been built because it has destroyed the Yamamotos' property values. Chairwoman Lawrence stated if this project did not come to the ZBA, it means no variances were required and the zoning laws were complied with at the time of the construction. Ms. Bauer stated she realized laws were changed after this house was built; however, she felt there should be an investigation as to exactly what happened when this house was built. Counsel Shumejda stated that request should be directed to the Board of Trustees.

Mr. Peter Desimini, 6 Kerwin Place, stated they only had to appear before the Architectural Review Board, which they did, and no comments were made at that time. They would have been willing to make some adjustments if concerns had been expressed.

Mr. Kai Yamamoto, 48 Windle Park, stated he grew up at 12 Kerwin Place and still lives in Tarrytown. The application by his parents will afford them some privacy and peace of mind. They had open space, which was taken away. The partition allows them some space and privacy.

Mr. Peter Desimini, 6 Kerwin Place, issued the following statement:

1. I would like to say that I am strongly opposed to this wall/railing and would like to see it removed.
2. I would like to bring up the issue of safety This wall was not designed or certified by an architect or engineer and the proper blueprints were never submitted. I also question its safety, especially with all of the strong winds and damaging storms, which have brought down many trees and caused other damage in the area.
3. I would like for you to take into account when coming to a decision, the fact that they continually violate village code and have no respect for it or for the processes in place and waste taxpayer time and money by wasting the time of the building department. Here is a brief list of the most recent violations that I am aware of:
 1. July 23 2003 they violated section 97.5. The bldg dept. issued a cease and desist order because they were doing major excavation, basement and foundation construction without obtaining any permits.
 2. On July 30, 2003 the building dept informed them that Final Electrical and Structural inspections of an Addition to their house were never performed and they allowed the permit to expire.
 3. June 25th 2004 installed an illegal drainage pipe violating village code 305-16
 4. November 6, 2006 illegal wall/railing violating village code 305-14(6)

This shows that they continually try to go around the processes in place to avoid having to deal with inconvenient laws, processes, fees and taxes that most Tarrytown residents have to comply with.

I'm sure the building department has more important things to do than repeatedly type up and send out letters of violation to 12 Kerwin Place. I have included copies of the violation letters for your convenience.

Unfortunately it does not end there. In June and July of 2005 they did not obtain any of the required permits or variances to excavate and dig up their yard and then clear an approximate 25' x 80' deep section of Village property of vegetation and trees to install a 6 inch pipe that drains into the village water supply.

4. They claim in their request for a variance that they lost privacy, their view and property value. I would like to address these claims one at a time. First, as you can clearly see in the photographs submitted by the applicant there were no trees, shrubs or vegetation blocking views from the living room windows, bathroom window, bedroom windows and garage window of the pre-existing house, giving an unobstructed view of their living room window and backyard. Please also notice that the pictures they submitted of the pre-existing condition were taken during the summer and the current condition pictures were taken during the winter when there aren't any leaves on bushes and trees. Also, two of the bushes on the property line were moved by the applicant after they completed the deck and replanted on both sides of their deck stairs taking away what little vegetation between the properties there was. Second, their view has not changed, as the old and new house approximately cover the same footprint and they still have an unobstructed view of the woods. Third, their claim of loss in property value is absurd given the fact that over the last 10 years home prices have doubled and tripled in neighborhoods, such as Tarrytown Crest where many residents have been remodeling and re-investing money into their homes. The only thing causing their property value and surrounding property values to decrease is the illegal erection of eyesores such as the wall/railing they built without the proper permission.
5. They claim they had to go through the expense of building a \$ 10,000 plus deck and the excessive wall/railing (where only 3ft is allowed) to restore their privacy.... Once again acting on their own and without any regard to law went ahead and built the wall/railing. If they only had come to the Variance board properly before going through all of the trouble of construction, they may have been given some good advice on a more affordable and acceptable solution. For a few hundred dollars they could have planted a few evergreen trees, installed blinds or installed a retractable awning to give them privacy they never had in the first place. After they built their deck and started using it, they soon discovered that many people walk for exercise and walk their dogs along the street on both Kerwin and Union. They never had a deck in their backyard to entertain prior to this and soon saw the need for a quick way to create privacy. I would also like to mention they now have an unobstructed view into the living rooms and backyards of their neighbors at 18, 24, and 30 Kerwin PlaceWhy didn't they also construct a wall on the other side of the deck? And I also question their intentions as to why they built the high wall/railing around the new deck. I believe its purpose is to provide privacy for their new deck a problem, which they created themselves. We installed and use blinds and curtains when we want privacy. Couldn't they have done the same? Instead they install a larger bay window? (and create less privacy???) Shouldn't this wall/railing also go before the

Architectural Review Board? It should because of its visibility from two public streets and also its excessive nonconformity.”

