

October 16, 2025

VIA E-Mail

Mamaroneck Village Hall
Zoning Board of Appeals
Attn: Chairman Robin Kramer
169 Mt. Pleasant Avenue
Mamaroneck, NY 10543

Re: ***1011 Greacen Point Road – Appeal of Issuance of Building Permit***

Dear Chair Kramer and Members of the Board:

We are co-counsel with Marks DiPalermo Wilson, PLLC, to the owners (the “Owners”) of 1011 Greacen Point Road (the “Subject Property”) in connection with the above referenced matter. Per the schedule laid out at your meeting on September 3, 2025, we write in response to the Appellants’ submissions dated December 16, 2024, July 3, 2025, and September 25, 2025. As set forth in detail below, portions of the Appeal should be dismissed on procedural grounds and, in any event, the entire Appeal should be denied on its merits.

Introduction

The Appellants most recent submittal is a long, meandering set of documents that do not clarify the issues sought to be reviewed by the Zoning Board of Appeals. When taken together with the Appellants’ earlier submittals, the entirety of the appeal consists of over 30 documents and hundreds of pages without any concision of the issues sought to be addressed. Throughout the documents the Appellants appear to raise points that, among other things, are within the jurisdiction of the Planning Board (grading, stormwater, trees, etc.) and elsewhere attempt to redesign the project for the Owners.

For purposes of this submission, we have limited our responses to those items that are properly within the purview of the Zoning Board of Appeals. Specifically, those issues are the zoning compliance of the project and the determinations of the Building Department concerning the gross floor area calculation, the proposed height/stories and the application of setback requirements to certain ancillary features of the project. While we forcefully disagree with many of the other points raised throughout the multitude of the Appellants’ submissions and the narrative

they have sought to weave, in the interest of your time we do not address those extraneous items here.

We respectfully request you approach this appeal analytically and reflect on the reality that the Owners are seeking the same treatment as countless other property owners who have come before the Village and specifically this Board. We ask that the longstanding practices and interpretations of the Village be upheld by this Board. Along those lines, the Zoning Board of Appeals must consider the potential impacts of the determinations you render in this appeal to not only the Owners, but to all the property owners in the Village.

The issues concerning gross floor area and height/stories can be objectively determined to a mathematical certainty by a review of the proposed plans. The Appellants' other argument concerning the application of setbacks to ancillary features rests on a single loosely worded footnote of an attachment within a much broader Zoning Code. The Zoning Code, when viewed through a practical lens and with the totality of the language contained therein, does not support the conclusion or interpretation sought by the Appellants.

As set forth in greater detail below, if the Zoning Board of Appeals were to agree with the interpretation sought by the Appellants concerning certain structures in setbacks, the Village must not only stop all future development that would similarly require variances, but it must also issue stop work orders on all active projects in the Village with any such structures in setbacks and issue Notices of Violation to all property owners with any such non-conforming structures. Putting a halt on all construction in the Village is clearly not the proper outcome, nor is unequal / selective enforcement of the Zoning Code.

The Amended Appeal is Untimely and Should be Dismissed

The Appellants' original appeal of the issuance of the Building Permit for the Subject Property was filed on December 16, 2024, and was limited solely to what the Appellants call a "Foundation Wall" but was in reality a retaining wall in the side yard setback, alleging the retaining wall required height and setback variances.

The Appellants' sought to amend their appeal on July 3, 2025, to include determinations that additional variances were required for: a) floor area; b) setback variances for additional structures in the side yard setback including the wall, barrier, stairs, planters, lighting fixtures, propane tanks and stormwater management structures; and c) the number of stories and overall house height (the "Amended Appeal"). The Amended Appeal was filed more than six (6) months after the Building Permit was issued and over a year after the initial Building Department Determination and approval of the FAR Variance. For your convenience, provided below is a timeline of the various determinations, approvals and appeals concerning the Subject Property:

Date of Filing	Approval/Action by Village
February 2, 2024	First Building Department Determination
March 28, 2024	Village Attorney advises ZBA that the February 2, 2024 Building Dept. Determination is “satisfactory, adequate and serves a sufficient jurisdictional basis”
April 16, 2024	Approved FAR Variance Stamped (ZBA approval received April 4, 2024)
July 17, 2024	Harbor Coastal Zone Management Commission Consistency Determination Stamped (HCZMC approval received June 18, 2024)
July 18, 2024	Board of Architectural Review approval received
July 25, 2024	Planning Board Site Plan and Wetland Permit Resolution Stamped (Planning Board approval received July 10, 2024)
December 13, 2024	Building Permit Issued
December 16, 2024	Neighbors 1019 Greacen Point Road file appeal application challenging issuance of building permit
January 16, 2025	Building Department Determination – Amended Site Plan is required by Planning Board and amendment to HCZMC Consistency Determination
June 24, 2025	Harbor Coastal Zone – Amended Consistency Determination Stamped (approval received May 21, 2025)
<i>Pending</i>	Planning Board – Amended site plan approval

Village Law § 7-712-a(5)(b) provides the following:

An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, **specifying the grounds thereof and the relief sought**. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken. (emphasis added)

The original building department determination was rendered on February 2, 2024 (the “First Building Department Determination”) which was the basis for the FAR variance approved on April 16, 2024. As part of the First Building Department Determination, the Building Department reviewed the proposed plans for the Subject Property and identified any approvals and variances required. The only variance identified in the First Building Department Determination

was the FAR variance which was subsequently issued by this Board on April 16, 2024 (the “FAR Variance”).

The Appellants received notice of the Zoning Board of Appeals and at the hearing on March 7, 2024, there was a detailed discussion with the Board concerning the application, including, *inter alia*, the proposed height of the residence and the floor area calculation.

The time within which an appeal must be brought is fixed when the agency action is final and binding upon the petitioner. *Save the View Now v. Brooklyn Bridge Park Corporation*, 156 A.D.3d 928 (2nd Dept. 2017). The determinations concerning FAR and height/stories were made final at the earliest upon the issuance of the First Building Department Determination (February 2, 2024) and latest upon the review by the Zoning Board of Appeals and issuance of the FAR Variance (filed with the Village Clerk April 16, 2024).

Moreover, during the permitting and approval process prior to the issuance of the building permit, our clients made eight (8) appearances before the Village’s various land use boards. Specifically, between March 2024 and July 2024, this matter was before the Zoning Board of Appeals for two (2) meetings, the Planning Board for three (3) meetings, Harbor & Coastal Zone Management Commission for two (2) meetings and one (1) meeting with the Board of Architectural Review.

The Appellants, as immediately adjacent neighbors, received proper legal notice of these hearings. In addition, prior to submitting a letter of support in connection with the project, the Appellants requested detailed information from our clients concerning the site plan and grading and later asked to be connected with our clients’ landscape architect. On or about March 13, 2024, our clients connected the landscape architect with the Appellants. Ultimately, the Appellants provided a letter of support for the project and did not participate in any of the public land use board meetings.

While there have been certain changes to elements of the site plan over the past sixteen (16) months, those changes have had no impact on the floor area or height/story determinations rendered in the First Building Department Determination. Moreover, the discrepancies/inconsistencies that were flagged during the review of the construction drawings by the Building Department referenced by the Appellants were corrected to align with the original approvals and are just a red herring raised by the Appellants without any bearing on this appeal.

Pursuant to Village Law § 7-712-a(5)(b), the appeal to the Zoning Board of Appeals is to “...specify the grounds thereof and the relief sought.” The grounds of the Appellants’ original appeal were limited to the alleged unpermitted encroachment of certain improvements in the side yard setback. There was no reference to any alleged noncompliance of the floor area or height/story determinations in the original appeal. Accordingly, the Appellants failed to timely appeal the zoning determinations concerning floor area and height/stories rendered in the First Building Department Determination, the FAR Variance and the Building Permit and are now time barred from doing so.

In *Loparco v. Napierala*, 96 A.D.3d 1213 (3rd Dept. 2012), the petitioner sought to appeal a determination by the Town's code enforcement officer that the use of a property was a permitted use in the district; however, the original determination as to the zoning compliance of the use was issued by the code enforcement officer more than four (4) months prior as a precondition to the property owner obtaining site plan approval. The petitioner attended the Planning Board meeting wherein site plan approval was granted and the underlying zoning issue was raised. The Court found that the timeframe within which the petitioner had to file an appeal did not reset as a result of the subsequent investigation of the code enforcement officer upon complaint by the petitioner and redetermination that the use was compliant. Accordingly, the Court dismissed the proceedings as time-barred. *Loparco* is instructive in the context of the Appellants' appeal – this case reinforces that subsequent actions do not “reset the clock” when they are derivative to prior final actions or determinations. In the case of the Appellants' appeal, the minor adjustments to the Subject Property's site plan do not nullify prior determinations' finality.

In *Matter of Crowell v. Zoning Bd. of Appeals of the Town of Queensbury*, 151 A.D.3d 1247 (3rd Dept. 2017), the petitioner timely appealed the issuance of a building permit to the Zoning Board of Appeals and timely commenced in Article 78 proceeding when the Zoning Board of Appeals issued a determination to uphold the issuance of the building permits; however, the grounds of the petitioner's appeal was that the proposed development required a use variance rather than an area variance which argument was raised by petitioner in an earlier Zoning Board of Appeals proceeding granting area variances for the proposed development. The Court dismissed the proceeding as untimely as the issue of whether a use variance was necessary was considered and rejected in the earlier Zoning Board of Appeals proceeding and the petitioner “could not sit idly by and extend his time to commence a proceeding for judicial review until after the building permit[s] had been issued.” *Id.* at 1249.

Under the applicable provisions of Village Law and holdings in *Loparco* and *Cromwell*, the Appellants attempt to amend their appeal is untimely. In fact, under the holding in *Cromwell* the original appeal itself as it pertains to the retaining wall is untimely as well. The southern retaining wall was always part of the project, and it was featured in elevations contained in the plans presented to the Zoning Board of Appeals. The floor area and height/stories were discussed at length over the course of the hearing on the FAR Variance. Accordingly, the Appellants had an opportunity to be heard in a meaningful manner at a meaningful time on these issues and failed to do so.

The Appellants' Reference to Estoppel is Misplaced

The Appellants cite to a line of cases that stand for the proposition that estoppel may not be invoked against a municipality to prevent it from discharging its statutory duties or ratifying an administrative error - those cases all pertain to an aggrieved party arguing that a municipal entity or agency should be estopped from taking certain actions based on prior approvals, decisions or permits issued by such entity or agency. That is not the case here.

In the current matter, the Village of Mamaroneck is not seeking to enforce a provision of the Zoning Code that was mistakenly overlooked or misapplied during the permitting process. In fact, the Building Inspector has never taken the position that the First Building Department

Determination was issued in error or that any of the FAR calculations or determinations regarding stories/height are not compliant with the Zoning Code. Obviously, since our clients have never argued the Village is estopped from applying any regulations to the project, the estoppel cases cited by the Appellants are simply static noise and have no bearing on this matter.

The FAR Calculation is Correct

The proposed plans for the project underwent a second review by the Building Department following the revisions to the plans of the height and length of the proposed retaining wall. Following a detailed review of the proposed plans, the Building Department issued a Second Determination Letter dated January 16, 2025 (the “Second Determination Letter”). The Second Determination Letter did not identify any additional variances needed for the project, rather it specified Amended Site Plan approval and an amended HCZMC Consistency determination would be required for the modifications to the plans. We note that the Second Determination Letter was issued by the Building Department with full knowledge of the Appellants’ initial appeal and the alleged zoning compliance issues raised therein.

During the review of the Owners’ application for the FAR Variance on March 7, 2024, the Zoning Board of Appeals studied the plans carefully and went through a detailed review of the proposed plans with the Owners’ architect. The architect and the Board reviewed the plans floor-by-floor for almost an hour before the Board adjourned the matter for consideration of a resolution at the following meeting.¹ The current plans that are the subject of the Appellants’ appeal have not expanded the gross floor area; rather, as set forth in greater detail below the FAR is actually less than what was previously granted under the FAR Variance.

