

---

---

**MEMORANDUM**

**IN OPPOSITION TO APPLICATION ALT-171-21  
SEEKING A VARIANCE TO CONSTRUCT A BUILDING  
IN THE FRONT YARD OF 115 WHITE PLAINS ROAD**

---

---

**TO:** BRONXVILLE ZONING BOARD OF APPEALS (VIA EMAIL)

**FROM:** JAMES R. MAXEINER (JOINT-OWNER 111 WHITE PLAINS ROAD)

**SUBJECT:** 115 WHITE PLAINS ROAD - APPLICATION ALT-171-21

**DATE:** OCTOBER 25, 2021

**CC:** ANDREA MAXEINER (JOINT-OWNER 111 WHITE PLAINS ROAD)

---

I, James R. Maxeiner, together with my wife, Andrea Maxeiner, as joint owners of the property at 111 White Plains Road, submit this memorandum in opposition to Application ALT-171-21 seeking a variance in the Bronxville Code to permit construction of a new building in the front yard of the adjacent lot at 115 White Plains Road.

**Summary**

Four months ago, on June 22, 2021, for \$2,375,000 Mr. Ian Ross and his wife (hereafter, the “Purchaser”) bought the property at 115 White Plains Road next to our home. We do not believe that they have moved in. They have never introduced themselves to us or otherwise contacted us. They propose to build a new building in their front yard of their new hose to serve as a two-car parking garage in place of the existing one-car garage and parking lot in the rear of the house.

Purchaser’s Zoning Compliance Analysis explains that that the variance is needed because the proposed project would “encroach the setback” (from fifteen feet to six!). It justifies the encroachment noting that his project “would be compliant with all other setbacks” [and] “would also increase the open space of the lot by 25%.”

August 31, 2021, Bronxville Building Inspector Paul Taft rightly denied Purchaser’s lame application.

Purchaser gives no valid justification for a variance. As his Analysis shows, the northern setback is and will remain 34.6 feet. But the project will all but eliminate the southern setback, reducing it from 15.1 feet to 6.1 feet. For what reason? 115 White Plains Road does not lack for parking spaces. On the north side it already has in the rear of the house a



Nearly 40 years later, in 1947 noted architect and builder Peter Rhynas (as in Rhynas Drive, Hunt Woods, Mount Vernon), bought the then still undeveloped corner property at White Plains Road and Elm Rock Road. There he built for his family three similar classic center hall Colonial homes including ours. 107 White Plains Road and 49 Elm Rock Road are the other two. Their lots were smaller and had more normal setbacks. So, our house and most of our property lies in front of the house at 115 White Plains Road.

When we moved to 111 White Plains Road there was no fence between it and 115 White Plains Road. We quickly became friends with our neighbors there, the Conlons. Almost daily we greeted the Conlons and they us across our shared property line. Alas, a successor chose to build what may be an illegal stockade fence between the two lots.

In the nearly 75 years since our house was built, to my knowledge the relationship between the Tudor-style “country house” at 115 White Plains Road and our smaller Colonial House on a smaller lot has been static. We look out on our neighbor’s front yard.

Now Purchaser proposes a major change in our still romantic environment. He would disfigure his own house and ours as well. He would detract from Bronxville’s charm.

We wonder why Purchaser would move into our neighborhood and think that this Board would let him dictate changes in relationships that have existed for almost 75 years. Why would he think that this Board would grant variances from clear Code provisions with no reason other than his temporal wishes? If this is not the house and lot that Purchaser wanted, why did he buy it just four months ago? Does not his Connecticut architect know Bronxville? Were he to tear the house down, he could not build a new house as proposed.

### **1. The Board should deny the appeal for failure to give notice.**

Purchaser repeatedly defied the notice requirements of Bronxville Code. Section 112-9 F (3) which required him to “provide a copy of the summary project statement to any property owner within 100 feet of the subject property by certified mail or registered mail within ten (10) days of submitting said building permit application.”

Purchaser provided no notice of his building permit application. That alone, under subsection (4), is “grounds for denying any requested permit or variance ...”

That should be the end of this appeal.

