

MEMORANDUM

**in Opposition to
Variance for garage and car park in front yard of 115 White Plains Road
and nine-foot encroachment of garage on fifteen-foot side yard setback**

ALT 171-21

Submitted by:

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Joint Owners, 111 White Plains Rd
December 8, 2021

SYNOPSIS

Applicants, non-residents, would turn into a garage and car park the magnificent front yard of 115 White Plains Road, one of the earliest Tudor-style homes in Bronxville (1915), located on one of the two largest lots on the block (0.48 acres). They would erect a large garage encroaching on 60% of the fifteen-foot side setback to our lot, which is one of the two smallest lots on the block (0.23 acres). Applicants' garage would be twenty-one feet from our family room, which is our principal house entry. The rear of their garage would be a constant presence in our everyday life. For an extra garage space!

Applicants' planned garage would urbanize Bronxville Village where we have made our home for nearly 33-years. It could unleash a new wave of front-yard construction and subdivision such as has not been seen in the neighborhood since the 1940's teardown of the Culver House at the northwest corner of White Plains Road and Woodland Avenue and construction of six houses. The application identifies no benefit to the property, which has served prior owners for more than a century without such changes. Applicants' planned two-car garage would damage the property itself, our property, our neighborhood and, because of the centrality of White Plains Road in public perception of Bronxville, the whole Village.

The Board should deny the application in all respects with prejudice.

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Summary

The Project: A garage and car park would desecrate a magnificent front yard.

The application proposes a large garage and car park for the front yard of 115 White Plains Road. It would have three parts: (A) large parking garage, 26 feet wide by 15 feet, a 10-foot by 4-foot bay, and a breezeway that would connect the garage to the house 15 feet away; (B) a low stone walled Belgian block three-automobile parking area and driveway, 38 feet wide by 31 feet deep; and (C) two fenced and gated grassy areas of undesignated uses.¹ The garage would be 15 feet high; both the garage and the paved parking lot would project into the front yard about 36-feet from the house. An existing driveway would be moved from the side to the center of the lot.

The fenced and gated grassy areas could serve Applicants or subsequent purchasers as overflow parking. The unpaved area is to have an automobile-width gate (11 feet) to the paved parking area (B), a fence of unstated type extending to the north boundary, running parallel to the east boundary, and to be aligned with the parking structure and parking area. The fence is to be broken only by another automobile-width gate to what will be left of the front yard. Here is a picture from December 7, 2021, that suggests what it might look like, and that that idea is already in mind.



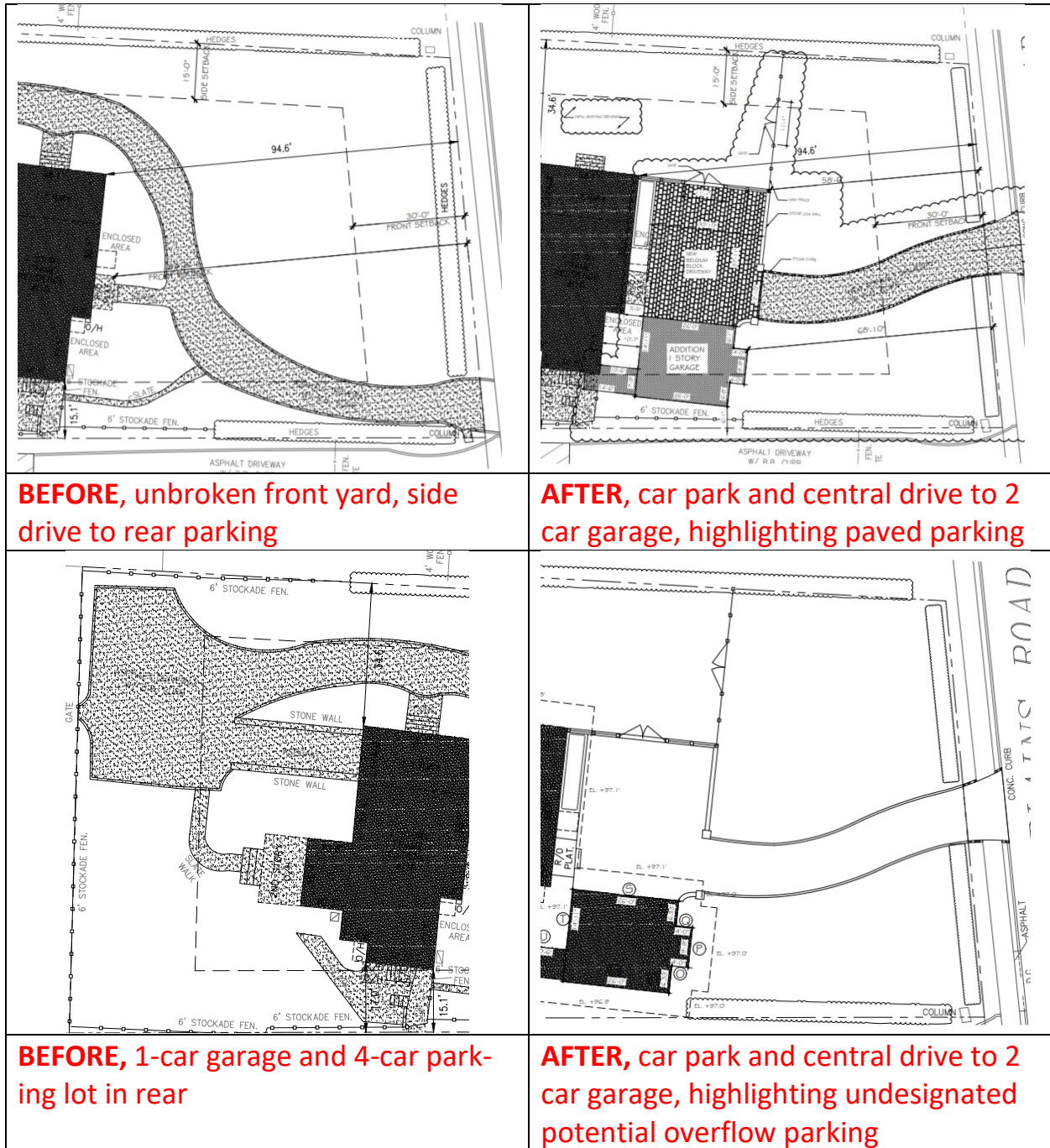
The proposed front yard garage and parking area would replace an attached basement one-car garage and an asphalt parking area usable for four more cars. The existing garage would be converted to a gym in a basement that already has a gym. The asphalt parking area and driveway would be removed and replaced with grass to make-up for the grassy area lost in the front yard.