In the letter from Wojciech Oktawiec dated March 12, 2025, the Appellants argue that the proposed total floor should be calculated as 12,653 square feet, as opposed to the 11,966 square feet approved in the FAR Variance, by including certain areas in the cellar, first floor, second floor and attic. Specifically, the Appellants allege that the unconditioned storage area outside of the cellar, cellar stairs, screened in porch on the first floor, areas with vaulted ceilings and livable space below 7 feet of ceiling height on the second floor all should be included in the gross floor area calculation. In addition, the Appellants allege there was a miscalculation of the attic space.²

While the Appellants’ comments concerning certain interior stairs had merit (which have now been accounted for in the FAR calculation as set forth below), the remainder of the comments are not supported by the definition of Gross Floor Area in the Zoning Code. Gross Floor Area is defined in §342-3 of the Zoning Code as:

The sum of gross horizontal areas of the several floors of the building or buildings on a lot, measured from the exterior faces of exterior walls or from the center line

¹ Link to video of meeting at: <https://lmcmedia.org/show/village-of-mamaorneck-zoning-board-meeting-3-7-24/>. The discussion concerning the FAR Variance starts at 07:37.

² The Appellants later submitted a letter prepared by Mark Privette of Tectonic Engineering Consultants, P.C., that derived a different total floor area of 15,088 s.f. but basically raised the same issues as in the letter from Wojciech Oktawiec. Specifically, that the calculations should have included certain areas outside the cellar, the covered porches, certain stairways and livable space below 7 feet in height.

of party walls separating two buildings. Any interior space with a floor-to-ceiling height in excess of 12 feet shall be counted 1.5 times, except in the M-1 Zone. The following are excluded:

- (1) Any attic space with a floor-to-ceiling height of less than seven feet.
- (2) Cellar and basement areas where the average height of all exposed exterior wall or walls is less than three feet measured from both the existing grade prior to construction and from the proposed finish grade after construction as indicated on the approved plans.
- (3) In connection with uses other than single-family and two-family homes, any areas or structures devoted only to off-street parking or loading.
- (4) Any horizontal areas that are within the special flood hazard area below two feet above base flood elevation that are useable solely for parking of vehicles, building access or storage in an area other than a basement as defined in § [186-2B](#).

When applying the definition of Gross Floor Area to this project, the following spaces were properly excluded from the calculation:

- (i) The storage space outside of the cellar is outside of the conditioned building envelope below the patio and is only accessible from the exterior of the residence. The covered “grotto” spaces and terraces are unenclosed.
- (ii) The screened in porch areas are not included in the floor area calculation as they are outside of the “exterior walls” of the residence.
- (iii) The design for the areas with vaulted ceilings on the second floor has been revised to have a maximum ceiling height of 12 feet and thereby do not need to be counted at 1.5 times.
- (iv) The “livable space” below 7 feet of ceiling height on the second floor are properly excluded as those areas are considered attic space as they are between the top of the first-floor ceiling joists and the roof rafters.

Three different Building Inspectors have consistently determined that these areas are not to be included in the gross floor area calculation. Over the past several months the Owners’ consultants had a follow up conversation with the present Building Inspector to ensure the project plans align with the Building Inspector’s views. The project architect has recalculated the total gross floor area to take into account certain interior stairs while also refining the calculation for the cellar and first floor areas to be measured from the face of the exterior walls rather than the face of the stone veneer and veneer shelves. Submitted herewith are an updated set of the floor plans for the proposed residence dated August 20, 2025 (attached as **Exhibit 1**), identifying which areas are included and excluded from the Gross Floor Area calculation. As can be seen, the total proposed floor area is 11,858 square feet, 108 square feet less than the maximum floor area of 11,966 square feet approved under the FAR Variance. The Owners’ consultants have reviewed these updated plans with the Building Inspector and have been advised that the FAR calculations of the residence shown thereon are compliant with the Zoning Code.

In the context of the gross floor area discussions the Appellants continually argue that the size of the proposed residence is out of character for the surrounding neighborhood. This is a smoke screen and an utter distraction because it is irrelevant to how FAR should be calculated. Moreover, even if it were relevant, and it is not, we note from a review of available internet listings there are several other homes in the area that have comparable “interior livable space” (excluding garages and certain mechanical/storage space in basements or attics).

The proposed residence at the Subject Property has a total “interior livable space” of approximately 9,689 square feet.³ There are five other “large” homes on Greacen Point Road that have interior livable space ranging from 7,897 square feet to 9,995 square feet. Specifically:

- 1120 Greacen Point Road – 9,995 SF per its Zillow listing (which only includes the finished spaces); the house is 15,872 SF when including the unfinished cellar and garage per the floor plans available online. This house is across the street from the Appellants’ residence.
- 1308 Greacen Point Road – 9,993 SF per a listing on Realtor.com
- 1185 Greacen Point Road – 8,094 SF per a listing on Zillow
- 1209 Greacen Point Road – 7,897 SF per a listing on Houlihan Lawrence
- 1135 Greacen Point Road – 7,782 SF per a listing on Zillow

The narrative spun by the Appellants that the size of the proposed residence is not in character with other homes in the area is simply untrue. In any event, as set forth in detail above, the proposed FAR of the residence is actually 108 square feet less than what was approved in the FAR Variance.

The Proposed Residence Complies with the Maximum Height/Stories

The Appellants submitted a letter from Tectonic Engineering Consultants, P.C., dated July 22, 2025 (the “Tectonic Letter”). The Tectonic Letter, among other things, calls into question the designation of the lower level as a “Cellar” and how the building height was calculated. Below is a detailed response to those portions of the Tectonic Letter with Tectonic’s comments followed by our response and supporting diagrams. In addition, submitted herewith are the current Average Grade Calculation plan dated July 31, 2025 (attached as **Exhibit 2**), and architectural plans showing the elevations of the proposed residence dated October 15, 2025 (attached as **Exhibit 3**) which support the responses to Tectonic’s comments.

Tectonic Comment:

Cellar Designation:

The lowest level of the building is designated on the architect’s plans as a cellar in lieu of a basement. Pertinent definitions from the village’s zoning code are provided below:

³ Specifically: i) Cellar – 2,700 s.f.; ii) 1st Floor (excluding garage) – 3,149 s.f.; iii) 2nd Floor – 3,840 s.f.

CELLAR - *That space of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building.*

BASEMENT - *That space of a building that is partly below grade, but which has more than half of its height, measured from floor to ceiling, above the average established curb level or finished grade of the ground adjoining the building.*

CURB LEVEL - *The elevation of the curb opposite the center of the front of the building. If a building faces on more than one street, the "curb level" shall be the average of the elevations of the curbs at the center of each side or front of the building. Where no "curb level" or its equivalent has been established by the municipal authority, the average elevation of the finished grade immediately adjacent to the front of the building shall be considered as the "curb level." If a building faces on more than one street where no "curb level" has been established, the average of the elevations of the finished grade on each street side of the building shall be considered as the "curb level."*

GRADE, FINISHED - *At any point along the wall of a building, the elevation of the completed surfaces of lawns, walks and roads adjoining the wall at that point.*

1. The Attachment 1 "Average Grade Calculation" prepared by ALP Engineering (01/21/2025) indicates a calculated average finished grade of 19.37'. However, upon inspection of the data presented in the exhibit, four of the finished grade data points do not match the revised grading plan or the definition of finished grade. Recalculating the average finished grade using the finished grades from the revised grading plan provides a new average finished grade elevation of 19.13, which is to be used in process of ascertaining the designation of the initial floor as basement or cellar.

Response: The average finished grade has been calculated in direct accordance with the Village's definition of **GRADE, FINISHED**: *"At any point along the wall of a building, the elevation of the completed surfaces of lawns, walks and roads adjoining the wall at that point."*

All points used in the calculation are located along the building perimeter and represent completed surface elevations of lawns, walks, or roads that adjoin the building wall. The Zoning Code does not prohibit the adjustment of grading along the perimeter of the building. The methodology is consistent with common engineering practice and prior Village applications. The resulting calculation of 19.37' is based on the full perimeter and therefore reflects the correct "average finished grade" per the definition in the Zoning Code.

Tectonic Comment:

2. A review of the Architectural Plans shows the finished floor elevation of the initial floor to be at elevation 15.00 and the finished ceiling at elevation 23.67 and 23.00, depending on the room. Those rooms with a finished ceiling elevation of 23.67 have 50% of their 8'-8" height (4'-4") at elevation 19.33 (15.00+4.33), which is higher than the average finished

grade of 19.13. Those with a finished ceiling of 23.00 have 50% of their 8'-0" height (4'-0") at elevation 19.00, which is lower than the average finished grade.

Response: Ceiling height in the cellar varies. Approximately 72% of the cellar has an 8'-0" finished ceiling height, with **all** perimeter wall areas at 8'-0" (see Figure 1 below). All areas in red have a ceiling height of 8'-8". The game room has a ceiling height of 11'-0". All other areas have a ceiling height of 8'-0". Using the correct average finished grade of 19.37' and applying the definition of **CELLAR** (*more than half of its height below the average established curb level or finished grade*), the entirety of the level's average height is below grade (see Figure 2 below). Furthermore, the few interior areas with 8'-8" ceilings are non-perimeter spaces (see Figure 1) and represent less than 20% of the total ceiling area and still have a greater height that is below the average proposed finished grade plane, see (Figure 4) below.

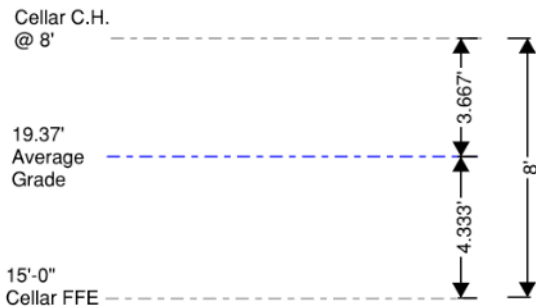
The code defines a **BASEMENT** as a space with more than half of its height, measured from floor to ceiling, above the average established curb level or finished grade of the ground adjoining the building. The project architect used the **finished grade elevation** - a more conservative approach - to confirm that the lowest level qualifies as a cellar, not a basement. However, the code also permits the use of the **established curb level**, which in this case is elevation 22.0'. Using this measurement method makes the classification as a cellar even more clear.⁴

Figure 1.



⁴ At locations with an 8'-0" ceiling height, 7'-0" of wall height would be below the curb level, leaving only 1'-0" above. At locations with an 8'-8" ceiling height, 7'-0" would remain below the curb level, with only 1.667' above. In both cases, more than half of the height is below the curb level, meeting the code's definition of a cellar.

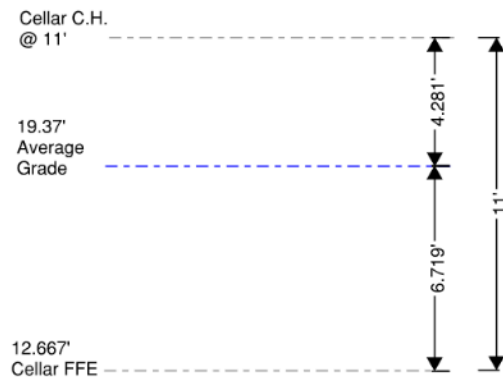
Figure 2.

**Tectonic Comment:**

- It should be noted that the Game Area room depicted on sheet A-3.2 appears to have a ceiling height of 11'-0" instead of the 8'-8" noted on the sheet.

Response: The game room does have a ceiling height of 11'-0"; however, the slab in the game room is dropped to elevation 12.667' to create an 11'-0" finished ceiling. This design places an even greater portion of this room's wall height below the average finished grade plane (see Figure 3 below).

Figure 3.