Mr. Desimini submitted a petition from people opposing the granting of the requested variance.

Ms. Lawrence stated Board members had a question as to the actual height of this partition since it did not appear to be 14 ft. Mr. McGarvey stated the overall height is 12 ft. It is about 10-1/2 ft. above the decking. The full height is from the top of the planking to the bottom of the planking.

Ms. Rowena Desimini, 6 Kerwin Place, stated, “I am addressing the Board to say that I strongly oppose the illegally erected 14 ft. wall surrounding the deck on 12 Kerwin Place. In their application, the residents of 12 Kerwin Place state that the next-door 2004 new construction at 6 Kerwin Place invades their privacy and that the wall is necessary – as a minimum – to partially restore and protect the privacy they lost. And that the sole purpose of adding their deck was to provide the necessary support for this wall. This deck cost them over \$10,000. Why couldn’t they put up curtains – as a minimum? They could have easily achieved the privacy they desired with curtains as a feasible alternative. I would also like to mention the former house at 6 Kerwin Place had just as many windows facing south toward 12 Kerwin Place as indicated in the pictures they have already submitted. I feel that they caused their own problem when they replaced a smaller flat window with a larger bay window in 2005. Many people walk their dogs and exercise on the corner of Kerwin Place and Union Avenue. The residents of 12 Kerwin Place installed this new bay window and built their deck and then realized that anyone walking by can see into their living room. It seems as though they put this partition up to provide them with privacy, not just from their next door neighbor, as they suggest, but also from the street, which is evident since their wall not only covers the side of the neighbor but also about 4 feet around. Might I suggest they plant bushes or trees on their property, as a more aesthetic and feasible alternative? The residents of 12 Kerwin Place have this false sense of entitlement because they have lived in their home for 30 years and therefore have repeatedly and continue to disregard the Village Code and its procedures. The fact that they are long time residents to the Crest should not supersede the rights of anyone else in our neighborhood. I also want to say that with our recent tornado and storms with high-speed winds, I question the safety and stability of the planks of this wall. This variance would create an undesirable change to the character of the neighborhood. The wall is an eyesore, to say the least. It doesn’t match the neighborhood nor does it match their house. It gives visitors and passers-by a negative image of the Crest and decreases ours as well as our surrounding neighbors’ property values. This wall does not add character to our neighborhood; it diminishes it. Lastly, when reviewing their application, please ask yourself this....their deck affords them a view into 18, 24, and 30 Kerwin Place. Will these other neighbors also be allowed to put

up a wall to protect their privacy? Is the Crest going to become a neighborhood of random walls? I appreciate the board's consideration of my concerns."

Upon inquiry from the Board relative to the safety and stability of the partition, Mr. McGarvey stated it is basically vertical siding. There are slats and the wind can go through it.

Mr. William Sohn, Crest Drive, stated the Board needs to look at the neighborhood. This new house is much taller than anything in the neighborhood. It is understandable why the partition was put up and he stated he supports the application.

Mr. Desimini stated residents cannot be allowed to build anything they want. He and his wife went through a six-month process to build their house yet his neighbor continues to do construction without permits.

Mr. Kazuto Yamamoto stated he also did not like the partition; however, they needed the deck with the partition to provide some privacy after this house was constructed.

Ms. Cathy Brown, 18 Kerwin Place, stated the neighbors are present tonight to express their dissatisfaction with the house at 6 Kerwin Place. She stated she did not fully understand the process and she questioned whether landscaping had been a requirement for the house at 6 Kerwin Place. Chairwoman Lawrence stated she had also asked that question but since this house had not been the subject of site plan review (as would be necessary today), no condition existed for landscaping.

Ms. Brown stated most of the neighbors have put additions on their homes but they have kept those in character with the neighborhood. Trees need to be put back on this property.

