



ZONING BOARD OF APPEALS

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ZBA 2018-74 - Remand
 Appeal of Paula Alvary & Jose Velez
 16 Mountview Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 28, 2019, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the appeal of Paula Alvary & Jose Velez pursuant to the provisions of Section XXIV-C of the Zoning Bylaw of the determination of the Building Inspector that the appellant's request for enforcement of the building code and the Town of Wellesley Zoning Bylaws was denied, and the Building Inspector's subsequent issuance of a Certificate of Occupancy at 16 Mountview Road. This matter was remanded to Wellesley Zoning Board of Appeals on January 29, 2019 from the Commonwealth of Massachusetts Land Court, Department of the Trial Court.

On September 24, 2018, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Christopher Heep, Esq., Town Counsel, said that the appeal that originally came before the Board of Appeals (ZBA) was filed by the abutters of 16 Mountview. He said that the ZBA decision was filed with the Town Clerk on November 15, 2018, after which the owner of 16 Mountview filed an appeal of that decision to Land Court. He said that case was at Land Court for a brief period of time before the Land Court ordered a remand of the case back to ZBA. He said that the remand was ordered for the purpose of allowing the ZBA to reconsider its initial decision and to consider new information, should it be submitted, that can be factored into a reconsidered decision. He said that the Land Court's order says that the hearing will be de novo and also says that the Board can consider all information that has been previously submitted.

The Chairman said that since its last decision the Board received two letters from Testa Engineering that say the same thing except that the first one was incorrectly addressed to an attorney, whereas it should have been addressed to the ZBA. He said that the Board received two plans that were referred to in the letters, one dated November 4, 2018 and the other dated January 23, 2019. He said that the first is an exhibit plan of the stone wall locations and the second is a topographic plan of the 16 Mountview property.

Mr. Heep said that while the case was in litigation in Land Court, the owner of 16 Mountview, through Counsel, shared some documents with him. He said that some of that information was ultimately intended to reach the Board members but did not because it was in litigation. He said that he asked that the letters from the engineer be re-addressed to the Board. He said that while they were in Land Court they had one conference with Judge Vhay, who talked about the case and the Board's decision on the appeal. He said that the Judge expressed some concern that revocation of the CO (Certificate of

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Occupancy) was based on findings of the Board related to Building Code and not to the Zoning Bylaw (ZBL). He said that the Judge went on to question whether the Land Court had jurisdiction to consider an appeal of a decision that had been based primarily on matters concerning the Building Code. He said that the Judge, without ruling on it, expressed the opinion that the Land Court does not have jurisdiction over strictly Building Code issues and the ZBA similarly does not. Mr. Heep said that, based on what he heard from the Land Court, the review of the Appeal should be focused as heavily as possible on the ZBL.

Present at the public hearing were David Himmelberger, Esq., representing, Jose Velez, the Appellant, and Kevin Smith, Esq., representing the owner of 16 Mountview Road.

Mr. Himmelberger said that the materials that were submitted to the Board since the last hearing should be given very little weight, if any. He said that in reviewing any documentary evidence submitted to the Board, the Board cannot suspend common sense or reality. He said that the Board has to look at the totality of the facts.

Mr. Himmelberger said that in his letter, Richard Testa asserts that the base of the retaining wall is not supported on any organic material. Mr. Himmelberger said that the Board is entitled to rely upon the photographs previously submitted by the Petitioner that documented that the retaining wall is sitting on the roots of a significant tree. He said that, when confronted with that anomaly, the Board is entitled to reject Mr. Testa's letter. He said that it further calls into question the accuracy and integrity of anything that Mr. Testa has said. He said that Mr. Testa identified early on that the wall should not sit on any organic material and said that he would personally inspect to ensure that it did not, which is clearly not the case.

The Chairman questioned how that issue relates to applying the ZBL, not the Building Code. Mr. Himmelberger said that it is more to attack the credibility of the letter that says that this is a wall that was built in compliance with applicable ZBL. He said that it is the case that retaining walls in excess of four feet may not be located within 10 feet of the property line. He said that there is no dispute that this retaining wall is within 18 inches to two feet of the property line.