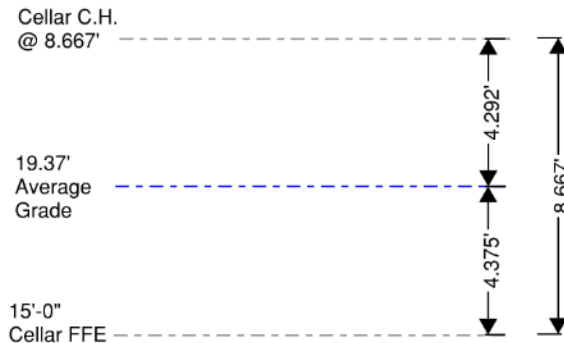
**Tectonic Comment:**

- Since the rooms with a finished ceiling height of 8'-8", have more than half their height above the average finished grade, by definition they would be designated as Basement and not Cellar, and as such would constitute an additional story for the structure. Plans need to be revised to ensure that all rooms on the cellar floor meet the criteria for a cellar, otherwise the proposed building will have 3.5 stories and exceed the 2.5 story maximum provided in the code.

Response: Per the Zoning Code, classification is determined by whether **more than half of the height, measured from floor to ceiling, is below the "average established curb level or finished grade of the ground adjoining the building"**. The entirety of this level is more than

half below the calculated average finished grade of 19.37'. Areas that are 8'-0" are compliant, with more than half of their height below the proposed average finished grade (see Figure 2 above). Areas that are 8'-8" in ceiling height are also compliant, with more than half the height below the proposed average finished grade, (see figure 4 below). The area that is 11'-0" is compliant, with more than half the height being below the proposed average finished grade plane (see Figure 3 above). Accordingly, the lower level is properly classified as a cellar under the Zoning Code and does not count as a story.

Figure 4.



Tectonic Comment:

Building Height:

1. In order to establish the building height elevation, the average existing grade adjacent to the exterior building walls had to be determined, as did the vertical distance between the roof peak and highest eaves. Neither the architectural nor engineering plans indicate the average existing grade adjacent to the exterior building walls. In review, the existing grade taken at the same locations as the finished grade elevations depicted in the Attachment 1 "Average Grade Calculation" were tabulated and an average existing grade of 16.493 was calculated. The architectural plans do not provide the elevation or height of the highest eaves or roof peak, and as such this distance was scaled from the Rear Elevation on sheet A-2.1 and found to be 8'-6".

The building height dimensions up to the 3rd floor add up to 30.51 ft. The scaled height from the 3rd floor to the roof peak was found to be 11.33 ft, giving an overall vertical distance to the roof peak of 41.84 ft. Subtracting out 1/2 of the distance between the roof peak and the highest eave of 4.25 ft ($8.5/2$), provides the vertical distance of 37.59 ft, above the cellar floor which is at elevation 15.00. This in turn means the maximum building height is at elevation 52.59 ($37.59 + 15.00$). Since the average existing grade is at elevation 16.49, then the maximum building height is actually 36.10 ft ($52.59 - 16.49$), which is 1.1 ft in excess of the 35.0 ft height allowed in the code.

HEIGHT, BUILDING - For one- and two-family dwellings, the vertical distance to the highest level of the highest point of the roof if the roof is flat or mansard or to the mean level between the eaves and the highest point of the roof if the roof is of any other type,

measured from the average level of the existing grade prior to construction adjacent to the exterior walls of the building. For all other buildings, the vertical distance to the highest level of the highest point of the roof if the roof is flat or mansard or to the mean level between the eaves and the highest point of the roof if the roof is of any other type, measured from the average level of the existing grade at the lot line abutting the lot at the front yard. When a building is within the special flood hazard area, height is measured from two feet above base flood elevation.

Response: As set forth above, in measuring building height for one- and two-family dwellings, the measurement is “the vertical distance to the highest level of the highest point of the roof if the roof is flat or mansard or to the mean level between the eaves and the highest point of the roof if the roof is of any other type, measured from the average level of the existing grade prior to construction adjacent to the exterior walls of the building.”

The calculated average existing grade is 16.63'. The highest eave is at elevation 45.510' (45'-6-1/8") and the roof peak is at 56.843' (56'-10-1/8"). The midpoint between these two is 51.177' (51'-2-1/8"). The vertical distance from the average existing grade (16.63') to this midpoint is **34.552'** (34'-6-5/8"), which is within the 35'-0" maximum allowed.

Application of Setback Requirements

The Appellants urge this Board to make a determination that the reference to “Every accessory building or structure” in Note 11 of Chapter 342, Attachment 2: Schedule of Minimum Requirements for Residential Districts applies to any “structure,” including, but not limited to, curbing, walls, barriers, stepping stone stairs, lighting fixtures and stormwater structures. The Appellants cite to the definition of “Structure” in the Zoning Code which provides:

Anything constructed, erected or installed the use of which requires location on or under the ground level, in whole or in part, or attachment to something having location on or under the ground. Depending upon its applicability, the use herein of "structure" shall include the term "building."

The Appellants also cite to a prior determination of the Zoning Board of Appeals in 2007 (Resolution of Case 2A-2007) (the “Henderson Case”) wherein the Zoning Board determined that “steps, platforms, walls and structures used as planters do not fall within the exceptions established in section 342-14 for projecting architectural features.”

A proposed retaining wall that was in issue when the Appellants filed the original appeal is no longer proposed on the present version of the plans. Yet, undaunted, the Appellants have now expanded their argument to include anything that may be deemed a “structure” under the Zoning Code. Given the magnitude of this determination to not only the Owners and the Subject Property, but to all property owners within the Village, we withdraw our prior position that the appeal has been rendered moot by the removal of the retaining wall, as it now requires a determination by this Board.

Following the Henderson Case in 2007, the Village Board of Trustees adopted an amendment to the Zoning Code in 2010 pursuant to Local Law No. 12-2010. In the minutes of the Board of Trustees meeting from April 26, 2010, it is noted that the Village's planning consultant indicated that the Building Inspector and Chair of the Planning Board kept a list of things they believed should be "changed in the Code" and some of the proposed changes were "meant to be administrative clean ups of the existing Code."⁵ The adopted amendment included a change to Section 342-14: Building Projections to provide, inter alia:

Fences, walls or retaining walls shall be constructed with the finished side facing outward from the property, and shall not exceed six feet in height, except:
[Amended 5-10-2010 by L.L. No. 12-2010, effective 5-26-2010]

(1) On a corner parcel, placed beyond the front or side building lines, they shall not exceed four feet in height.

(2) An additional six inches in height may be allowed, at the discretion of the Building Inspector, to provide for necessary distance between the grade and the bottom of the fence, for greater flexibility in mounting.

(3) Where required pursuant to Article XI.

(4) Where approved in conjunction with a special permit granted under Article X.

This change to the Code clearly considers "fences, walls or retaining walls" separately from "projecting architectural features" and contemplates that such improvements could be within front or side yard setbacks by limiting the height of such features to four feet when on a corner parcel and beyond the front or side building lines. If fences, walls and retaining walls were not permitted in front and side yard setbacks it would render subsection (1) above meaningless. We note that there is no direct or indirect reference of such structures being subject to the setbacks prescribed in the Schedule of Minimum Requirements for Residential Districts; as we will describe in more detail below, the Code intentionally incorporates this reference in several instances – its absence in §342-14(C) is instructive. For purposes of statutory interpretation "any statute or regulation...must be interpreted and enforced in a reasonable...manner in accordance with its manifest intent and purpose" and any interpretation "...rendering the provision meaningless or defeating its apparent purpose" should be avoided. *Matter of Sapphire W.*, 237 A.D.3d 41 (2nd Dept. 2025) (internal citations omitted). Accordingly, the Appellants' argument that fences, walls and retaining walls may not encroach into required yards must fail.

As noted above, the Appellants have taken their argument to new and unsupportable heights. The Appellants now argue that virtually nothing can be located in a required yard, specifically referencing curbing, walls, barriers, stepping stone stairs, lighting fixtures and stormwater structures. The Appellants essentially argue that when taking the literal definition of

⁵ Link to minutes:

https://cmsarchive.civicplus.com/Mamaroneck%20NY/MamaroneckNY_TrusteeMinutes/2010/14.%20Minutes%20of%20BOT%20042610%20rvsd%20RCS%206-10-2010%20cleaned%20up.pdf

“Structure” from the Zoning Code it applies to everything. Applied as the Appellants insist would lead automatically to ridiculous results - including on the Appellants’ own property.

This position is simply untethered to reality. Every single building, not just in the Village of Mamaroneck – but every residential home in the United States if it were subject this code – would require a setback variance. The literal application of this footnote suggested by Appellants would necessarily apply to structures like driveways, curbing, sewer taps, water taps, walkways, mailboxes, electrical connections, irrigation systems, and more – all of which are traditionally located in the perimeter areas of a property and are “constructed, erected or installed the use of which requires location on or under the ground level, in whole or in part, or attachment to something having location on or under the ground.” The intent of the Zoning Code was never to require every single building in the Village to require a setback variance for such commonplace and necessary ancillary features. Rather the setback provisions are intended to apply to the primary structure and any actual accessory structure (i.e. shed, garage, etc.).

A careful review of the Code reveals the types of accessory structures that are subject to setbacks. The Code is deliberate in its setback requirements of accessory structures, as evidenced by [§342-21\(B\)](#), where the Code memorializes typical permitted accessory uses and the requirements of their use. The Code intentionally includes references to setback requirements for certain accessory structures and intentionally omits such references where not appropriate. Provided below are examples that emphasize the typical drafting in the Code regarding applicability of setbacks and the notable absences of such language on the structures subject to the Appellants’ appeal:

- Garden houses, tool houses, etc. – refer to [§342-21\(B\)\(3\)](#) , which reads “Garden houses, tool houses, playhouses, greenhouses or other uses customarily incidental to the residential use of the premises and not operated for gain, subject to the provisions set forth in Note 11 of the Schedule of Minimum Requirements for Residential Districts.”
- Private Garages – refer to [§342-13\(B\)](#), which reads “Every such private garage shall be set back at least 50 feet from the front property line and, on corner lots, shall also be set back at least 20 feet from a side street, unless such garage is made part of the main dwelling.”
- Storage of Boats and Boat Trailers – refer to refer to [§342-12](#) [text not copied due to length]
- Swimming Pools – refer to [§300-3\(B\)](#), which reads “No pool or its appurtenances, including but not limited to its filter and heater, shall be erected or constructed on any lot closer than six (6) feet to the rear property line, with side yard setbacks as prescribed by the Schedule of Minimum Requirements for Residential Districts, Chapter 342, Zoning, or, in the case of a corner lot, no closer than ten (10) feet to any property line along an abutting street.”

Where a matter of interpretation comes before a Zoning Board of Appeals and “there is no precedent to guide the board, it may desire to refer to one or more of the various zoning treatises containing standard definitions of terms, or even to the dictionary.” Department of State, Division of Local Government Services, James. A. Coon Local Government Technical Series, *Zoning Board of Appeals* at 10 (2005, 2024 reprint) (available at

<https://dos.ny.gov/system/files/documents/2024/09/zoning-board-of-appeals.pdf>). Black's Law Dictionary defines a setback as "the minimum amount of space required between a lot line and a building line" and goes on to provide that "setbacks are designed to ensure that enough light and ventilation reach the property and to keep buildings from being erected too close to property lines." (emphasis added). This Board ought to take note here of the words "building" and "buildings."