The footprint of the construction site, i.e., of the garage, breezeway, and paved parking area, exclusive of (C), will exceed that of the house. The garage and breezeway would completely occupy the open space between our backyard detached garage and our home. Applicants' garage for two of their cars would come within 21-feet of our family room. That would not be allowed between residences in multi-family zoned districts B, C, and D. It is not appropriate in single-family zone district A.

The proposed garage and car park are against good practices in residential parking and a century long practice in our neighborhood (see Section III). They violate Zoning Code prohibitions of front yard garages and front yard parking.

¹ Measurements are given rounding to the nearest foot and are based on the Application, government published measurements, and the complainants' own informal approximate measurements.

Illustration 1: Project plan of 115 White Plains Road before and after



A variance could catalyze construction and even subdivision in the neighborhood

Applicants' garage and car park would end 100 years of neighborhood practice of protecting front yards. All of the present lots on the block are sub-subdivisions of originally larger lots. In the past, once a house was built on White Plains Road, its front yard was not diminished. Lots with large front yards retain the openness of a century ago. Garages have not been put before houses as Applicants would do. Most parking is in the rear of houses. Garages that do face forward, are not in front of the houses but are

recessed from the houses. “When the garage is recessed from the façade, cars left in the driveway are tucked alongside the house and do not mar the streetscape.” Duany in Illustration 11 below.

If a variance is granted here, there is no reason why other front yards would be spared. Applicants acknowledge that theirs is not a special case; they do not contend “that the effect of the ordinance on the property to which this appeal pertains is different from its effect on other properties in the same zoning district.” Five other houses on the same block of White Plains Road between Woodland Avenue and Elm Rock Road have large open yards suitable for additional construction. 119 White Plains Road, 125 White Plains Road, 129 White Plains Road, 1 South Road, and 10 South Road. The prime candidate is the adjacent lot to the north, 119 White Plains Road. It has NO garage; new owners closed on it only eight days after Applicants closed on 115 White Plains Road.

Construction of one front-yard garage would encourage front-yard construction up-and-down the length of White Plains Road. It could suggest more subdividing such as not occurred in our block since the 1940s. Not counting the Village Lutheran Church and the defunct Concordia College, twelve lots along White Plains Road in Bronxville are large enough to subdivide (either A or AA) for multiple houses, i.e., 10 North Road, 5 Middle Road, 142 White Plains Road, 1 South Road, 10 South Road, 100 White Plains Road, 11 Paddington Circle, 90 White Plains Road, 2 Northway, and 3 Westway.

Parties

The Applicants, Ashley and Ian Ross, are two corporate lawyers in practice in New York City (admitted to the New York Bar in 2014 and 2015 respectively). New York City is where they live. Ashley is a litigation partner with Kirkland & Ellis, the world’s largest law firm by revenue²; Ian is Vice President and in house counsel of Deutsche Bank, Germany’s largest bank. They closed on the property of 115 White Plains Road on June 24, 2021. They are not Bronxville residents. We have not seen anyone living in the house since then. We have seen legions of workers in a house advertised last spring as a “beautifully renovated home ... immaculate throughout with countless upgrades and updates.”

The Opponents, Andrea and James Maxeiner, are two teachers (obtained dissertation doctorates in 1990 and 1986 respectively). James is also a lawyer (admitted to the Missouri Bar in 1977, New York Bar in 1983). Andrea teaches Advanced Placement courses at Hicksville High School on Long Island after having previously taught at Iona College, Concordia College and Tuckahoe High School. James teaches at The University of Baltimore School of Law, after having previously taught and practiced law elsewhere.

Before moving to Bronxville Village, we lived in nearby Yonkers; James commuted by the Harlem Line from Bronxville, Tuckahoe or Fleetwood, to law firms in New York City. In 1989 we moved to 111 White Plains Road to be close to the Village Lutheran Church, the Chapel School and Concordia College at 171 and 172 White Plains Road, all of which have been affiliated.

In 1999 we added a family room to our house when our two Bronxville born children entered Bronxville Elementary School. Instead of encroaching on our neighbors, we worked with them and with Building Superintendent Vincent Pici to bring our plans into compliance with the Zoning Code. Our two children graduated from Bronxville High School (classes of 2010 and 2012) and now teach in Newton, Massachusetts and Los Angeles, California.

² <https://www.law.com/international-edition/2021/09/21/the-2021-global-200-ranked-by-gross-revenue/>.

Prior proceedings

By May 7, 2021, Applicants contracted for purchase of 115 White Plains Road. They closed on the property June 24, 2021. Their application shows that they submitted architectural plans of some sort to the Village on June 26, two days after closing. They applied for a building permit for the Project on August 26. Building Inspector Paul Taft denied their application on August 31, 2021, citing incompleteness of the application and violation of the required side yard-set back of Zoning Code §310-10 D (2).³ The next day Applicants filed a petition seeking a variance to the south side yard setback requirement.

We had no knowledge of Applicants' application until October 23, 2021, when Building Inspector Paul Taft told us about it. Here is why:

- Applicants did not contact us informally at any point, even though their plans for a garage and car park were completed at the latest in July or August and were in discussion before that.
- Applicants did not seek the site plan approval from the Planning Board required under Zoning Code §310-26. Therefore, they did not make the required Pre-Application filing, there was no Design Committee Review, there was no preliminary approval of a site plan, no reviews and reports by the Superintendent of Building and the Village Engineer, no public hearing, and no final statements from the Building Superintendent, the Village Engineer, experts and the Design Review Committee, and no final approval of a site plan by the Planning Board.
- Applicants did not send us notice of their application for a building permit, although the Zoning Code requires that they send neighbors notification with a Summary of Project Statement.
- Applicants did not send effective notice of the originally scheduled hearing date, October 26, 2021; the notice they sent in October was for the Zoning Board's September 2021 meeting already weeks in the past.

We learned of the Project serendipitously. When Friday evening, October 22, James read the incorrect notice, he did not ignore as no longer relevant, but out of an abundance of caution, sent an email to the Department of Buildings inquiring what was going on. Thanks to the diligence of Building Inspector Paul Taft, who responded outside normal office hours, on Saturday morning, three days before the hearing we got an inkling of what Applicants were planning. James quickly wrote a brief opposition which he submitted to the Board on Monday. He stayed home from Baltimore that week and rescheduled his in person classes for remote Zoom teaching. Monday, he prepared a PowerPoint presentation.

Even then we could not be sure of what Applicants' intended. Their Statement of Project Summary in the original filing falsely stated the location of the proposed garage.