Mr. Himmelberger said that the height of a wall is computed from the base to the top. He said that if a wall is installed on a slope, it does not have a level base. He said that because the wall is sitting on a slope that is eroding, if you measure down the face of the wall, you do not get to the bottom of the block wall for several more inches. He said that Mr. Velez was out there today and took photos showing that now there are portions of the wall that are 50 inches, given the fact that there is no base under the edge of the wall. He entered the photographs into the record.

The Chairman said that the only piece of expert evidence before the Board is the letter from Mr. Testa, who is a Structural Engineer, and unless it has other evidence, the Board has a right to rely on that letter. Mr. Himmelberger said that Mr. Testa may be an expert engineer but he is not an expert on the ZBL. He said that Mr. Testa's assertion that wall is compliant with applicable ZBL should not have greater weight than any other individual because he is not an expert on the application of Wellesley's ZBL. He said that the Board can take the photographic evidence and can hear testimony from his client that, given the fact that there is erosion because the wall is built on a slope, the face of the wall is taller than the actual block itself, as measured by the ZBL.

Mr. Himmelberger said that photographs and documentation that was previously submitted show that the retaining wall on the Mountview property was constructed one and a half feet from the property line and about two to three feet from another two to three foot retaining wall on his client's property. He said that the ZBL discusses measurement of retaining walls and terracing where the distance between the two walls must be two times the height of the higher of the two walls to be considered separate. He said that based on the terracing definition, this wall is in excess of four feet. A Board member said that the ZBL typically applies to a specific property and not abutting properties. Mr. Himmelberger said that the ZBL does not talk about terracing only on one property or that terracing cannot cross property lines. He said that in this instance there is nothing in the retaining wall bylaw that precludes it being applied as he is suggesting it should be applied. The Chairman said that he did not think that approach is practical.

Mr. Himmelberger said that the rip rap to the right of the concrete block wall should also be considered to be a retaining wall. He said that at least one member at the previous hearing felt that stacked boulders might not constitute a retaining wall but there is nothing in the bylaw to compel that conclusion. He said that he previously submitted documentation that showed that a four foot square could not be held in a vertical position because the rip rap has a pitch that is steeper than 1:1 over the first four feet. He said that the plans that were submitted by the builder assert that there is less than 1:1 slope from the top to the bottom. Mr. Himmelberger said that you have to look to see whether or not the wall as constructed is greater than four feet retaining unbalanced fill, which is a condition that is shown by the four foot square.

Mr. Himmelberger said that an engineer previously submitted a letter that asserted that the wall fails to meet industry standards. He said that this case is before the Board because the wall failed and was subject to a stop work order issued by the Building Inspector that required that after completion of all work, a stabilization engineer submit a final written report that includes certification that the inspection area is stable, safe and presents no current or future risk to the safety of the public. Mr. Himmelberger said that the wall is actively in the process of failing again. He said that some of the Board members have been out to the site and seen the erosion and the fact that the walls are bulging out with gaps developing between the blocks. He said that it is an extremely unsafe condition. He said that there is sufficient evidence by which the Board can conclude that the wall, as presently constructed, be it the concrete wall with the eroded base or the rip rap wall that is in excess of 1:1 over a four foot section is in violation of the retaining wall bylaw. He said that the previous Board was sufficiently appalled by the poor construction and that was how it reached the decision that it made. He said that the Board has the ability to find that, based on how the ZBL requires a wall to be measured, the height of the wall is taller than just the exposed face of the concrete block. He said that the builder's engineer said that the height of the block wall itself is four feet. He said that the Board can find that terracing can be applied here but it need not be applied for the Board to reach the conclusion that the height of the wall from the top to the bottom soil, not the base of the exposed block, is greater than four feet and within 10 feet of property line and is in violation of the ZBL. He said that the stacked rock to the right is also at the property line, greater than four feet in retainage, which the Building Inspector has determined has a 1:1 slope. He said that the wall should never have been rebuilt as it was the first time because it resulted in a catastrophic failure and will fail again.

Mr. Himmelberger said that Mr. Velez is willing to attest that the measurement tools that he used today accurately reflect the current conditions and that the photographs corroborate the evidence.

A Board member said that the photographs and the Retaining Wall Section Detail, S.1, dated January 10, 2019, stamped by Richard Testa, show the condition that Mr. Himmelberger talked about. He said that the engineer certified that the distance from the bottom edge of the retaining wall above grade to the top of the retaining wall is four feet but there is a space below that he could not measure specifically. The Board member said that there is a stone resting on the ground at the back but not at the front.