A Zoning Board of Appeals is "accorded reasonable discretion in interpreting an ordinance that addresses an area of zoning where it is difficult or impractical for a legislative body to lay down a rule which is both definitive and all-encompassing." *Northwood School, Inc. v. Joint Zoning Board of Appeals for Town of North Elba*, 171 A.D.3d 1292 (3rd Dept. 2019). In addition, any ambiguity in a zoning ordinance "must be resolved in favor of the property owner." *Allen v. Adami*, 39 N.Y.2d 275 (1976). Where a Zoning Board of Appeals is authorized to interpret the requirements of a zoning ordinance, the "specific application of a term of the ordinance to a particular property is...governed by the board's interpretation, unless unreasonable or irrational." *Frishman v. Schmidt*, 61 N.Y.2d 823 (1984). In other words, the Zoning Board of Appeals is authorized to exercise reasonable interpretive discretion when applying a zoning ordinance rather than being bound to a hyper-literal application of the text, unless such interpretation is "unreasonable or irrational."

The Board of Trustees could not have intended or envisioned the application of Note 11 to apply to any and all "structures" as broadly defined in the Zoning Code; however, it would be "difficult or impractical" for the Board of Trustees to identify every single feasible permitted encroachment into such setbacks (e.g., mailboxes, utility lines, curbing, light posts, etc.). Therefore, it is now the Zoning Board's job to use common sense and reason in determining the application of Note 11, as the Building Inspector has historically done.

It has long been the common sense practice of the Village (along with countless other municipalities) to not consider things like curbing, walls, lighting fixtures and stormwater structures as "structures" for setback purposes. Rather, setback restrictions are applied to true above-ground buildings and structures one would normally consider a building or structure, not subterranean features like stormwater infrastructure and utility connections, at grade surfaces like driveways and walkways or innocuous features such as lighting fixtures or curbing. In fact, the Appellants' own residence at 1019 Greacen Point Road has a driveway and curbing on the side property line shared with the Subject Property with fencing and a light fixture in the front yard setback. Adjacent to the Subject Property at 943 Greacen Point Road, there is a driveway, curbing, stone entry piers, basketball hoop and drainage inlet all within the side yard setback. Directly across the street from the Appellants' residence at 1014 Greacen Point Road, there is a driveway, drain, and curbing in the side yard setback along with a retaining wall and 6' stockade fence on the side lot lines.

We suggest the Zoning Board members take a moment to consider their own properties, their neighbors' properties and all the properties that have come before this Board and acknowledge the inescapable reality that improvements like fences or walls are within the side yard setbacks; and driveways, underground infrastructure, and utility connections are necessarily in the setbacks. Indeed, the practical purpose of nearly all fences and many walls is to provide privacy or establish property boundaries necessitating their installation along property boundaries

and within setbacks. To further illustrate the point, attached hereto as **Exhibit 4** are examples from the zoning codes of neighboring municipalities to the Village of Mamaroneck with respect to how fences, walls and retaining walls are treated.

There are a multitude of other examples throughout the Village of retaining walls and stormwater infrastructure being located in setbacks and in any given month the Zoning Board of Appeals has a number of applications before it with similar features. Attached hereto as **Exhibit 5** is a detailed selection of other properties recently proposed or developed with stairs, fences, retaining walls, and/or stormwater practices located in setbacks, none of which were determined to require a variance. Although some of these applications progressed through the land use board process without ZBA review due to the Building Inspector correctly determining that no variance was necessary, we also highlight examples of projects that were before the ZBA and the ZBA did not raise issues of zoning non-conformance for such structures despite it being first made aware of the appellants' perspectives in Autumn 2024. We further note that the current determination of the Building Department that such features are permitted in side yards has been upheld by three different Building Inspectors throughout the lengthy review of this project.

With respect to stormwater infrastructure, we clarify two points. First, the Village and its engineering consultant (John Kellard, P.E.) have indicated that it would be impossible to develop homes in the Village of Mamaroneck without allowing for stormwater infrastructure within setbacks. Second, in response to the Appellants' comments, the Owners' civil engineer, Alan Pilch, spoke with Cultec's (the manufacturer of the proposed stormwater detention units) Northeast Project Coordinator, Jill Gorneau. She clarified that Cultec does not specifically require a minimum 10-foot separation from any foundation but, rather, leaves the decision regarding separation distances to the engineer. Indeed, they also have technical resources for suggested design elements for chambers sited closer than 10 feet to a structure – which evidences the engineering permissibility of Cultecs within 10 feet of structures.

While the Appellants' have only raised certain proposed features on the Subject Property (i.e., curbing, walls, barriers, stepping stone stairs, lighting fixtures and stormwater structures) the Zoning Board's determination will not be limited to just the Subject Property and just those select features. Rather, if the Zoning Board were to agree with the Appellants' requested interpretation that determination would apply to anything that could be deemed a "structure" under the Zoning Code and to all other property owners throughout the Village. Accordingly, the Zoning Board's review of this issue must not be limited to only those items flagged by the Appellants but take into consideration all potential "structures" in setbacks, including, but not limited to, the driveway, front walkway, curbing, utility connections and propane tanks.

In its adoption of Zoning Code provisions, the Trustees could never have intended for this Zoning Board of Appeals to have agendas full of setback variances for bird feeders and driveways or curbs. Moreover, the Village would be dutybound to then apply this "new" determination to all ongoing construction projects throughout the Village that have features in violation of the Appellants' proposed interpretation. The Zoning Board should carefully consider the implications of the Building Department having to issue Stop Work Orders and/or withholding Certificates of Occupancy to an unknown number of other property owners. Such a determination could lead to a cascade of civil lawsuits for takings of property (or perhaps selective enforcement if not applied

equally to all) as no property could be developed without the need for a variance. In the alternative, if such an interpretation were only enforced against the Owners, that would certainly invite a claim by the Owners for violation of equal protection.

While the Zoning Board of Appeals has the jurisdiction to rule on this issue and many of the members have training in planning and zoning matters and/or law, we do not believe any of the members have specialized training as building inspectors and/or plan examiners. The Zoning Board should rely upon, and not casually consider countermanding, the expertise of the Village's Building Inspector and outside consultants, all of whom have consistently determined that the proposed improvements in the setbacks are not subject to the same restrictions as a primary or accessory structure.

In sum, the imposition of setback restrictions as sought by Appellants in this appeal is improper. The literal enforcement of a minor footnote of the Code is absurd on its face. Even if one were to have a bias towards a strict textual interpretation, there is instructive guidance regarding the applicability of setbacks elsewhere in the Code, such as §342-21(B), and other chapters of the Code referenced above. The legislative intent of the Trustees is further evidenced by Local Law No. 12-2010 that, *inter alia*, amended §342-14 concerning fences and walls. The Board is empowered to use sound interpretative judgement and the guidance of its experts. The experts – the Village's Building Inspector and outside consultants – have repeatedly affirmed the project's compliance with the Code and that no area variances are necessary aside from the FAR Variance previously granted. The historical interpretation in the Village is evidenced by the many examples we provided of similar structures in the Village that are properly permitted in the setbacks.

The Board must consider the public policy issues at hand – both the initial intent of the Code's drafting and the implications of a determination in favor of the Appellants. A decision in favor of the Appellants would make the Village dutybound to enforce an effective building moratorium and create an absurd and onerous backlog of variance applications before this Board, while also inviting civil lawsuits for takings of property, and if not consistently applied invite civil lawsuits for unequal enforcement of the law.

The Appellants' Extraordinary Request for a Re-Hearing Should Not be Considered

We again reiterate our position that there are no grounds to consider, let alone grant, the Appellants' request for a re-hearing of the FAR Variance. The overall gross floor area has not changed since the prior approval (and the FAR is actually less than what was approved in the FAR Variance as set forth above). All of the changes to the site plan over the past several months - which did not impact the floor plans or design of the house - have been good faith attempts to address feedback from the Appellants and other neighbors. In addition, the previously-proposed retaining walls were always part of the design and were presented in elevations submitted to the Board in connection with its review of the FAR Variance; the wall itself was not a new factor that was not previously considered by the Board.

Any such re-hearing would require a motion by a member of the Board and a unanimous vote of all members in attendance (Village Law §7-712-a.12). No such motion has yet been made

or even discussed by the Board. We believe that a re-hearing is improper, and we reserve any further comment on this unless the Board entertains the request - which it should not.

Conclusion

For the reasons set forth above, we respectfully request the Zoning Board uphold the Building Inspector's determinations and deny the Appellants' appeal.

Thank you for your time and attention to this matter.

Very truly yours,
HARFENIST KRAUT & PERLSTEIN, LLP

By: Jonathan D. Kraut
Jonathan D. Kraut
Leo K. Napior

EXHIBIT 1

ARCHITECTURAL FLOOR PLANS

CELLAR FLOOR FAR:	FIRST FLOOR FAR:	SECOND FLOOR FAR:	ATTIC FLOOR AREA:
S1 = 3,265 S.F.	F1 = 4161 S.F. F2 = 138 S.F.	S1 = 3,666 S.F.	A1 = 240 S.F. A2 = 148 S.F. A3 = 240 S.F.
TOTAL = 3,265 S.F.	TOTAL = 4,299 S.F.	TOTAL = 3,666 S.F.	TOTAL = 628 S.F.

200 TONS
TOTAL LOT AREA: 40,459.017 S.F.
ALLOWABLE FAR: 74,183 X .27 = 10,986.03 S.F.

CELLAR FLOOR FAR =	3,265 S.F.
FIRST FLOOR FAR =	1,425 S.F.
SECOND FLOOR FAR =	3,464 S.F.
ATTIC FLOOR =	628 S.F.
TOTAL PROPOSED FAR=	11,858 S.F.

FAR CALCULATIONS: COMBINED LOTS			
CELLAR FLOOR FAR:	FIRST FLOOR FAR:	SECOND FLOOR FAR:	ATTIC FLOOR AREA:
B1 = 329.6 S.F.	F1 = 416.1 S.F.	S1 = 3466 S.F.	A1 = 240 S.F.
	F2 = 130 S.F.		A2 = 148 S.F.
			A3 = 240 S.F.
TOTAL = 3,265 S.F.	TOTAL = 4,299 S.F.	TOTAL = 3,466 S.F.	TOTAL = 628 S.F.

320 TONE
TOTAL LOT AREA 74,183 S.F. [COMBINED LOTS]
ALLOWABLE FAR 74,183 X .27 = 20,029 S.F.
CELLULAR FLOOR FAR = 3,265 S.F.
REST FLOOR FAR = 4,299 S.F.
TOTAL FLOOR FAR = 7,564 S.F.
ATTC FLOOR = 628 S.F.
TOTAL PROPOSED FAR = 11,858 S.F.

NOTES:

1. PER 342 TRAVIS DEFINED OF MANAKONICK VILLAGE CODE BUILDING AREA IS DEFINED AS THE ENTIRE AREA OF THE BUILDING, INCLUDING ALL ATTACHED PORCHES, PATIO, PORCHES, BUILDINGS AND ALL ACCESSORY BUILDINGS EXCEPT UNCOVERED PORCHES, PATIO, PORCHES AND TRAVELWAYS.
2. PER 342 TRAVIS DEFINED OF MANAKONICK VILLAGE CODE "GROSS FLOOR AREA" IS DEFINED AS THE GROSS HORIZONTAL AREA OF THE LEVEL FLOOR OF THE BUILDING OF BUILDINGS ON THE LOT, INCLUDING ALL ATTACHED PORCHES, PATIO, PORCHES, BUILDINGS AND ALL ACCESSORY BUILDINGS, EXCEPT UNCOVERED PORCHES, PATIO, PORCHES AND TRAVELWAYS.
3. PER 342 TRAVIS DEFINED OF MANAKONICK VILLAGE CODE "INTERIOR SPACE WITH A CEILING OF AT LEAST 7 FEET" SHALL BE THE SPACE BETWEEN THE INTERIOR SURFACE OF THE PARTIAL WALLS SEPARATING TWO BUILDINGS, AN INTERIOR SPACE WITH A CEILING OF AT LEAST 7 FEET IN HEIGHT IN EXCESS OF 12 FEET SHALL BE COUNTED 1/3 TIMES, EXCEPT IN A ZONE THE FOLLOWING:
 - 2.1. AN ATIC SPACE WITH A FLOOR TO CEILING HEIGHT OF LESS THAN 7'.
 - 2.2. A SPACE WITH A FLOOR TO CEILING HEIGHT OF 7' OR MORE.
4. PER 342 TRAVIS DEFINED OF MANAKONICK VILLAGE CODE "FINISHED GRADE" SHALL BE THE FINISHED GRADE OR FINISHED GRADE OF THE EXISTING GRADE PRIOR TO CONSTRUCTION AND FROM THE PROPOSED FINISHED GRADE AFTER CONSTRUCTION AS INDICATED BY THE SURVEY OF THE LOT.