About 5 PM Monday, October 25, after we objected to the Board, Architect Anderson Kenny and Applicant Ashley Ross got in touch with us. Ashley spoke briefly with James about her intentions and then left the call without permitting James further discussion with Mr. Kenny. Ashley's letter dated October 25, was not sent to us and was not available to us until posted, so far as we know, on the Board's website December 7. On Tuesday, the Board informed us that it had rescheduled the evening's hearing to the next meeting, which turned out to be, December 14. We do not address the letter here.

³ Their proposed garage would reduce the setback to six feet and one inch. The Department of Buildings Plan Review Comments mistakenly switches encroachment and remaining setback measurements. The rejection occurred with what Superintendent Taft thought was even more distance than what applicants propose between their new garage and our property line.

I. The Board should deny the application because Applicants ignored the Zoning Code.

A. Some of the Zoning Code provisions that Applicants ignored.

Effective January 11, 2021, the Village amended the Zoning Code. The goal was to avoid what nearly happened here: “the surprise contractor showing up as first notice of a construction project including exterior work.” See Paul Taft, Explanatory PowerPoint, <https://www.villageofbronxville.com/building-department/pages/zoning-changes-2021>. The Village revised the law to “ensure that neighbors have an opportunity to express views at an earlier stage of the process rather than towards the end.” All too often, material alteration of a single-family home happened without meaningful Planning and Zoning Board review. The revised law encourages applicants to consult informally with the Planning Board; it requires them to obtain site plan approval with a full panoply of site reviews. When applicants seek building permits, it requires them to notify neighbors and include a Summary of Project Statement.⁴

⁴ See “From the Office of Bronxville Mayor Mary Marvin, January 27, 2021,” *The Bronxville Bulletin* February 2021 - <http://www.thebronxvillebulletin.com/>, pages 4 and 5:

The overarching goal of the recent zoning changes was to adequately protect and preserve the unique physical characteristics of the Village’s existing neighborhoods, particularly at this moment in time when large scale exterior renovations and tear downs/rebuilds have attracted more attention in the Village. Our greatest concern upon review was that Bronxville lacked an adequate review procedure for tear downs, rebuilds and major exterior alterations compared to similar communities in Westchester. The concern was heightened by anecdotal evidence suggesting that architects and their clients were becoming more sophisticated in designing new or modified homes in order to max out the size of the new construction. The net result has been an increase in the number of code compliant applications for very large projects, that despite their size and scope were effectively not subject to any meaningful Zoning and Planning Board review or approval prior to the January zoning changes. To increase the concern, we learned that an increasing number of buyers were becoming aware that Bronxville’s zoning code was relatively permissive in this particular area visà-vis other nearby communities.

...

The first change relates to tightening certain bulk and setback requirements and to create a design review process for major exterior renovations. Site plan approval shall now be required when there is a material alteration of an existing one family dwelling. ... In addition, building permit applicants will now be required to give a form of early notice to neighbors at the same time they are submitting applications to the Building [*5] Department. Such a process would ensure that neighbors have an opportunity to express views at an earlier stage of the process rather than towards the end. In the experience of the Zoning Board of Appeals, issues are often rendered moot once applicants have engaged with their neighbors. Hopefully, the results will be that all applicants, Village authorities and neighbors can now save time and expense if notice of potentially disruptive or contentious projects and their issues are resolved sooner rather than later.

In addition, many variances or approvals granted at the Zoning and Planning Board levels are subject to certain conditions such as the installation and maintenance of landscape. Neighbors will now be made aware of the requirements going forward as neighboring property owners have the greatest stake in ensuring that these conditions are met.

B. How Applicants ignored the Zoning Code.

Applicants did not obey the Zoning Code.

- Applicants did not make a required pre-application filing for site plan approval.
- Applicants did not apply for or obtain Planning Board site plan approval.
- Applicants did not serve notice on neighbors that they had applied for building permits or supply them with a Summary of Project Statement.

Applicants' misstatements before this Board and their failures to follow the Zoning Code came close to bringing about the evil that the Zoning Code revisions are intended to end: no timely notice to neighbors and no meaningful review of the Project by the Village.

Applicants' misstatements include:

1. Their application falsely claims to have served notice of the October 26 hearing, to the extent of including a copy of a notice that it did *not* serve.
2. Their application falsely suggests that the project requires only one variance, when multiple variances are required.
3. Their application falsely states the location of the proposed garage is "adjacent" to our existing garage." Study of the application shows that that the Applicants' proposed garage will not be adjacent to our garage, but forward of it, reaching our home's family room. Page 37 of the application, for example, shows that their house is adjacent to our garage and that their proposed garage would be at an entirely different location. Page 45's aerial photo shows that our garage is tucked back on our property and is not near where they hope to place their garage.

See Illustration 2, next page.

C. Should Applicants be sanctioned for disobeying the Zoning Code?

The Zoning Code provides sanctions for its violation. Failure to comply with Planning Board approval procedures is governed by its statute. These include substantial fines. The Zoning Code specially addresses failure to serve a Summary of Project Statement in § 112-9 F (4).

"An applicant's failure to comply with the provisions of this section shall constitute grounds for denying any requested permit or variance, or for delaying the commencement of any time period otherwise established under this chapter for any Village official or board to take any action or undertake any review."

It is for the Board to decide whether and how to sanction disobeying Zoning Code revisions. At stake is a central purpose of the Code: to provide "a level of certainty and reliability as a potential property buyer knows what he can build and, as important, what can't be built next to him." Mary Marvin, "Zoning Boards 101: How Do They Work?," *Patch*, September 13, 2016, available at <https://patch.com/new-york/bronxville/zoning-boards-101-how-do-they-work>. Who would pay the Code any mind and who would rely on it?

There was a day when local laws were not easily obtainable; one might forgive non-resident laymen for filing omissions as “mere” ignorance of the law. But today, Bronxville’s Zoning Code is easily accessible. Applicants are not laymen, but elite lawyers. Ashley is a litigation partner with the world’s largest law firm. Not to note the failure would haunt the house; a President of the American Bar Association was its decades long owner!⁵

Applicants’ silence with us and with neighbors also clearly affected (we understand they have stories that they will tell, too), suggests that Applicants may have hoped that neighbors would not notice. Calling neighbors early has always been good variance practice, it also risks that they object. Ashley finally did call the night before the original hearing date, many months after she had concrete plans, and only after **we** objected. Once she did call, October 25, she asserted the inconceivable: that their proposed garage and ours would be “adjacent.” She claimed the Summary Project Statement was using adjacent in the sense of “not distant, nearby” and not in the sense of “next to.” The next day her architect, not a lawyer but a man with the wisdom of a skilled litigator, corrected the Summary Project Statement: “At the most narrow point, this will leave 6.1 feet between our structure and the property line. Our garage addition would be adjacent to the neighbors driveway.”