August 31, 2021, Bronxville Building Inspector Paul Taft denied the building permit application. Purchaser then consulted with his counselors to prepare this appeal (already September 1!) but sent and said nothing to us—his next-door neighbor most affected by the proposal.

In his application for appeal, Purchaser claims to have sent us notice of this hearing, October 15. That would have been just eleven days before this hearing. Because I was teaching in Baltimore when it arrived, I did not learn of it until my return to Bronxville Friday evening, October 22.

The notice I received was no notice of this hearing at all. It was for last month's meeting! I attach a copy with the certified envelope. I almost threw it out but instead contacted Bronxville Building Inspector Paul Taft to confirm that it was a nullity. To my chagrin he answered—already by email early Saturday morning (he must work 24/7!)—with disturbing news: Purchaser was to be heard in three days on a new building in his front yard.

That I learned of this meeting before it happened does not mean that I have not been prejudiced by lack of notice. Purchaser should have notified me of his building permit application when he filed it in the summer. The neighborly thing to have done was to walk the few fifteen feet from his property to my door and let me know informally of the appeal he had set in motion September 1. The one business day notice that I did get (today!), despite his failure to comply with law, is inadequate time to engage a zoning lawyer and prepare for an important hearing. I could not investigate issues of drainage, trees and property history, all of which are suggested by facts. Purchaser has prejudiced preparation of this memorandum, my hearing attendance, and my private life.

## **2. The Board should deny Purchaser's appeal for lack of good faith.**

In his application, Purchaser affirmed, before a notary public, that “to the best of my knowledge, information and belief, all statements contained in this application are true, complete and correct ...”

The Purchaser cannot have made this affirmation in good faith. His application on its face demonstrates misstatement. The legal definition of misstatement is “an assertion not in accord with the facts.” On page two of the Zoning Board of Appeals Application, Purchaser states that “**Our garage addition would be adjacent to our neighbors' garage.**”

That is not the case. Geographic location is a fact. The proposed new building will at *NO* point be adjacent to our garage. As best we can tell from his drawings and our impromptu measurements, the proposed building *will be* partly adjacent to the most used room in our home (the family room), will be close to the most used entrance to our house and will block our everyday views from that room. Many documents in the application demonstrate that Purchaser's assertion is not in accord with facts. See Exhibit #3 Architectural Drawings; Exhibit #4 Copy of Current Land Survey (5/28/2021); Exhibit 6, Photos, Existing Driveway Entrance, Area of Proposed Garage, Southeast Corner of Exist. House, View South to Neighbor, Rear Patio; and Exhibit #7, Site Development Plan.

Either Purchaser has not seen our garage or his plans, or he has made a statement that he “knows ... is not in accord with the facts,” i.e., legally, a fraudulent misrepresentation.

This is not the only misrepresentation in the Application. Exhibit #5 purports to be a “Signed Affidavit of Mailing and Certified Mail Receipts.” Yet it contains *NO* affidavit, signed or unsigned. The Certified Mail 7021 1970 001 2121 3319 did *NOT* contain the Notice claimed but notice of last month's meeting. I attach what I received.

In making its decisions the Board relies on the veracity of applicants. When as here, applicants misstate the facts, the Board should reject their applications.

**3. The Board should deny the appeal and uphold the Code prohibition of building new buildings in front-yards.**

Section 31010 D. (5) of the Bronxville Code provides that “no accessory building [which includes garages] shall project nearer to the street on which the principal building fronts than such principal building.” Purchaser’s proposed garage will project 35½ to 40 feet nearer the street than the existing house. Exhibit #3, I Site Plan Development Plan A-002.

There is good reason for the Code prohibition: few structures disfigure a neighborhood more than garages in front yards! We have an example of that just up the street at 141 White Plains Road where that mistake has happened. My wife and I have been particularly aware of this defect ever since we saw noted town planner Andres Duany’s talk at Sarah Lawrence explaining why Bronxville is such a special place architecturally.

Allowing the owners of 115 White Plains Road to build in their large front yard will encourage owners of the next three old country houses at 119, 125 and 129 to do the same in their large front yards perhaps, even in a few weeks. The house adjacent to 119 White Plains Road, sold June 30, 2021, only eight days after 115 White Plains Road. Perhaps its new owners will consult with Purchaser to plan their new front yard building!