AREAS INCLUDED

*AREAS NOT INCLUDED IN FAR CALCULATION (EXCEPTION)

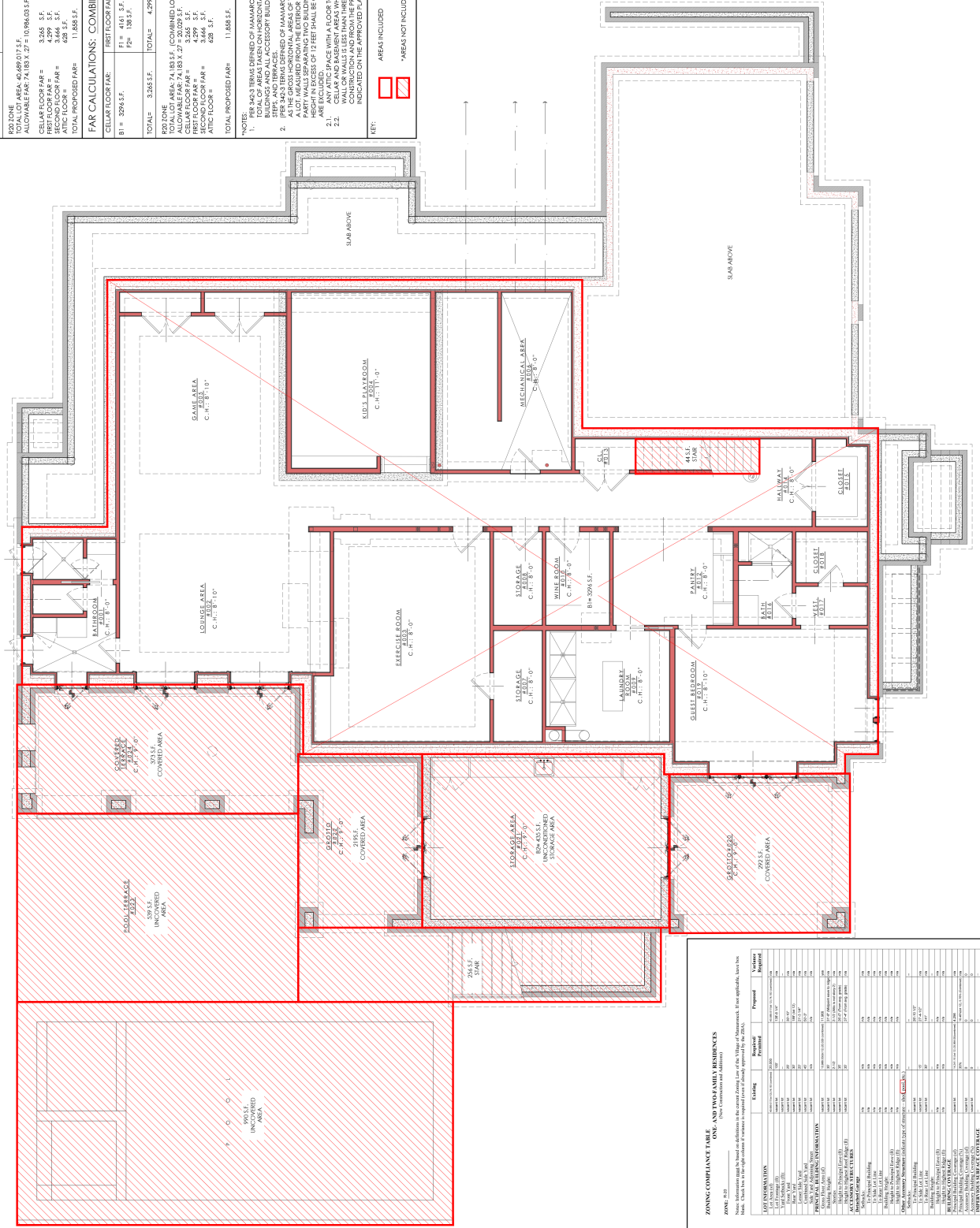
[illegible]

EXHIBIT 2

AVERAGE GRADE PLANE PLAN

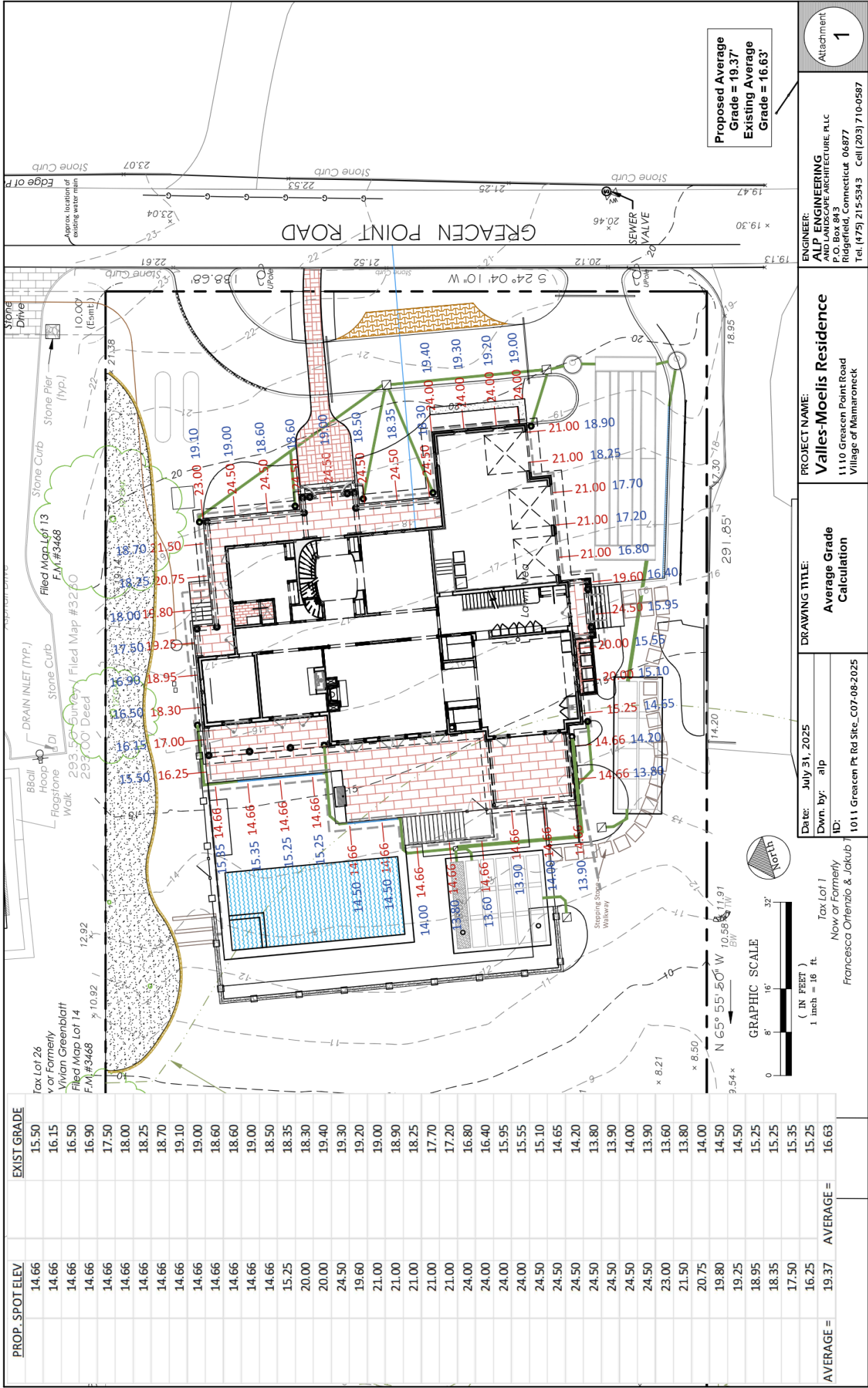


EXHIBIT 3

ARCHITECTURAL ELEVATIONS

FRONT ELEVATION

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EXHIBIT 4

SELECT PROVISIONS OF ZONING CODE PROVISION FROM NEIGHBORING MUNICIPALITIES

Set forth below are examples of how neighboring municipalities to the Village of Mamaroneck treat fences, retaining walls and the like:

A. Town/Village of Harrison:

- § 235-18 Placement of accessory buildings and uses; garages; off-street parking; truck loading spaces.
 - A. In all districts:
 - (5) Access driveways may be located within a required yard.
- § 235-19 Yards.
 - A. Unless otherwise permitted in this section, every part of a required yard shall be open to the sky, unobstructed except for:
 - (1) Retaining walls or fences.

B. Town of North Castle

- § 355-15 Yard improvements; building projections
 - G. Walls and fences.
 - (1) The yard and height requirements of this chapter shall not be deemed to prohibit any retaining wall. However, any retaining wall over six feet in height shall require approval of the Planning Board.

C. Town of New Castle

- § 60-420(C) Yards and building projections
 - (5) Walls and fences.
 - (a) Walls. Regardless of the location of a freestanding wall on a lot, parcel or property, such wall shall not exceed six feet in height and shall not conflict with the standards in § 60-420C(6). A retaining wall located at the property line or within a required minimum yard setback shall not exceed four feet in exposed retaining wall height.

D. Town of Somers

- § 170-49 Fences and walls.
 - Except as limited by § 170-35, the yard requirements of this chapter shall not be deemed to prohibit any otherwise lawful fence or wall. In no case shall a fence or wall exceed six feet in height.

E. Town of North Salem

- 250-5 FENCE
 - An unroofed barrier or unroofed enclosing structure, including retaining walls.
- § 250-22 Front, side and rear yard exceptions.

- C. A fence or wall not more than four feet in height is permitted within the front yard and no more than five feet in height within any side or rear yard except as in Subsection E below or in a case where specific fencing requirements may be established by the Town Planning Board or Board of Appeals. A fence which is installed along a lot line or within any yard shall be of comparable quality and appearance on both sides.

F. Town of Bedford

- 125-3 FENCE

- Any structure, including a wall or gate, regardless of composition, except those comprised of living plants, that is erected or maintained for the purpose of enclosing, separating or screening a piece of land or to divide a piece of land into distinct portions.

- 125-15

- A. No fence or gate shall be erected except as provided herein:
- (1) A fence or gate may be erected in a residential district wholly within the lot lines of the subject property, provided that the fence:
 - (a) Is located 20 feet or more from the front lot line and does not exceed six feet in height.
 - (b) Is located less than 20 feet from the front lot line and does not exceed four feet in height; provided that a permit for same has been issued by the Building Inspector.

The above list is not intended to be exhaustive of how other municipalities address and treat typical yard features, but these few examples clearly demonstrate codification of well-understood planning practices with respect to such structures.

EXHIBIT 5

PRECEDENT FOR STRUCTURES IN SETBACKS

Across the Village of Mamaroneck (“VOM”) there exist many retaining walls and stormwater management practices located within yard setbacks. Provided below is a selection of precedents for your reference and consideration.

Retaining Walls Located Near 1011 Greacen Point Road.

Based on our research, within ~1,000 feet of 1011 Greacen Point Road’s property there are two recently-constructed single-family homes that exhibit approved retaining walls on their property line, demonstrating that they remain in the character of the neighborhood. Our review was not exhaustive, and we would expect to find many additional examples with respect to other homes; this information was not readily-accessible from public record. For the avoidance of doubt, we have found no evidence that these projects required area or height variances for the walls or fences.