Illustration 2: Applicants’ material misstatement of garage placement

 <p>Project’s garage would NOT be adjacent to our garage but would fill the space between our garage and house.</p>	<p>115 White Plains Road</p> <p>111 White Plains Road</p>	 <p>SOUTH EAST CORNER OF EXIST</p>
<p>“The neighboring property also has a garage is this location. Our garage addition would be adjacent to the neighbors garage.” Zoning Board Application</p>		
<p>If so, from which ordinance, from which provision thereof and to what extent? _____</p> <p><i>We are over the setback line by 8.9 feet on side yard 2. At the most narrow point, this will leave 6.1 feet between our structure and the property line. The neighboring property also has a garage in this location. Our garage addition would be adjacent to the neighbors garage. The existing elevation change between the front yard and backyard is approximately 5 feet, preventing access by vehicles in this location. By putting the garage in side yard 2 we create a more open space and permeable space in the front, side 1, and rear yards. Please note that we are under the allowed FAR with this addition.</i></p>		

⁵ Harold J. Gallagher, ABA President 1949-1950.

II. The Board should deny the application for failure to state a prima facie case.

A variance proceeding weighs benefits to Applicants against injury to others. If, however, an application fails to state a prima facie case, that is, if it does not allege facts that would justify granting the relief sought, there is no need to weigh anything: immediate dismissal is in order.

New York State Village Law § 7-712-b (3) suggests the minimums to be alleged:

- A. A valid reason for the variance sought.
- B. The reason for the variance is not precluded as self-created.
- C. The variance sought is the minimum necessary to attain the benefit sought.
- D. The variance sought is sufficient; no other variances are necessary.

Applicants for variances have higher burdens of pleading and of proof than do applicants for exceptions to laws generally. Variances are granted to land, and not to people; they outlive the applicants who move away or die, leaving the variances in place.

A. Applicants have not asserted a valid reason for a variance.

In their application, Applicants have not alleged **any** reason, let alone a valid one, for a variance. They want to build a two-car garage and parking area in the front yard on the side yard setback, park cars there, remove pavement in the backyard parking area, and create a second gym in the former basement garage. This is all ok, in their view, because they will not violate other parts of the Zoning Code.⁶

That is not sufficient. Mere wish for a variance is not enough. There must be valid reasons to grant a variance. There must be a deficiency in the law that the variance is to allow in a unique case. If a case is not unique, then the better course is not to undermine the law, but to modify it for general application.

Applicants' case is not like that of the other applicants in the October 26 hearing who pleaded for hedge relief to provide a safe-playing space for a child on a small, non-conforming 0.23-acre lot. Applicants are owners of a spacious 0.48-acre lot, who wish, Ashley told James, for a beautiful Tudor-style carriage house.

⁶ The application's reasons for not applying the law are selfish and pathetic. Complete they read:

With the addition of the new garage, we would need a variance because the southeast corner would encroach the setback. However, the house with the addition is well below the FAR and compliant with all other setbacks. The project would also increase the open space of the lot by 25% and permeable area by 15%.

We are over the setback line by 8.9 feet on side yard 2. At the most narrow point, this will leave 6.1 feet between our structure and the property line. The neighboring property also has a garage in this location. Our garage addition would be adjacent to the neighbors garage. The existing elevation change between the front yard and backyard is approximately 5 feet, preventing access by vehicles in this location. By putting the garage in side yard 2 we create a more open space and permeable space in the front, side 1, and rear yards. Please note that we are under the allowed FAR with this addition.

If the application is somehow for the benefit of their one-year-old child, it is hard to see how the Project helps her materially. For a hundred years prior owners have brought up generations of children in 115 White Plains Road and have never needed a car park in the front yard. One child became an NBA professional! To the contrary, sixty-years ago one owner sold off a larger backyard that is now the 0.28 acre lot of 12 Greenfield Avenue. Realtors and town planning expert note that children like to play on smooth lots. See Illustration 11.

B. The application gives no reason not to deny a variance based on a self-created difficulty.

Variations are disfavored if sought in response to difficulties of self-creation. Self-creation is not dispositive but suggests denial if not countered. NY Village Law § 7-712-b 3 (b)(5). Perhaps leniency is in order where a sale was long ago, and the recent purchaser discovered difficulty only after living in the house for some time.

That is not the case of the Applicants; they have yet to move in seven months after purchase. Their case is like the example of self-created difficulty given by Mayor Marvin, in her article “Zoning Board 101”: “Did the homeowner buy a small house with the thought of a big encroaching addition in the future?” Only Applicants bought a **big** house with the thought of building a **big** encroaching garage.

If Applicants did not like the garage of 115 White Plains Road, they should have bought a house with the “carriage house” they covet. Indeed, just 354 feet away, the property at 100 White Plains Road, sold only four years ago, **HAS** a carriage house, now being converted, we believe, into a swimming pool. That lot, at 1.41 acres, is nearly three times the size of the 115 White Plains Road lot; it has the ground needed for a carriage house.

Illustration 3: Carriage House nearby at 100 White Plains Road on north side Paddington Rd



C. The benefit sought can be achieved without a variance or with a more minimal variance.

The application on its face shows that the benefit sought—a two car garage—can be achieved without a variance or with a more minimal variance. See NY Village Law § 7-712-b 3 (c).

No variance. No variance is needed to build a two-car garage, either where the garage is now, or next to it. The north side distance to the boundary is 36 feet; a new garage could be squeezed in next to it or placed recessed behind it. One friend who has a similar problem with a neighbor's garage, seeing the plans, instantly said, replace the existing garage. That makes sense: the present garage is not the main house, but a one-story add on sunroom that does NOT match the main house, either in height or building style. Rebuilding there, in our opinion, would be more attractive and more usable. There the garage would be closer to the kitchen than in the Project proposed. We doubt that it would cost materially more than the proposed garage, which cost would be small compared to \$2.375 million spent for the property or compared to the reduction in value to our property that would be caused by the Project.

Illustration 4: existing house and garage:



A minimal variance. Have any of the New York City based Applicants and architect ever looked at the property or lived in Bronxville? Besides transplanting New York City urban conditions to our Suburban Village, they would maximize, and not minimize variances. For a building permit to issue, they need, besides a side yard setback variance—huge with our property—a front yard variance for the garage and another for the parking area. See Subsection II. D below, next. Other locations, including adjacent to our garage, would require fewer and less substantial variances. See Illustration 6.