A Board member said that a letter from SFC Engineering referencing a survey prepared by Framingham Survey Consultants, dated November 2, 2018 and two slope details, both of which are dated February 4, 2019, were submitted. The Chairman said that the SFC letter was sent to Michael Grant, Building Inspector, on December 12, 2018, after the close of the hearing. He said that the most important thing set forth in that letter is that SFC Engineering originally was of the opinion that the slope was well constructed and met the design requirements but the slope was modified and failed, which invalidated their prior letter. He said that SFC stated that it is their opinion that the slope and wall have been repaired back to the original design conditions, and that they visited the site and observed the design conditions which were reviewed by Framingham Survey Consultants. He said that the Board received a letter dated February 27, 2019 that stated that the work was done according to the plans and specifications and in accordance with applicable ZBL. He said that is the only expert evidence that the Board has on that issue.

Mr. Himmelberger said that the photographs are the most compelling evidence and they clearly show the void. He said that it is highly unusual to build a retaining wall on a slope without a proper base. He said that Arthur Cabral, Coweaset Engineering, said that it was not built to industry standards. He said that the wall, as originally designed, showed it resting on a three inch concrete leveling pad. He said that plan was stamped by Mr. Testa. He said that when he and his client pointed out that there was no concrete leveling pad, Mr. Testa erased the three inch levelling pad. He said that you can still see the 3.5 inch reference on the plan next to existing grade. The Chairman said that the Engineer's letter says that the wall was built in accordance with the ZBL. Mr. Himmelberger said that Mr. Testa is not an expert on the ZBL.

A Board member said that Mr. Testa's S.1 Retaining Wall Section makes some reference to the rip rap but does not give details about it other than alleging that there is a three foot depth of rip rap. Mr. Himmelberger said that on Plan S.1, Mr. Testa talks about a two foot plus gravel backfill. He said that the May 29, 2018 status report from Mr. Testa details the reconstruction of the wall and there is no mention of gravel backfill. He said that the blocks are 24 inches deep. He said that there are photographs that show a 30 inch depth on the measuring tape because there is a void behind it. A Board member confirmed that Mr. Himmelberger was questioning the reliability of Mr. Testa's statements.

Mr. Smith said that he was representing Mr. Behrend. He said that he did not believe that this de novo review is a total do over. He said that the only issue that was appealed to Land Court was whether this Board had the authority to direct the Building Inspector to revoke the CO.

Mr. Smith said that Mr. Testa was a third party registered engineer who was hired at the direction of the Building Inspector. He said that Mr. Testa has never worked with Mr. Behrend before. He said that Mr. Testa submitted documents to the Building Inspector certifying what had been done. He said that Mr. Testa inspected the work as it was being done and after it was done made a representation to the Building Inspector that it was done in accordance with industry standards, plans and specifications.

Mr. Smith said that after appearing in Land Court and having numerous conversations with Town Counsel, he asked Mr. Testa to go back out to inspect the whole area and to look at the wall to see how it relates to the shortcomings that Mr. Himmelberger says exist. He said that after going out to the site in early January, Mr. Testa and wrote a letter that was subsequently re-submitted at the request of Mr. Heep. He said that Mr. Himmelberger presented photographs but an engineer went out there as recently as January of 2019 and inspected the wall. He said that Mr. Testa wrote letters as a result of his inspection. He said that Mr. Himmelberger has not brought in a structural engineer to tell the Board that the wall is not structurally sound. He said that Mr. Testa's letter is more than sufficient evidence for the Board to determine that this was not a Zoning violation and the wall as constructed is in accordance with the manufacturer's specs.

A Board member asked Mr. Smith if he believes that Mr. Testa is a Zoning expert. Mr. Smith said that Mr. Testa has to deal with ZBL whenever he works on a project. He said that the letter is not to suggest that he is an expert on Wellesley's ZBL but that the wall was designed in accordance with what he reads in the ZBL. The Board member said that Mr. Testa designed the retaining wall to be placed where he was directed to place it by the property owner. Mr. Smith said that the Building Inspector was also involved in this. He said that the Building Inspector said that the placement of the wall in that location complied with Zoning and according to the structural engineer, the wall is sound and built in accordance with the plans and specifications.