- **1014 Greacen Point** (R-20) sits diagonally across from 1011 Greacen Point, and directly across the street from 1019 Greacen Point. This home was completed in 2015 and replaced a small 1960’s-era structure. On the property’s southern property line, 1014 Greacen Point maintains a retaining wall and large stockade fence (6’ tall fence based on a survey publicly available). This wall abuts 1014 Greacen Point’s driveway, which runs along the property line. There also appears to be a basketball hoop and stairway from the driveway to the rear yard in the setback. See Exhibit A for a visual.
- **886 Orienta Avenue** (R-20) sits just past the end of Greacen Point Road, and we understand it was constructed shortly after its land use board approvals (BAR approved on March 20, 2017) and building permit. While the property itself has grown due to the acquisition of additional land, the original building permit contemplated a driveway retaining wall abutting the western property line. There exist other retaining walls on the perimeter of the property, as well. See Exhibit B for a visual of the as-built drawings with red bubbles indicating the existence of retaining walls.

Spotlighting the actual height of certain nearby retaining walls, there are two notable examples within the same ~1,000 foot radius of 1011 Greacen Point. These represent retaining walls with guards/fences installed on top of the retaining wall, such that the cumulative height exceeds the 6’6” permitted pursuant to Village Code § 342-14(C). We have found no evidence of height or setback variances being required.

- **1014 Greacen Point** (R-20), as noted above, has a 6’ stockade fence on top of a retaining wall.
- **Hampshire Country Club** conducted certain clubhouse and parking lot changes in the mid-2000’s. In connection with those improvements, there is at least one ~6’ retaining wall with a code-compliant ~3’ safety guard on the top of it. This is in a high traffic area with cars regularly driving on the upper tier of the wall. See Exhibit C for a visual of one of the walls.

Other Retaining Walls and Underground Site Infrastructure (including Stormwater Management Practices) Located Within a Yard Setback

Leveraging publicly-available information, we have found numerous other examples throughout the VOM of retaining walls and underground site infrastructure (including stormwater management practices) located within a yard setback. For the avoidance of doubt, we have found no evidence that these projects required area variances. The precedents below reflect a selection of recent development projects. This further demonstrates the consistent treatment of such engineering elements in the VOM.

- **941 Taylors Lane (R-15).** Project involved demolition of an existing home and construction of a new single-family home. Construction included installation of a new stone masonry wall within the front yard setback. There was also a stormwater management practice installed within the front yard setback. This project is complete. No variance was required. See Exhibit D for excerpts from the site plan that show the new wall and stormwater management practice. *Note: this project was designed by 1011 Greacen Point's architects, Cardello Architects.*
- **2 Shore Road (R-15).** Project involved elevation of a single-family home, construction of terraces, new driveway, stormwater management system, and septic system. Project added a portion of a wall to the front yard, which encroached on a front yard setback. An underground septic system also encroached on both the front yard and side yard setbacks. No variance was required. Project was fully approved through Planning Board as of February 14, 2024. See Exhibit E for excerpts from the site plan that show the new wall and septic system.
- **877 Port Drive (R-15).** Project involves demolition of an existing home and construction of a new single-family home. There are multiple stormwater management practices encroaching on the rear yard setback. No variance was required. We understand that this project received site plan approval at the February 12, 2025 Planning Board meeting. See Exhibit F for excerpts from the site plan that show the stormwater management practices.
- **1060 Seven Oaks Lane (R-20).** Project involves demolition of an existing home and construction of a new single-family home. There is a proposed driveway within the side yard setback. There also exists within the yard setbacks multiple stormwater management practices, HVAC equipment platforms, and a retaining wall. No variance was required. We understand that the project received planning board approval on April 15, 2025. See Exhibit G for excerpts from the site plan that show the stormwater management practices, HVAC equipment, and retaining wall.
- **824 The Crescent (R-15).** Project involves site plan and wetland permit approval for a second floor addition above an existing one-story residential garage along with new exterior patio and walkways. We understand that the project received planning board approval on July 23, 2025. See Exhibit H for excerpts from the site plan that show steps, fences, and walls.

- **825 Orienta Ave (R-20).** Project involves site plan approval for the proposed 2-story addition to the existing single-family home, and a single-story addition to the existing attached garage. Landscaping and stormwater improvements are also proposed. We understand that the project received planning board approval on July 9, 2025. See Exhibit I for excerpts from the site plan that show steps, fences, and walls.

Precedent of ZBA review

Leveraging publicly-available information, we have identified multiple applications before the ZBA, where the ZBA does not appear to have used its “de novo” review authority to expand the scope of variances needed beyond what the building department Determination Letter indicated. Examples include:

- **722 Jefferson Ave (R-5).** The applicant seeks a front and side yard setback variance for the proposed portico as per Village Code Chapter 342, Attachment 2. We understand that the project was reviewed by the ZBA at its September 30, 2025 hearing. See Exhibit J for excerpts from the site plan that show a walk and fences in setbacks.
- **220 Harbor Hill Lane (R-7.5).** The applicant seeks a rear yard setback variance for proposed rear deck as per Village Code Chapter 342, Attachment 2. We understand that the project was reviewed by the ZBA at its September 4, 2025 hearing. See Exhibit K for excerpts from the site plan that show stairs and underground stormwater management systems in the front and rear yard setback, respectively.
- **1402 Henry Ave (R-5).** The applicant seeks an area variance to legalize condensers placed within side yard setback as per Village Code Chapter 342, Attachment 2. We understand that the project received the variance sought by the applicant on September 4, 2025. See Exhibit L for excerpts from the survey that show stairs, fences and walls that were not required to be legalized despite the purpose of the variance being legalization of another structure in the setback.
- **641 Hillside Ave (R-2F).** The applicant seeks a 10-foot area variance from the 25-foot rear yard setback requirement as per Village Code Chapter 342, Attachment 2, in connection with reducing the size of a non-conforming deck. We understand that the project received the variance sought by the applicant on July 24, 2025. See Exhibit M for excerpts from the survey that show stairs, fences and walls that were not required to be legalized despite the purpose of the variance being legalization of another structure in the setback.
- **216 Union Avenue (R-2F).** The applicant seeks an area variance (minimum front yard setback, minimum lesser side setback, minimum total two side yard setback) for the addition and renovation of existing home as per Village Code Chapter 342, Attachment 2. We understand that the project received the variance sought by the applicant on May 1, 2025. See Exhibit N for excerpts from the site plan that show fences and walls in the setbacks.

Exhibit A
1014 Greacen Point
Stairs, Basketball Hoop, Retaining Wall and Stockade Fence



886 Greacen Point

As-Built Retaining Walls (indicated in red bubbles)

NOT SHOWN: original building permit site plan showing a retaining wall next to the driveway adjacent to the property line

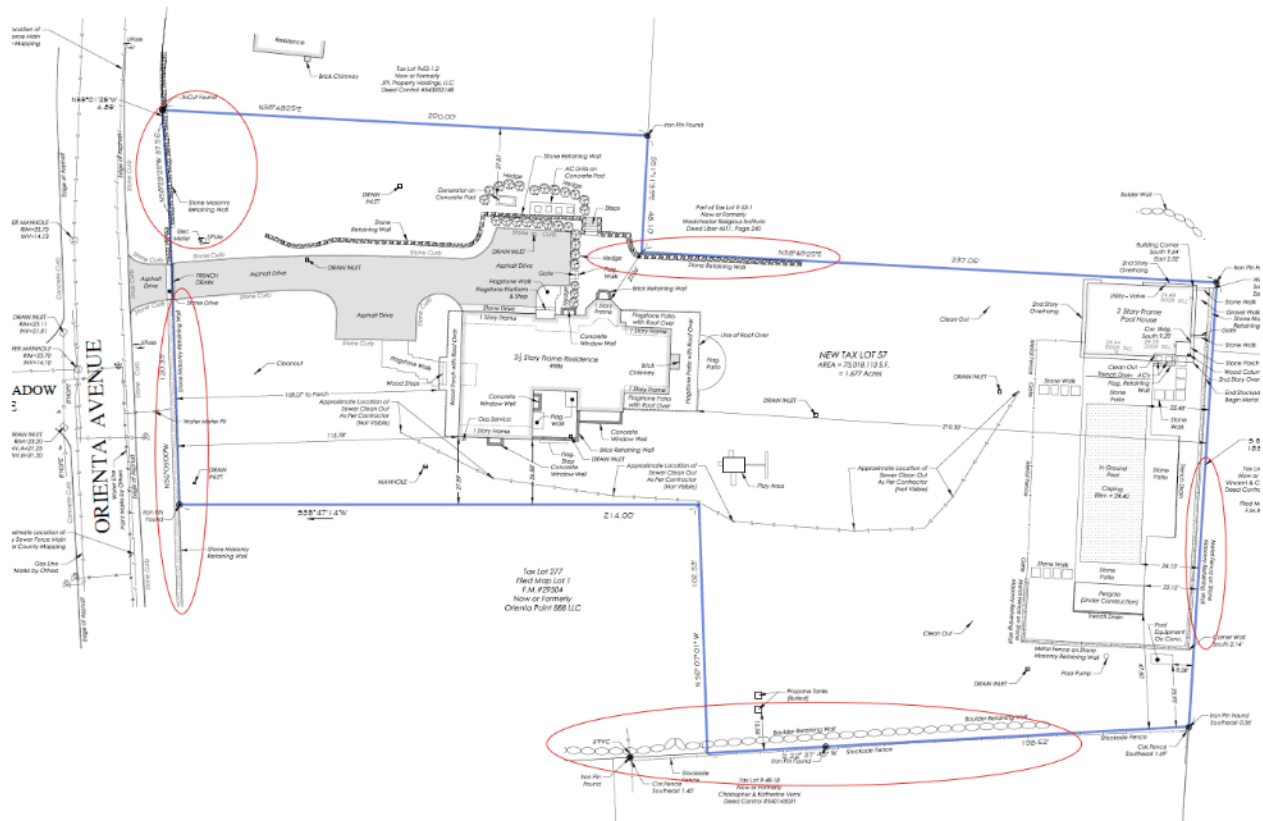


Exhibit C
Hampshire Country Club
Retaining Wall and Guard



155.53-1-13
Now or Formerly
Kathryn Kastenbaum
Filed Map Lot 12
F.M.#11246

Hedge

Edge of Asphalt

Stone Masonry Wall

DI-1
GR.: 10.2
INV. OUT: 7.8

PROPOSED UNDERGROUND
150XLHD CULTEC SYSTEM #1
TOP OF CHAMBERS: 9.6
INV. IN (6"): 9.2
BOTTOM OF CHAMBERS: 8.2
BOTTOM OF GRAVEL: 7.7