Did Applicants and their architect consider other choices? See Illustration 5, next page. The side yard distance to the boundary to the north is 35 feet; to the south it is 15 feet; the rear yard distance to the west is 45 feet. Of the adjacent lots, ours is the smallest and its house is closest to the property line. Applicants' choice would turn our best practices and desirable side driveway into an undesirable alley. In question 18 of the recent Comprehensive Plan Survey, 530 out of 671 respondents, i.e., 78.99%, agreed that

⁷ Personal photo, November 2021.

“Additional urbanization and crowding threaten the character of the Village in the long term.” Bronxville respondents’ nightmare will become our reality if Applicants’ project is approved!⁸

Illustration 5: 115 White Plains Road and 111 White Plains Road from the air



In conversation December 7, 2021, Mr. Kenny told James that the old garage is not adequate for today’s modern cars. At 14-feet wide by 28-feet it is larger than the 8 ½-foot by 18-feet that the Village Zoning Code sets as a minimum for a parking space. Each of Applicants’ proposed two garage spaces will be no larger than the one space they have now. Applicants’ proposed two-car garage at 26-feet wide will be four feet wider than I measure our garage at. Maybe Applicants need room for extra-large SUVs to take their infant child to Bronxville School or to Bronxville train station? For our family of four, we’ve never found our garage unsuitable for our modern cars. Cars are NOT kings in Bronxville, at least, not yet.

⁸ https://www.villageofbronxville.com/sites/g/files/vyhlf336/f/uploads/bronxvillepublicsurvey_summaryrespondeddata.pdf

III. The Board should deny the application because the project would damage the neighborhood and public perception of the Village

We do not believe that the project provides **any** benefit for 115 White Plains Road, but any benefit it provides Applicants is outweighed many times by how it would damage the neighborhood, neighbors' property, and the public's perception of Bronxville. See NY Village Law § 7-712-b 3 (b)(1). To restrain such projects is why the Village amended the Zoning Code. Mayor Marvin explained last winter:

“The overarching goal of the recent zoning changes was to adequately protect and preserve the unique physical characteristics of the Village’s existing neighborhoods, particularly at this moment in time when large scale exterior renovations and tear downs/re-builds have attracted more attention in the Village.”

A. White Plains Road’s role in public perception of Bronxville

That the project is on White Plains Road injures all of Bronxville if it is allowed to go forward. White Plains Road is New York State Highway Route 22. It is the Village’s only arterial road; it is the only road designed to carry traffic through and between Bronxville and surrounding municipalities. It runs practically to Canada. Of all roads in Bronxville, it has the highest daily traffic volume.⁹ Many people from outside Bronxville know no more of the Village than what they see on White Plains Road. They never get to Four Corners or to the Lawrence Park Historic District. The only Bowman Tudor they know is 330 Pondfield Road at the junction with Pondfield Road. When they think of Bronxville Tudors, they are as likely to think of 115 White Plains Road as of Bowman’s Tudors.

Fortunately, for over a century, White Plains Road has represented Bronxville well. In 1893, one of the nation’s most read magazines, *Frank Leslie’s Popular Monthly*, reported that while Bronxville consisted only of a “single street ... [of] a few straggling houses and a row of aspens,” one could go up toward White Plains Road, where Immaculate Conception Church was (and is) “prettily perched on the hill.” More descriptive of White Plains Road, it explained:

“If you take White Plains Road from Mount Vernon to Tuckahoe you will come upon many sweet little bits of scenery, and pretty, new houses. There are also drowsy old apple orchards and some antiquated colonial houses, recalling the days of Sleepy Hollow and the village of Falling Water. If you enter the calm homestead you will hear the clock ticking time with the sundial in the garden. On the walls you will find pictures of ancestors who felled forests and founded States.”¹⁰

Beginning in the first years of the 20th century, development of this part of Bronxville began. In 1904 Harriet Rockwell sold two large tracks of land on White Plains Road on either side of Woodland Avenue to John and Amalie Utz.¹¹ On the north side of Woodland, the Utzes, builders, built what would later be called the Culver House and on the south side, they built what later would be called ‘Innisfree’.

⁹ Village of Bronxville, *Comprehensive Plan*, February 2020, at 50-52.

¹⁰ Frank MacQueen, “The Bronx Valley,” *Frank Leslie’s Popular Monthly*, 515, 518, 520. 520-521 (vol 35, no. 5, May 1893).

¹¹ Anne Curtis Fredericks, “Tanglewylde Mrs. Rockwell’s Farm: A determined woman’s estate becomes one of the largest neighborhoods in the Village,” 154-177, at 158, in *Building a Suburban Village*,

Illustration 7: Culver House and “Innisfree”, circa 1910

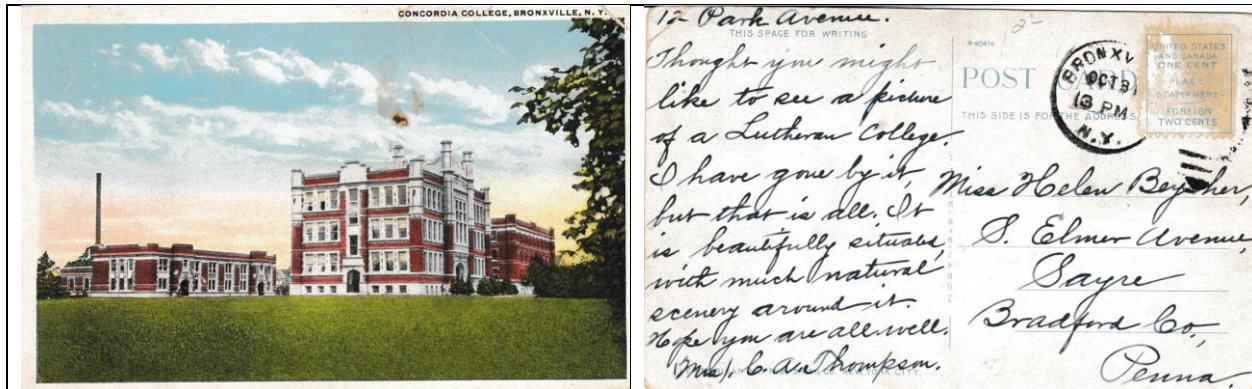


Culver House, White Plains Rd and Woodland Ave

“Innisfree,” now 129 White Plains Rd

To the north, in 1908 Lawrence sold what was to have been Lawrence Park East to Concordia College, which then moved its campus from Hawthorne N.Y. to Bronxville, and which has anchored the northern end of White Plains Road in beauty until its demise earlier this year.

Illustration 8: Concordia College circa 1912



“It is beautifully situated with much natural scenery around it.” C.A. Thompson to Helen Beysher.