A Board member confirmed that Mr. Smith and Mr. Behrend did not see Mr. Testa's letters before they were sent to Mr. Smith. Mr. Smith said that he passed the letters along to Mr. Heep after he received them and Mr. Heep suggested that the letters be re-addressed to the Board and consolidated. Mr. Himmelberger said that there was a change in the letters dated January 10, 2019 and January 23, 2019. He said that the letter of February 27, 2019 is the first reference to applicable ZBL.

The Chairman said that when the Board voted to revoke the CO, the reason that it was doing so was due to the fact that the Board did not have a letter from an engineer with a plan that certified that the wall was structurally sound. He said that the Board has since received that letter. Mr. Himmelberger said that at the previous hearing, the Board had a letter, dated August 2, 2018, that attested to the fact that the work was acceptable to support the wall and the slope above. He said that the only additional piece is Mr. Testa's letter of February 27, 2019 saying that it is in compliance with Zoning.

Mr. Heep said that his experience with this case since it went to litigation is that the owner of 16 Mountview has been attempting in serial fashion to provide the ZBA with an additional level of assurance that the wall was built safely. He said that it is fair for the Board to question the content of those letters. He said that there may have concern that the first letter was not sufficient to address all of the concerns that the Board might have in remand, so another letter came in. He said that when he looked at the letters a few days prior to this hearing, he noticed that they were addressed to Mr. Smith and asked that the letters be re-addressed to the ZBA, which is more suitable for a public hearing such as this. He said that it is entirely up to the Board to challenge the content of the engineering letters if it so chooses. He said that the fact that there were multiple letters represents that there was a good faith effort to do what the Board asked after the initial decision was filed.

A Board member said that the Board was concerned at the previous hearing about how and if the wall was modified to address the conditions that led to its initial collapse and what the actual height of the wall

was. He said that his viewing of the drawings and Mr. Himmelberger pointing out that there are measurements today that clearly appear to indicate, based on a tried and true measurement method, that this wall is more than four feet. He said that if someone chooses to build a retaining wall within 18 inches of the property line, they should be prudent in the design to ensure that it remains four feet because they do not have much room between the neighbors and the property line to build up the grade to make it comply. He said that building up the grade does not solve the problem because dirt that is added to the front will eventually erode.

Another Board member said that to take a defect that arises from the construction process and try to bend it into the definition of height that is in the ZBL is a stretch. He said that the remedy to this issue is to go back to repair the soil at the base of the wall, not move the wall back to 10 feet. He said that the design of the wall is based on something that is less than four feet. He said that it was installed, according to Mr. Testa and others, in accordance with the drawings. He said that the concrete portion of the retaining wall is exempt under the bylaw because the unbalanced fill is less than four feet. He said that to take the rip rap portions of the site and try to apply the retaining wall provisions in the bylaw is not consistent with what people are being taught in structural and civil engineering classes in universities today. He said that the elements of proper design are in the Building Code and there are certifications for it. He said that part of the issue is not in the ZBL.

The Chairman said that Mr. Testa's January 10, 2019 letter talks about the concern that the wall was built on organic material. Mr. Himmelberger asked how anyone could certify that it is not on organic materials when there is a tree right under the wall. He said that is why he attacked Mr. Testa's reliability. He said that it does not comport with what is in the field. A Board member said that Mr. Testa was talking about the material underneath that is intended to provide support for the wall, not a tree root. He said that there is nothing in the ZBL that talks about a 1:1 slope or any other slope and how stable it is. He said that when Mr. Testa talked the design and stability of the 1:1 slope not being evaluated, he was talking about the likelihood of a slope failure with the material above the wall coming down, independent of the wall. Mr. Himmelberger said that there is no testimony as to whether the wall retains balanced or unbalanced fill.

Mr. Himmelberger said that, as measured in September, continuing through today, the face of the wall as measured from the top of the wall to where it hits the ground is greater than four feet and the wall, as constructed, is already showing evidence of failure. He said that his Client's frustration is that they made several complaints two years ago. He said that the wall was built and failed. A Board member said that he shares a number of Mr. Velez's concerns about the wall but they are not within the Board's jurisdiction. He said that he is concerned that the wall appears to be retaining some of the boulders. Mr. Himmelberger said that there is yet to be a letter, compliant with Mr. Grant's requirement that there be a certification that this does not pose a present or future threat to public safety.