**4. The Board should deny the appeal and uphold the Code prohibition of building encroachments on setbacks**

Purchaser acknowledges that his application violates Code setback requirements: “We would need a variance because the southeast corner would encroach the setback”.

Purchaser does not acknowledge, however, that his application renders the Code’s setback requirements nugatory. If a setback can be reduced, as he asks, from fifteen feet to six, ignored for fifty feet, more than 25% of the common property line, not for an inobtrusive patio or deck, but for a fifteen-foot-high building, for no reason more important than the owner’s desire for a second garage, then the setback requirement is meaningless.

Purchaser asserts that the proposed building will be adjacent to our detached garage in the rear of our yard. I have shown above that his application discloses the falsity of this assertion. From my rough calculations, his new building will be adjacent, *not to our garage*, but partly *to our family room* and will be near the most used entrance to our house.

In 1999-2000 when we built an addition in our backyard, we learned how well the Bronxville Building Department safeguards setbacks. We had what we thought a minor change to the small porch north entrance to our house. The Building Department guided us in how we could make this change without variance: cantilever the roof (no posts) and get approval of the then neighbors at 115 White Plains Road. We did both. When the Building Department discovered that our builder had placed the fourteen-foot-long deck on the south slightly over the setback, we did not appeal, but apologized and cut the newly constructed deck back about a foot to achieve the required fifteen-foot setback.

Our experiences show the enormity of the encroachment that Purchaser seeks.

In his application promoting such an extreme variance, Purchaser verges on another misrepresentation. Exhibit #6 Photos show three pictures of the rear patio of 115 White Plains Road. They have no connection to the proposed encroachment, which is not in the back of the house, but in the front. These and other photos try to use the existing stockade fence to boot-strap approval of a whole building. The thought to be conveyed is that the boundary is already blocked. That suggestion is to no avail; the stockade fence itself may be illegal. The six-foot wooden stockade sits on a wall itself about one to three feet. In effect, the stockade approaches nine feet. See Exhibit #4 Copy of Current Land Survey.

### **5. The Board should deny the appeal and protect the beauty of Bronxville.**

For 113 years this pre-Bowman “sun-filled Tudor” has sat undisturbed “on almost half an acre of stunning property” (so the advertisement pre-purchase). Now Purchaser, who has never lived in the house, would throw that all away so that when he moves in, or when some later purchaser moves in, they can have a two-car garage and a basement gymnasium. Long after he has resold the house, Bronxvillians will have to live with a permanent diminishment of our suburban village. The Code calls on the Board to protect Bronxville from such a future.

Code section 310-30 A (2) calls for protecting a “harmonious relationship among buildings and landscape.” It directs consideration to: “(a) Siting of buildings and accessory structures ... (b) Effects of building height, length, bulk and shadows; ... (e) Preservation of views from the site and from adjoining areas; ... and (h) Relationship and scaling of building design and exterior architectural feature to the environment ....” Section 310-30 A (1) calls for particular attention to (c) Preservation or replacement of existing trees ....; (d) Preservation of historical, archaeological and landmark areas and structures. ....”

Look at in Exhibit #7 the fine “Photo at Existing Front Yard.” Then close your eyes and imagine what would be left of that fine house view when a huge new pillbox, some 35 feet by 20 feet by 15 feet, as shown in Exhibit #7 “Exterior Elevation - North / Side Yard 1” is dropped in front of it. Then imagine all the cars parked in the new 37 foot by 30 foot “Belgian block” parking lot in front. What would be left of the once fine country house? What would be romantic? If help in imagining is needed, look at the house at 141 White Plains Road; see what a front-yard garage did for it. While you are contemplating how 155 White Plains Road will look forever, look also at the adjacent drawing “Exterior Elevation – South / Side Yard 2” to see what the view will look like from our family room.

### **Conclusion**

The Board should deny the Purchaser’s unfounded application.

Thank you for your consideration.

Sincerely yours,

James R. Maxeiner