Counsel Shumejda stated this house was responsible for a change in the legislation. Now new homes and additions to existing homes where the proposed addition increases the footprint of the existing home by 25% or more or results in a square footage or volume increase of 50% or more requires site development plan approval by the Planning Board. At the time this house was constructed Planning Board review was not required and only Architectural Review Board approval was needed and that Board does not usually address landscaping.

Ms. Anne Marie Ibanez, 71 Carrollwood Drive, stated she has witnessed first-hand the anguish of the Yamamotos. The partition requested is a gentle gesture to offer some protection for the family.

Ms. Brown stated there is tree replacement legislation, which applies to all residents. Mr. Desimini stated they had the Village's Tree Inspector come to the property. The trees to

be removed were marked and they received the tree permits. There was nothing mentioned about replacement.

Ms. Andrea Scott-Ram, 53 Crest Drive, stated there was a lot of vegetation on that property before this house was built and there are no trees there now. Mr. McGarvey stated he would have to check to determine how many trees were approved for removal. He noted bushes and shrubs do not require tree permits.

Ms. Scott-Ram stated she commends the Village for passing the new legislation. She noted many large houses are being constructed which are out of character with their neighborhoods. The Yamamotos did not have the benefit of the new law and they lost privacy, tranquility, and property value.

No one further appeared to address the Board.

Chairwoman Lawrence reported receipt of the following memo dated January 8, 2007, from Kathleen D'Eufemia, Designated Environmental Review Officer:

“Yamamoto – 12 Kerwin Place

This application requests a 14 ft. high open partition attached to a deck. The proposal will not have an undesirable change in the character of the neighborhood. The open partition only encompasses the northern corner/side of a deck attached to a single story home facing a much larger 2.5 story home (6 Kerwin Place) which was recently constructed on an adjacent lot. The partition does not impact the overall viewscape of the adjacent property and is only intended to enhance the applicants' privacy. Prior to the construction of 6 Kerwin Place, no home on Kerwin Place exceeded 1 story in height; however, as a result of 6 Kerwin Place, there arose landscape privacy concerns given the height of the neighboring home (6 Kerwin Place) and the lack of any natural screening between the properties. Despite the fact that the variance requested would on a percentage basis be substantial (14 feet requested, 6 feet permitted) the actual magnitude of the variance is not substantial considering the limited portion of the deck which is actually partitioned and the location of said partition relative to the adjoining property. It should also be noted that the partition only limits the ability of an occupant at 6 Kerwin Place from viewing into the living quarters of 12 Kerwin Place. The proposed variance does not have an adverse effect on the neighborhood or district. The requested variance is a direct result of a large house constructed to the north of the subject property, which was not a difficulty created by the applicant.

As a result of the above, as Designated Environmental Review Officer, I make a recommendation that the Zoning Board of Appeals issue a negative declaration in that there appears to be no significant adverse environmental impact from the proposed variance, pursuant to the State Environmental Quality Review Law.”

Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that the Board determines there will be no significant adverse environmental impact from the proposed variance.

Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that the Board has arrived at the following findings required by the ordinance:

1. That the benefit to the applicant outweighs any detriment to the health, safety, and welfare of the neighborhood
2. That the proposed variance will not create an undesirable change to the neighborhood or detriment to the neighborhood
3. That the benefit the applicant seeks to achieve cannot be achieved by any other feasible method
4. That the variance is not substantial in the Board's judgment
5. That the variance would not have an adverse environmental impact on the neighborhood
6. That the variance is the minimum one deemed necessary and will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The Board has arrived at these findings because the open partition only encompasses the northern corner (side) of a deck attached to a single story home facing a much larger 2.5 story home, which was recently constructed on an adjacent lot. The partition does not impact the overall viewscape of the adjacent property and is only intended to enhance the applicant's privacy. After construction of the house at 6 Kerwin Place there arose privacy concerns given the height of this new home and the lack of any natural screening between the properties. The magnitude of the variance is for a limited portion of the deck and only limits the ability of an occupant at 6 Kerwin Place from viewing the living quarters at 12 Kerwin Place. The subject variance is the direct result of a large house constructed to the north of the subject property.

Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that for the above-noted reasons, the Board approves a variance permitting a 12 ft. high open partition attached to a portion of the deck at 12 Kerwin Place.

ADJOURNMENT

Mr. Jolly moved, seconded by Ms. Brown, and unanimously carried, that the meeting be adjourned – 9:15 p.m.

Kathleen D'Eufemia, Secretary