The Chairman said that he did not see where this fails to comply with the ZBL. He said that it is clearly shown that the wall is retaining less than four feet of unbalanced feet at the back side. Mr. Himmelberger read an excerpt from Section XXIID. Retaining Walls C. General Provisions, of the ZBL and said that it does not comply. The Chairman said that B.1 of Section XXIID clearly makes this wall acceptable, in combination with Mr. Testa's letter. He said that was what the Board was looking for when it revoked the CO. Mr. Himmelberger said that in determining height, the bylaw talks about measuring from the grade at the base at the face of the wall to the grade at the back of the wall at the same section. The Chairman

said that section discusses things that are not exempt. He said that this does not reach the general provisions.

The Board discussed what constitutes the fill at the back of the wall. A Board member said that the soil on the slope is treated in the design as what is called surcharge. A Board member expressed concerns about the boulders that are resting against the retaining wall and whether they should be considered to be part of the unbalanced fill.

Mr. Himmelberger said that Mr. Testa certified what is in the field is compliant with Zoning. He said that by Mr. Testa's own drawing, the wall is not compliant.

Statement of Facts

The subject property is located at 16 Mountview Road, in a 20,000 square foot Single Residence District.

The Appellant is appealing, pursuant to the provisions of Section XXIV-C of the Zoning Bylaw, the determination of the Building Inspector that the Appellant's request for enforcement of the Building Code and the Town of Wellesley Zoning Bylaws was denied, and the Building Inspector's subsequent issuance of a Certificate of Occupancy at 16 Mountview Road.

Submittals from the Appellant

- Letter to Town Clerk, dated September 24, 2018, from David Himmelberger, Esq., re: Appeal of Building Inspector's Determination regarding 16 Mountview Road, Wellesley
- Notice to Town Clerk pursuant to Section XXIV of the Zoning Bylaws
- Memorandum in Support of Appeal of Building Inspector's Denial of Request for Zoning Enforcement at 16 Mountview Road, Wellesley, MA
- Exhibit A – Notice to Dean Behrend, dated April 27, 2018, from Michael Grant, Inspector of Buildings, re: Notice of Violations and Order to Stop Work, 16 Mountview Road, Wellesley
- Exhibit B – Retaining Wall Plan S.1, stamped by Richard Testa, P.E.
- Exhibit C – Photographs
- Exhibit D – Letter to Jose Velez, dated August 8, 2018, from Coweaset Engineering, re: Inspection Report, Rear of 41 Suffolk Road, Wellesley, MA
- Exhibit E – Email to David Himmelberger, dated August 27, 2018, from Michael Grant, re: Engineer Letter from the Abutter – 16 Mountview Road
- Letter to Zoning Board of Appeals with photographs attached, date October 17, 2018, from David Himmelberger, Esq., re: 16 Mountview Road, Wellesley
- Hand drawn Elevation Drawing of Slope
- Plan S-1, stamped by Jeffrey M. Benway, P.E.
- S.1 Retaining Wall Plan, dated 2018, stamped by Richard Testa, P.E.
- S.1 Retaining Wall Plan, dated 7/30/18, stamped by Richard Testa, P.E.
- Pre-construction photograph of slope, taken from 41 Suffolk Road
- Segmental Retaining Walls Best Practices Guide

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- Email to Skyeyecorp, dated May 25, 2016, from David Hickey, Town Engineer, Town of Wellesley, re: Draft Email to Building Department
- Exhibit Plan Stone Wall Locations, dated July 11, 2018, stamped by Richard Testa, P.E.
- As-Built Plot Plan, dated 3/1/17, stamped by Glenn D. Odone, Jr., Professional Land Surveyor

Submittals from Michael T. Grant, Inspector of Buildings/Zoning Enforcement Officer