Now that Iona College owns Concordia, we can only hope that Concordia is not subdivided and that it continues in the model of North Road and does not turn into the North Avenue on which Iona sits!

These pictures confirm the conclusion of the authors of the book, *Around Bronxville*, that “Families from more densely settled neighborhoods like Mount Vernon were attracted to Bronxville where they could purchase large new homes with broad front lawns.”¹²

Development took off in the teens and twenties. One realtor advertised for sale an unidentified stretch of 32 acres along White Plains Road:

Bronxville, New York, 1898-1998 (Eloise L. Morgan, ed., 1998). Many details below are from this book. Many thanks are due Ms. Morgan, former Village Historian, and her co-authors.

¹² Marylynn Wood Hill & Mary Means Huber, *Around Bronxville*, at 89 (Images of America, Acadia, 1997)

Illustration 9: Advertisement for 32 acres along White Plains Road circa 1917

Romantic Environment

And accessibility to the city are combined to a rare degree in a fine tract of land located in the beautiful old White Plains Road, in the Village of Bronxville, Westchester County, which we are offering for sale.

Delightfully wooded roads, vine-covered rocks, and gently sloping fields on every side. ...

Several fine country houses have been built in the immediate vicinity during the past year. The elevation is very high, and the property itself level. Here is a frontage of 1,300 feet on the White Plains Road. The size of the tract is 32 acres.

The tract is likely “Pondfield Crossways” at the southeast corner of White Plains Road and Pondfield Road, sold in 1918.¹³ Likely one of the fine country houses just built was 115 White Plains Road.

While the Pondfield Crossways property was sold as one lot, seven years later in 1925 the “Cranford Property” at the north end of White Plains Road on the east side between North Road and South Road was sold at auction as 55 “residential plots.”¹⁴

To understand the threat that Applicants’ proposed development poses it is helpful to understand the last century’s secondary subdividing of lots on White Plains Road between Woodland Avenue and Elm Rock Road. On the west side, there was not a single subdivision of land, but a series of secondary subdivisions of larger lots having one house into smaller lots for multiple houses.

Today’s houses are shown in Illustration 10 (next page).

Noteworthy from the air is how the lots have protected front yards, whether in secondary subdividing or in avoiding secondary subdividing altogether. Later, in Subsections (D) to (F), we show how garage placements too, have protected front yards. In other words, secondary subdividing has not led to the solution proposed by Applicants.

¹³ Janet L. Slavin, “Pondfield Crossways developed from the Old Hunt Estate: The only Village section complete with large level lots,” 197-203, at 198, in *Building a Suburban Village, Bronxville, New York, 1898-1998* (Eloise L. Morgan, ed., 1998)

¹⁴ Janet Lentz, “The Cranford Property part of the Morgan Farm: A development grew in the ‘20s and ‘30s on the site of one of Bronxville’s oldest settlements,” 204-215, at 209 in *Building a Suburban Village, Bronxville, New York, 1898-1998* (Eloise L. Morgan, ed., 1998)

Illustration 10: White Plains Road between Woodland Avenue and Elm Rock Road today



B. Subdividing White Plains Road south from Woodland Avenue to Elm Rock Road 1904-1961

All of the lots between Woodland Avenue and Elm Rock Road on the west side of White Plains Road are creations of secondary subdividing. Properties to the north or south and the backyards on Greenfield Avenue were spun off. The last Greenfield Avenue spin-off was completed in 1961 when a house was built on the previous backyard of Applicants' 115 White Plains Road.

What were three tracts, the largest about two acres and the other two about 1 ½ acres each, became 15 houses. After discussing in (C) two problems of secondary subdividing—front yards and garages—we report in (D) to (F) on secondary subdividing on the west side of White Plains Road between Woodland Avenue and Elm Rock Road.

Lots of the Crawford Property on the east side of White Plains Road require no discussion. From North Road, all the way to South Road there are but five lots, all from 0.86 to 1.17 acres. Four do not front on White Plains Road, but on North Road, Middle Road, or South Road. Even today these houses resemble the idyllic wooded property of turn of century descriptions. There has been no secondary subdividing.

C. Two problems of secondary subdividing: front yards and garages.

Many years ago, we heard a lecture at Sarah Lawrence College by renowned town planner Andres Duany. He explained why Bronxville is such a success. One explanation he gave is its treatment of garages. In his *Smart Growth Manual*, Illustration 11, he explains a kind of hierarchy of better solutions for parking cars. (1) Best, especially for older communities like Bronxville, is a side driveway to parking in the rear. (2) Almost as good is a side driveway to a garage facing to the side. (3) Less desirable, but sometimes necessary, is a front-facing garage, recessed twenty or more feet. The recess is needed because inevitably cars are parked in front of garages. Not considered is a garage placed in front of the house, the solution Applicants ask the Board to approve.

D. Hoppings' "Innisfree": 129 White Plains Road and its spin-offs, 125 White Plains Road, 22, 24 & 28 Greenfield Avenue, and 52 Woodland Avenue

The first purchase was that in 1904 by John Utz of 300 feet by 300 feet section of the northerly portion of the block. He built a house there that is now 129 White Plains Road. The property also included what are now 52 Woodland Avenue, 125 White Plains Road, and 22, 24 & 28 Greenfield Avenue. In 1909 he sold, it seems, the whole property to Daniel M. Hopping, who named it "Innisfree".¹⁵

The original configuration included a rear, distant detached garage that was on one of what would become a successor lot. At some point, perhaps to allow for the successor lot, the garage was moved closer. It now faces the front but is detached from the main house and is recessed. Although much of the front yard is driveway, it is still an open expanse behind hedges. See Illustrations 10 and 12.

¹⁵ Fredericks, *above*, at 158. Similarly named nearby is Lake Innisfree in Interlaken.

Illustration 11: Andres Duany and Jeff Speck, *The Smart Growth Manual* (2010)

11.10 Front Garage Setback


Set garages well behind the house front.



Montgomery, AL: Placed toward the rear of its lot, this garage at The Preserve does not detract from the appearance of the house it serves.

Absent rear alleys, front driveways are inevitable. But there are several ways to limit parking's negative impact on the streetscape. One solution is to rotate the garage 90 degrees to create a front parking court, which takes the garage doors off the street. If the garage cannot be rotated, it should be set back a minimum of 20 feet behind the front of the house, shielding it from oblique views. This also addresses the problem that most people do not park in their garages. When the garage is recessed behind the facade, cars left in the driveway are tucked alongside the house and do not mar the streetscape. Another solution, found in older neighborhoods, places a separate garage at the rear of the lot, with a long driveway running alongside the house. This design is ideal if the driveway is nicely surfaced to serve as a terrace or play area.