Water Meter Pit

30 LF
6" Ø HDPE
@ 1.0%

TAYLORS LANE

Stone Masonry Wall

Asphalt Drive

Stone Curb

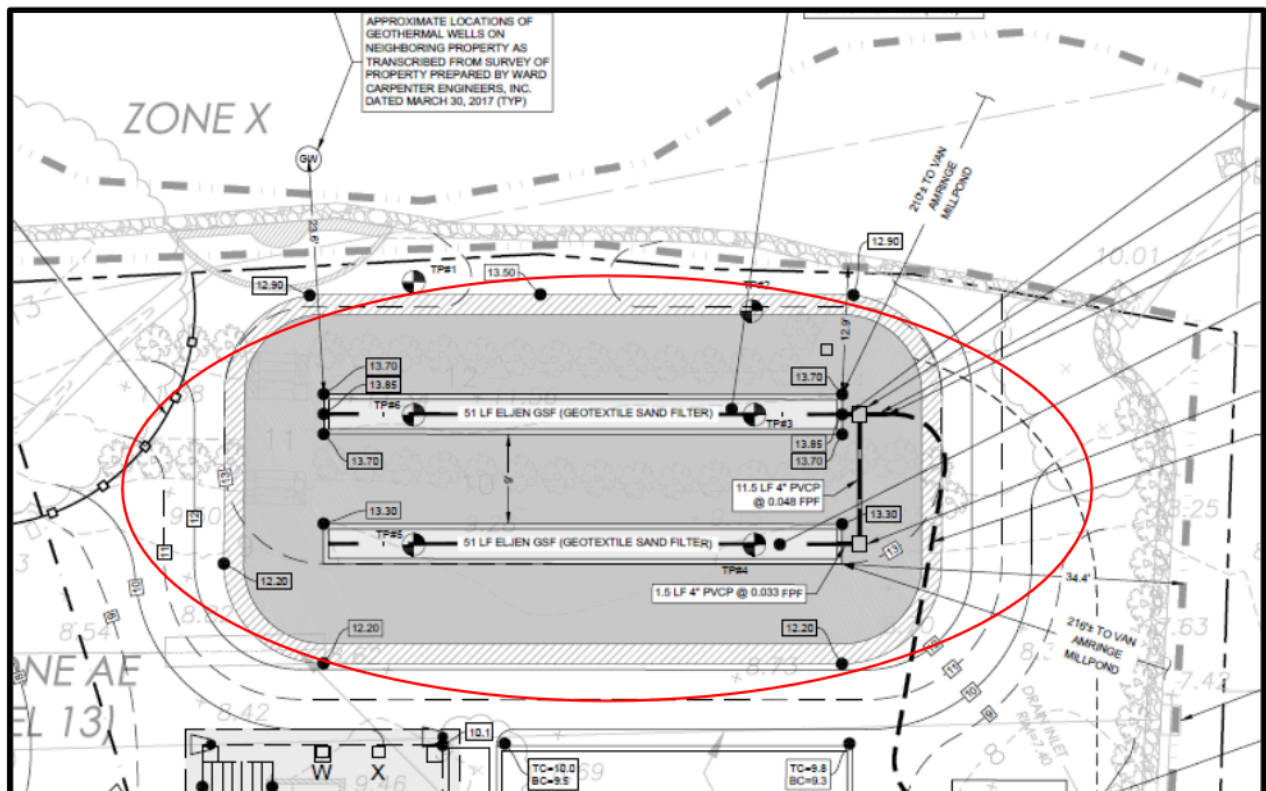
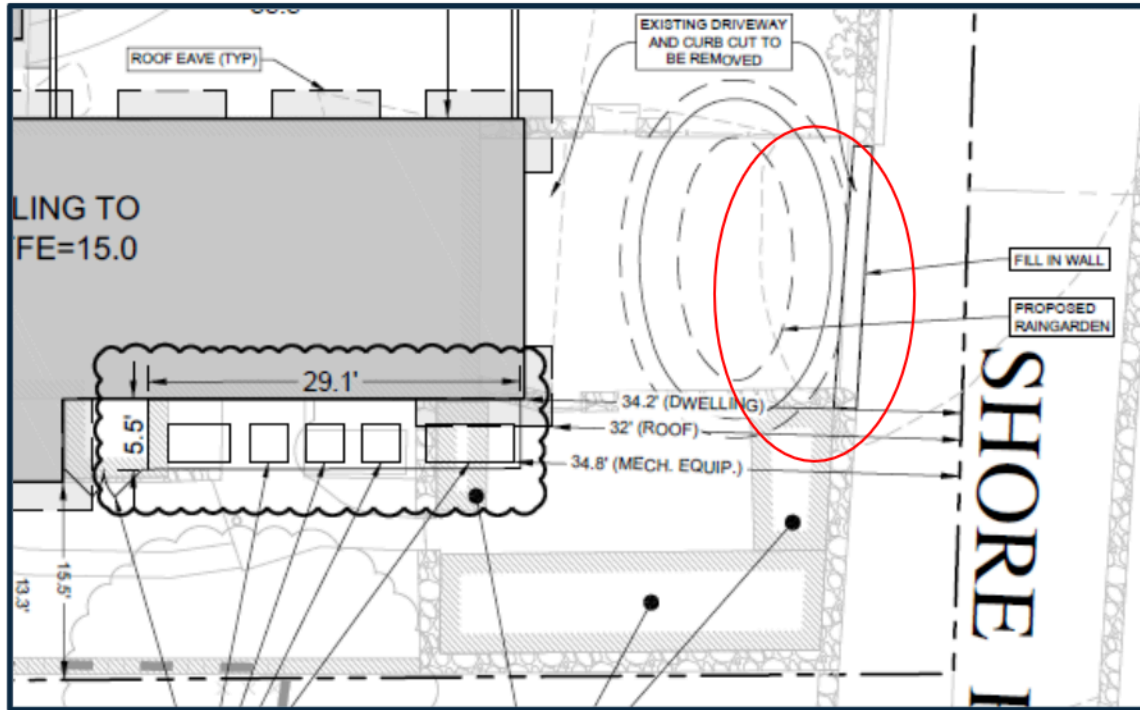
NHOLE MAIN) = 11.92
ANOUT = 8.82

UPole

ANHOLE E MAIN) = 10.59
ANOUTS = 7.59

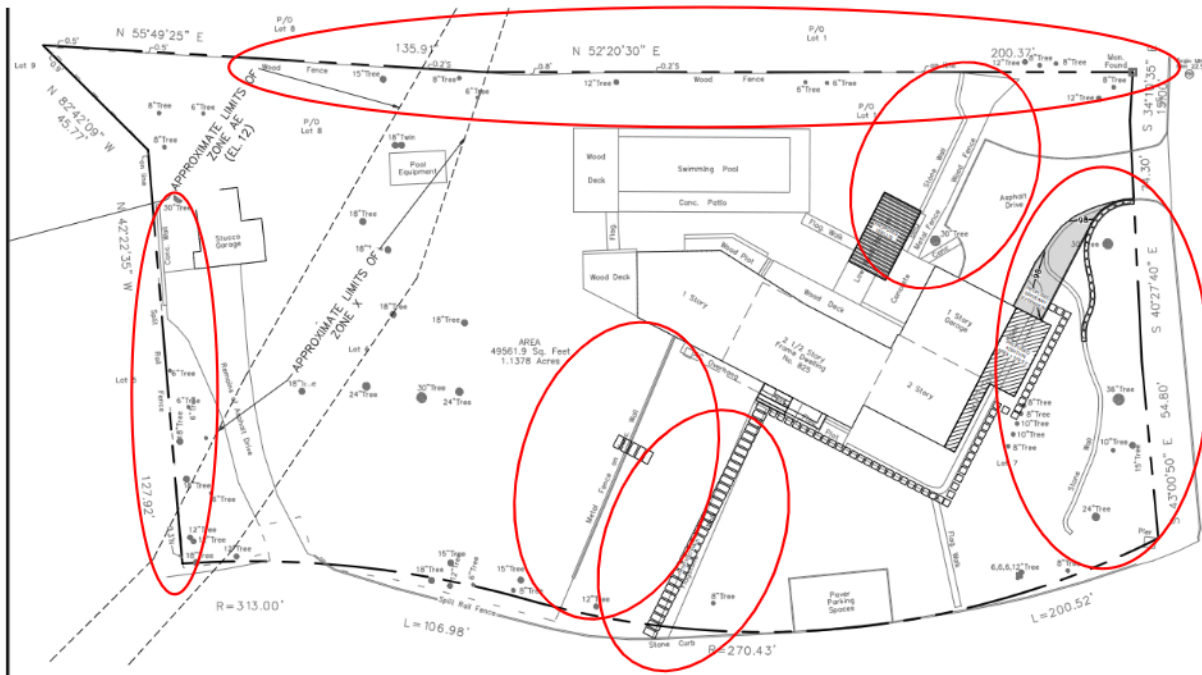
Edge of

Exhibit E
2 Shore Road
Wall and Septic System



[illegible]

Exhibit I
825 Orienta Ave
Steps, Fences, and Walls



Fences, Walks

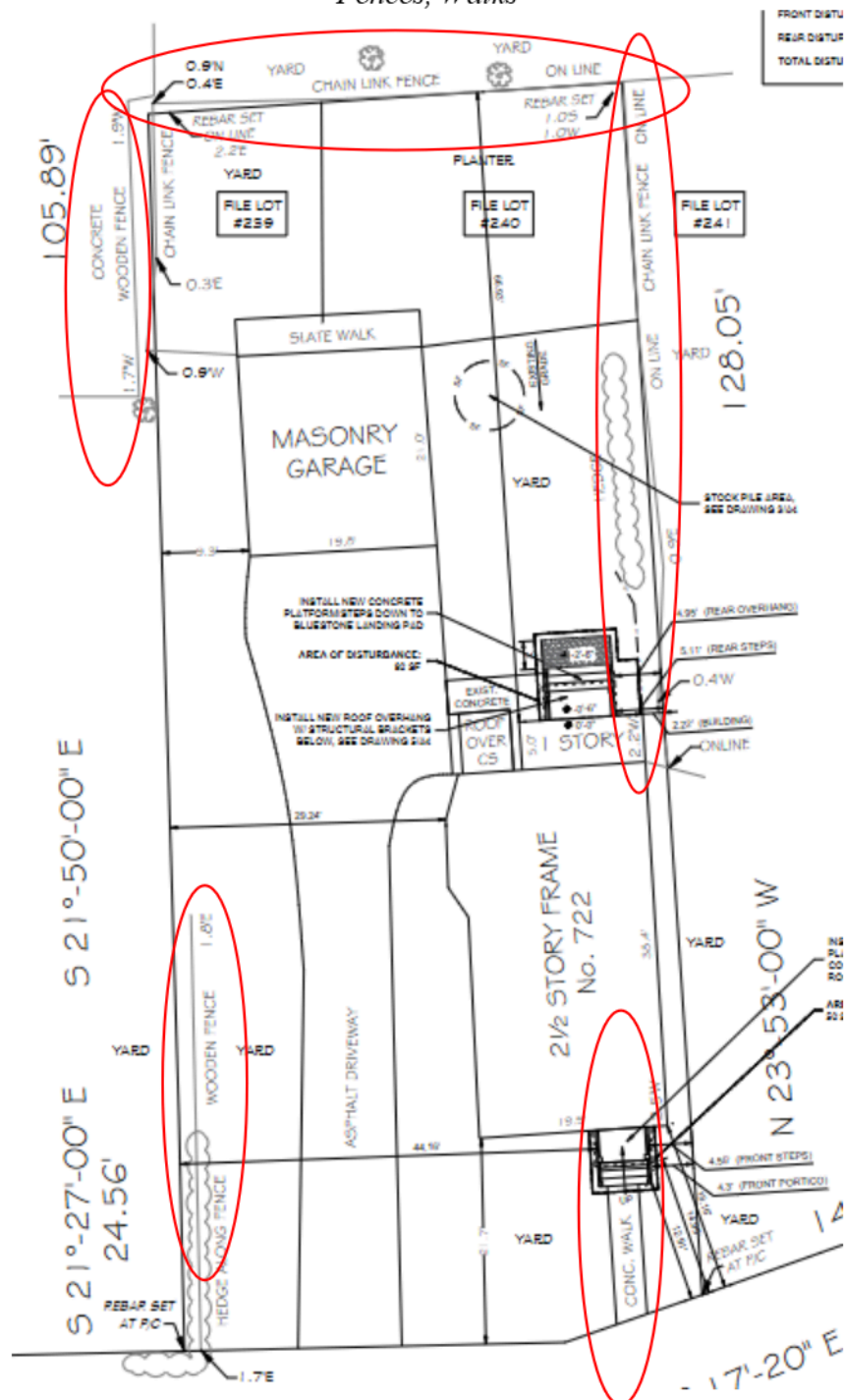
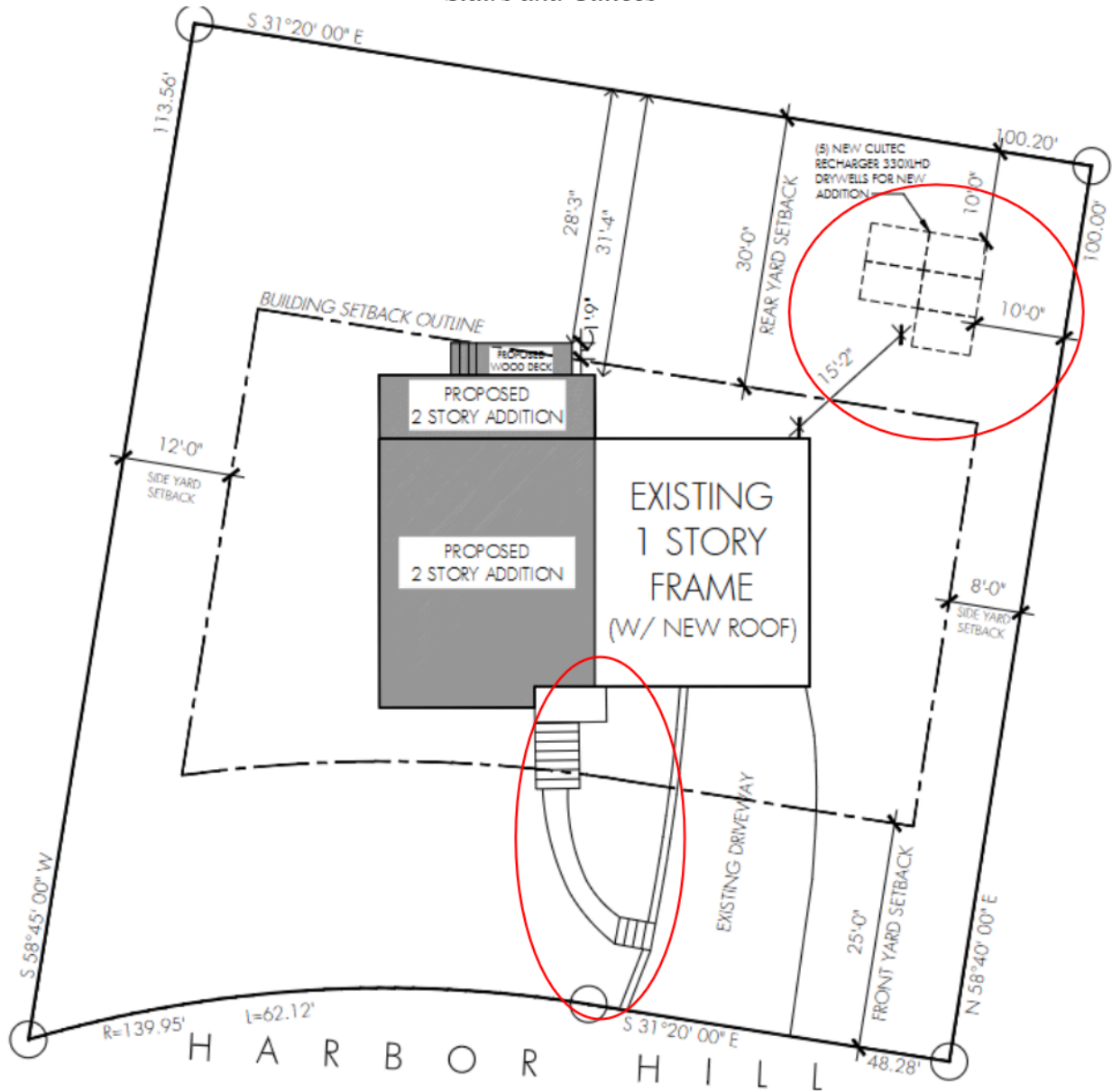