- Letter to Michael T. Grant, Building Inspector, dated July 18, 2018, from David Himmelberger, Esq., re: 16 Mountview Road, Wellesley, Notice of Violations and Order to Stop Work
- Letter with photographs attached, to Michael T. Grant, Building Inspector, dated July 6, 2018, from David Himmelberger, Esq., re: 16 Mountview Road, Wellesley, Notice of Violations and Order to Stop Work
- Letter to Michael T. Grant, Building Inspector, dated May 22, 2018, from David Himmelberger, Esq., re: 16 Mountview Road, Wellesley, Notice of Violations and Order to Stop Work
- Exhibit A – Notice to Dean Behrend, dated April 27, 2018, from Michael Grant, Inspector of Buildings, re: Notice of Violations and Order to Stop Work, 16 Mountview Road, Wellesley
- Exhibit B – Letter to Dean Behrend, dated November 28, 2016, from Michael Grant, re: 16 Mountview Road – Building Code & Zoning Violations
- Exhibit C - Letter to Michael Grant, dated April 19, 2017, from Jeffrey Benway, P.E., re: Retaining Wall & Slope Evaluation 16 Mountview Road, Wellesley
- Exhibit D – Letter to Michael Grant, dated May 16, 2018, from Richard Testa, Jr., P.E., re: Project: 16 Mountview Road, Wellesley, MA
- Letter to Michael Grant, dated May 17, 2018, from Richard Testa, Jr., P.E., re: Project: 16 Mountview Road, Wellesley, MA
- Exhibit E – S.1 Retaining Wall Plan, stamped by Richard Testa, Jr., P.E.
- Exhibit F – Photographs
- Notice to Dean Behrend, dated April 27, 2018, from Michael Grant, Inspector of Buildings, re: Notice of Violations and Order to Stop Work, 16 Mountview Road, Wellesley
- Letter to Michael Grant, dated May 9, 2018, from Dean Behrend, re: 16 Mountview Road
- Initial Construction Control Document, dated May 16, 2018, stamped by Richard Testa, Jr., P.E.
- Letter to Michael Grant, dated May 10, 2018, from Dean Behrend, re: 16 Mountview Road
- Letter to Michael Grant, dated May 14, 2018, from Dean Behrend, re: 16 Mountview Road
- Letter to Michael Grant, dated May 16, 2018, from Richard Testa, Jr., P.E., re: Project: 16 Mountview Road
- Letter to Michael Grant, dated May 17, 2018, from Richard Testa, Jr., P.E., re: Project: 16 Mountview Road
- Letter to Dean Behrend, dated May 21, 2018, from Michael Grant, re: Authorization to Commence with work: 16 Mountview Road, Wellesley, MA
- Letter to Michael Grant, dated May 29, 2018, from Richard Testa, Jr., P.E., re: Project: 16 Mountview Road – Weekly Report – May 21st thru May 25th
- Letter to Michael Grant, dated May 29, 2018, from Richard Testa, Jr., P.E., re: Project: 16 Mountview Road – Weekly Report – May 29th thru June 1st
- Letter to Michael Grant, dated June 11, 2018, from Richard Testa, Jr., P.E., re: Project: 16 Mountview Road – Weekly Report – June 4th thru June 8th

ZBA 2018-74 - Remand
Appeal of Paula Alvary & Jose Velez
16 Mountview Road

- Letter to Michael Grant, dated June 20, 2018, from Richard Testa, Jr., P.E., re: Project: 16 Mountview Road – Weekly Report – June 11th thru June 15th
- Letter to Michael Grant, dated June 26, 2018, from Richard Testa, Jr., P.E., re: Project: 16 Mountview Road – Weekly Report – June 18th thru June 22nd
- Final Construction Control Document, dated June 28, 2018, stamped by Richard Testa, Jr., P.E.
- Photographs of Left Side Slope, Mid Slope, Left Side Slope and Picture from Top
- Letter to Michael Grant, dated August 2, 2018, from Richard Testa, Jr., P.E., re: Project: 16 Mountview Road
- Letter to Michael Grant, dated August 20, 2018, from Richard Testa, Jr., P.E., re: Project: 16 Mountview Road
- Email to Michael Grant & Bean Behrend, dated August 21, 2018, from Richard Testa, re: Engineer Letter from the Abutter – 16 Mountview Road
- Letter to Mike, from Jose Velez
- Letter to Jose Velez, dated August 8, 2018, from Arthur S. Cabral, P.E., Coweaset Engineering, re: Inspection Report, rear of 41 Suffolk Road, Wellesley, MA
- Photographs
- Engineering Pictures
- Letter to Michael Grant, dated April 19, 2017, from Jeffrey Benway, P.E., re: Retaining Wall & Slope Evaluation 16 Mountview Road, Wellesley
- Letter to Michael Grant, dated April 23, 2017, from Jeffrey Benway, P.E., re: Retaining Wall & Slope Evaluation 16 Mountview Road, Wellesley
- Plan S-1, dated August 18, 2016, stamped by Jeffrey M. Benway, P.E.
- Plan S.1, Retaining Wall, dated July 30, 2018, stamped by Richard Testa, Jr., P.E.
- As-Built Plot Plan, dated March 1, 2017, stamped by Glenn D. Odone, Jr., Professional Land Surveyor
- S.1, Retaining Wall Plan, stamped by Richard Testa, Jr., P.E.
- Exhibit Plan Stone Wall Locations 16 Mountview Road Wellesley, Massachusetts, dated July 11, 2018, prepared by Framingham Survey Consultants, Inc.
- Exhibit Plan Stone Wall Locations 16 Mountview Road Wellesley, Massachusetts, dated June 25, 2018, prepared by Framingham Survey Consultants, Inc.