Illustration 12: The original “Innisfree”, 129 White Plains Road, then and today

Entrance 1909 Westchester Historical Society	Garage 1909 detached, rear, Hill & Huber, above
	
Contemporary postcard, Innisfree as address	Current garage from sales photo
	

Today’s Innisfree successor lots on White Plains Road, besides 129 White Plains Road, are 125 White Plains Road and 52 Woodland Avenue. 125 White Plains Road was not built until 1941. Although the garage faces the street, it is recessed from the main house, which itself is recessed far from White Plains Road.

As the address suggests, 52 Woodland Avenue does not front on White Plains Road. Its garage is well back of the house and of Woodland Avenue. Hedges render it invisible from White Plains Road.

Illustration 13: “Innisfree” spinoffs on White Plains Road today

125 White Plains Road	52 Woodland Avenue
	

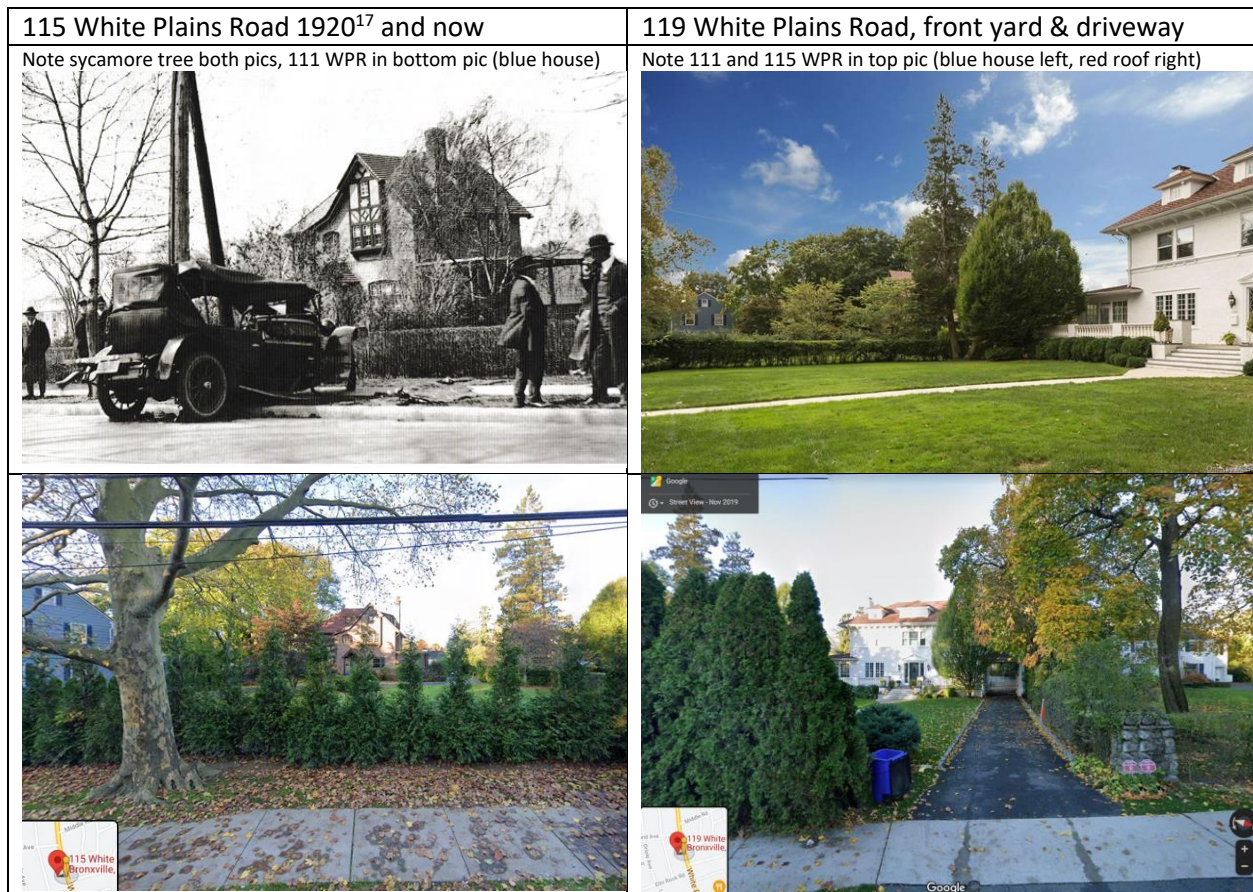
E. Genung lots: 115 & 119 White Plains Road and 12 & 18 Greenfield Avenue

In 1909 Merwin E. Genung, owner of a Mount Vernon department store, bought two White-Plains-Road-to-Greenfield-Avenue lots just south of Innisfree, now 115 & 119 White Plains Road and 12 & 18 Greenfield Avenue. In 1915 he built a house on what is now 115 White Plains Road. In 1924 Harold Gallagher, of the noted law firm of Wilkie, Farr & Gallagher, and later president of the American Bar Association, bought 115 White Plains Road, presumably still including 12 Greenfield Avenue. Gallagher held the property for decades. Genung’s properties began secondary subdividing in 1936.¹⁶ The former backyard of 115 White Plains Road had a house built in 1961, apparently the last such division on the block.

Through all secondary subdividing, over more than 110 years after the original sales, the front yards of 115 & 119 White Plains Road remain open and unblemished by garages. To this day, 119 White Plains Road has NO garage at all; it relies on a long side driveway to open parking in the rear. The solution of 115 White Plains Road is almost as felicitous: a long driveway to open parking and a 1-car underground garage in the rear.

To have one more car garaged Applicants would destroy their beautiful open front yard. Why?

Illustration 14: The Genung Houses, 115 and 119 White Plains Road



¹⁶ See Fredericks, above, at 160, 170.

¹⁷ This was Bronxville’s first motoring fatality.

F. From open field to five homes: 2 & 6 Greenfield Avenue, 49 Elm Rock Road, and 107 & 111 White Plains Road

Until 1940 the southern end of the block was an open field. In 1940 the western half bordering on Greenfield Avenue was broken off for construction of two homes, 2 and 6 Greenfield Avenue.