Exhibit K
220 Harbor Hill Lane
Stairs and Culverts



SITE PLAN DIAGRAM BASED
ON SURVEY PREPARED BY
GARRETT E. SEVON P.E.
DATED FEBRUARY 22, 2022

Exhibit L
1402 Henry Ave
Stairs, Fences, Walls

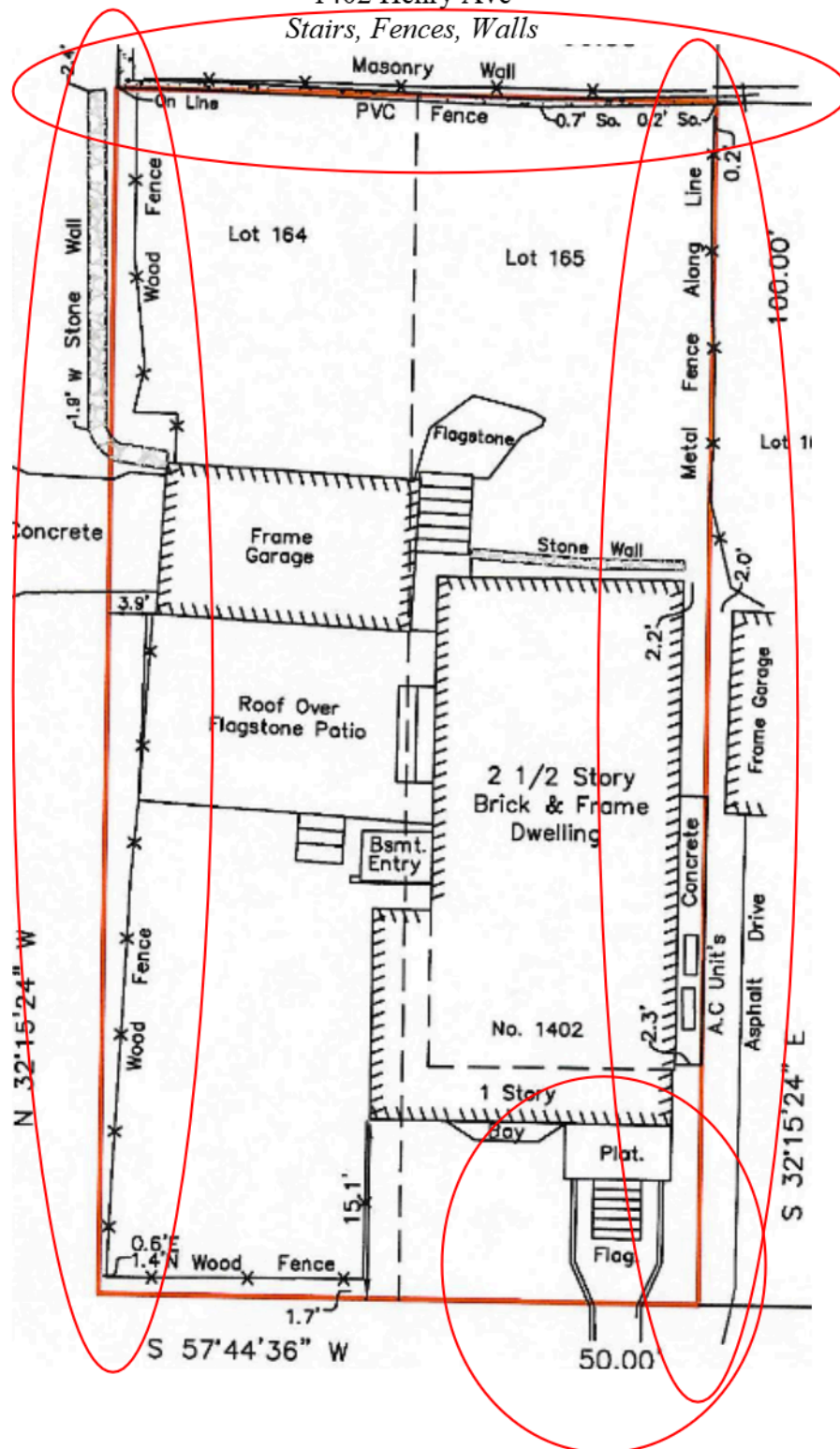
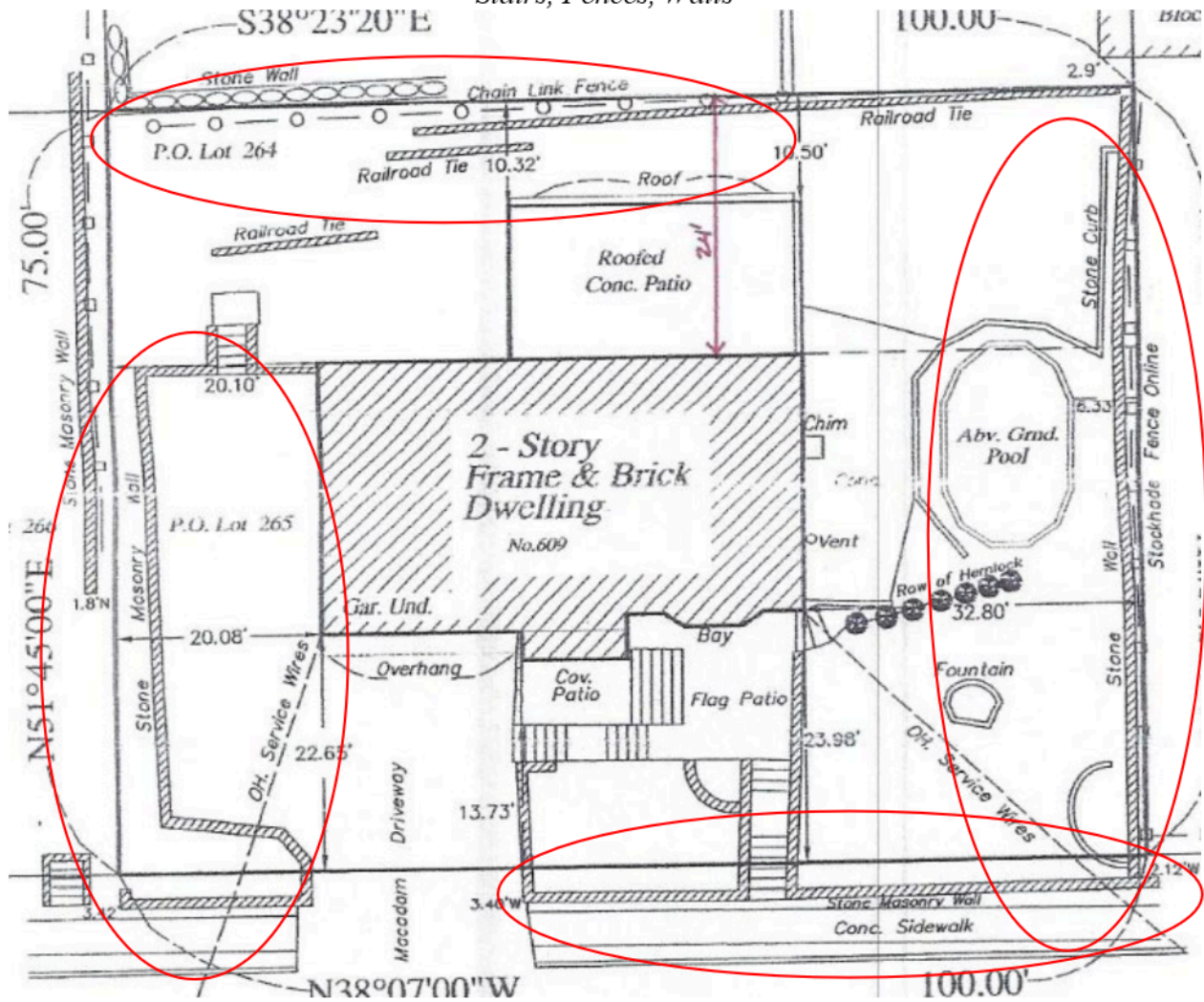


Exhibit M
641 Hillside Ave
Stairs, Fences, Walls



Fences