Submittals Subsequent to the close of the Public Hearing on November 1, 2018 and the Board decision, dated November 15, 2018

- Letter to Zoning Board of Appeals, dated November 6, 2018, from David J. Himmelberger, Esq., re: 16 Mountview Road, Wellesley
- Letter to Michael Grant, Building Inspector, dated November 6, 2018, from Richard J. Testa, Jr., P.E., re: 16 Mountview Road, Wellesley, MA
- Letter to Zoning Board of Appeals, dated November 28, 2018, from Kevin T. Smith, Esq., re: ZBA 2018-74 16 Mountview Road/Request for Reconsideration
- Complaint, Mountview Road LLC, Plaintiff v. Richard L. Seegel, Walter B. Adams, and Derek B. Redgate, Acting as Members of the Zoning Board of Appeals for the Town of Wellesley And Paula Alvary and Jose Velez, Defendants, filed in Land Court on December 3, 2018

- Notice of Action, Mountview Road LLC, Plaintiff v. Richard L. Seegel, Walter B. Adams, and Derek B. Redgate, Acting as Members of the Zoning Board of Appeals for the Town of Wellesley And Paula Alvary and Jose Velez, Defendants, filed in Town Clerk's Office, Wellesley, MA on December 4, 2018
- Letter to Zoning Board of Appeals, dated December 12, 2018, from Kevin T. Smith, Esq., re: Notice of Appeal of ZBA No. 2018-74, with attachment
- Letter to Michael Grant, Inspector of Buildings/Zoning Enforcement Officer, dated December 12, 2018, from Jeffrey M. Benway, P.E., SFC Engineering, re: Retaining Wall & Slope Evaluation 16 Mountview Road, Wellesley
- Exhibit Plan Stone Wall Locations, dated November 5, 2018, stamped by Stephen P. Desroche, Professional Land Surveyor
- Letter to Kevin T. Smith LLC, dated January 10, 2019, from Richard J. Testa, Jr., P.E., re: 16 Mountview Road Wellesley, MA
- Letter to Kevin T. Smith LLC, dated January 23, 2019, from Richard J. Testa, Jr., P.E., re: 16 Mountview Road Wellesley, MA
- Letter to Zoning Board of Appeals, dated February 27, 2019, from Richard J. Testa, Jr., P.E., re: 16 Mountview Road Wellesley, MA
- Topographic Plan, dated January 4, 2019, stamped by Stephen P. Desroche, Professional Land Surveyor
- Exhibit Plan Stone Wall Locations, dated January 4, 2019, stamped by Stephen P. Desroche, Professional Land Surveyor
- Retaining Wall As Built Elevation & Section, dated January 10, 2019, stamped by Richard J. Testa, Jr., P.E.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

Upon motion duly moved and seconded, the Board voted to deny the Appeal of Paula Alvary and Jose Velez concerning the property located at 16 Mountview Road, and further voted to order the Certificate of Occupancy for 16 Mountview Road to be restored.

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ZBA 2018-74 - Remand
Petition of Paula Alvary & Jose Velez
16 Mountview Road

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.


Richard L. Seegel, Chairman


J. Randolph Becker


Walter B. Adams

ZBA 2018-74
Applicant Paula Alvary & Jose Velez
Address 16 Mountview Road

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02462
2019 MAR 20 A 2:10

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato
Town Clerk

cc: Planning Board
Inspector of Buildings
lrm