In 1947 the builder Peter Rhynas (as in Rhynas Drive, Mount Vernon), built three houses in similar colonial style on the rest. If he had maintained lot sizes of the two Greenfield Avenue successor houses, then he would have built only two houses. But Rhynas, it is said, was building houses for his family and needed three homes for them. He squeezed three lots on to the property, which created what are now three non-conforming lots of 10,019, 10,019 and 11,325 square feet. Our lot, 111 White Plains Road, is one of the two smaller lots. It is also non-conforming in lot width, 68 feet instead of 80 feet. Its depth of 148 feet well exceeds the minimum of 100 feet and helps make the detached garage in the rear a success, at least so long as Applicants are not allowed to turn that success into failure.

Although in 1947 Rhynas squeezed three lots into space better for two, his garage placement then is best practices today. Our house and 49 Elm Rock Road have parking in the rear. Only the middle lot, 107 White Plains Road, has compromises, but small ones. Its garage is front facing but is only for one car and is recessed. We can confirm from observation, however, that the circular drive, encourages parking in front.

Illustration 15: Three Rhynas houses, 107 & 111 White Plains Road and 49 Elm Rock Road



IV. The Board should deny the application because the Project damages 111 White Plains Road

A. The magic of Bronxville's suburban village brought us to 111 White Plains Road

When we moved in 1989 to 111 White Plains Road, in our worst nightmares we would never have imagined that an absentee owner of 115 White Plains Road would (or could) build in that lot's front yard a garage between our garage and our house to wall us off from the rest of Bronxville. Why would anyone do such a thing? Why destroy your own beautiful yard? Why would Bronxville permit such an intrusion?

Zoning exists, as Mayor Marvin notes, in part to protect past buyers' expectations. New buyers cannot come in to change willy-nilly all that exists. If Applicants have a problem with their lot, it is a problem that they choose to take on. Their problem with 115 White Plains Road is that fifty years ago a prior owner broke off 12 Greenfield Avenue and the lot lost room for a carriage house and rear entrance.

We could not imagine a worse placement. The Project garage will abut our family room. Our family room is the most-used room in the house. We spend our days at our desks there. With our impending retirements we will spend still more time there. From the workspaces our view would be of the back of a garage. The family room is the principal entrance to our home. Every time we went in or out of our home, we would confront the garage. Every time we walk to our garage, we would think how the Applicants' garage was in some crazy sense "adjacent" to ours.

Applicants' garage would be adjacent to our house: TWENTY-ONE FEET AWAY! Multiple Resident Districts B, C and D do not allow buildings to be so close. Why? Bronxville is a suburban village; the Project would produce "urbanization and crowding that threaten the character of the Village in the long term." See page 11-12 above. To adequately protect and preserve the unique physical characteristics of the Village's existing neighborhoods requires denying this application in all respects.

Bronxville is a suburb, but it is not a typical upscale American suburb where cars are kings. We moved to Bronxville because we could walk to Village Lutheran Church. We moved here so that children we might have could master their lives on foot or by bicycle. We moved here so we would not be chauffeurs. It worked as planned. Our children were not prisoners of cars; we were not chauffeurs. They got everywhere on foot or bicycle. Our daughter hardly drove until after college; our son did not even get license until after college. James grew up in a typical American upscale suburb of half acre to two acre lots (Ladue, Missouri); he got his driver's license four weeks after turning 16!

Bronxville has green without congestion. It is different from Brooklyn: many trees grow in Bronxville. Because of the care of this community, 125 years after incorporation, Bronxville retains its charm. It has not become an urban center, although its population density is that of Buffalo. That care is backed up by a Zoning Code that Applicants flout.

B. The Project would substantially and materially damage 111 White Plains Road

The New York State Village Law § 7-712-b (3)(b) requires that the Zoning Board consider the undesirable changes that the Project would bring to 111 White Plains Road. It is to take account that the damage will be substantial. The Zoning Code requires that Applicants whose Projects would cause material changes must first seek Planning Board approval.

One picture is worth a thousand words. Here are views from our home to where the Applicants' garage would be. It would run from the end of their house to the end of their illegal stockade fence.

Illustration 16: views from our family room, porch and master bedroom

 <p>From family room to garage (fence) → From master bedroom to garage ↘ From entrance porch to garage ↓</p>	<p>115 White Plains Road</p> <p>111 White Plains Road</p>	
		
 <p>Note chimes on porch</p>	 <p>This was my wake-up "call" December 6, 2021</p>	

Illustration 17: Our backyard before the would-be garage of 115 White Plains Road



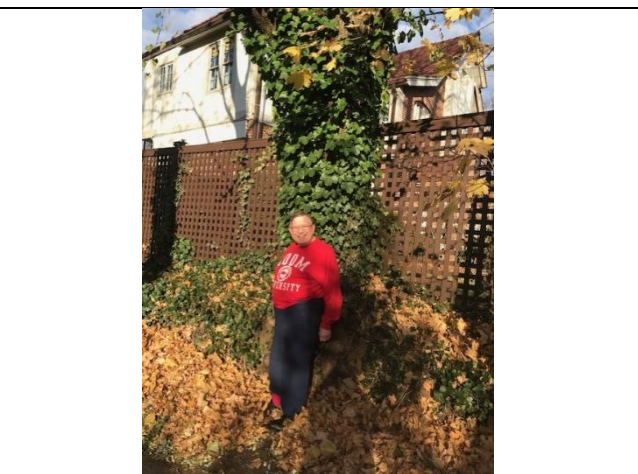
Driveway to our garage from our front yard ↑

To front of house from our garage ↗

To would be garage from our south deck →

James before over-height fence & would be garage ↘

Andrea in backyard before would be garage ↓



V. Site reviews avoided by Applicants' flouting of the Zoning Code should be conducted before this Board acts.

Applicants ignored the Zoning Code. They did not seek a site permit from the Planning Board. When they sought a Building Permit, they did not notify neighbors or provide them with a Summary of Project Statement. The Summary of Project Statement that they did include in their application to this Board was false and materially misleading.

Had they gone to the Planning Board, or had they served neighbors with notice of their Building Permit, the Planning Board ex officio and the Building Department on neighbors' inquiry, would have considered a host of site issues. See Zoning Code §§ 310-30 for reviews that are in order. The reviews are well-structured and involve the Village Engineer as needed.

Applicants did not follow proper procedures and the Village has not—yet—given the Project “meaningful review.” It is incumbent on this Board before it acts, itself to conduct those site inquiries or to return this application to Planning Board and Building Department to conduct the omitted reviews.

These reviews include over-height fences (too high, built on top of a retaining wall), over-boundary fences, light issues, drainage issues and more.

CONCLUSION

The beautiful front yard of 115 White Plains Road should be preserved and the Applicants' proposal for a front-yard garage and parking lot should be denied.

Respectfully submitted,

James Randolph and Andrea Bessac Maxeiner
111 White Plains Road, Bronxville N.Y.

December 8, 2021