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December 7, 2021

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Hon. John Ewasutyn and
Planning Board Members
Town of Newburgh Planning Board
21 Hudson Valley Professional Plaza
Newburgh, New York 12550

Re: Hadid – Grading Permit Referral
34 Susan Drive
Sec. 46, Block 5, Lot 21 (PB Project No. 21-10)
Our File No. 4276-003

Dear Chairman Ewasutyn and Members of the Board:

As discussed in letter dated November 22, 2021, requesting that the board reconsider and rescind the positive declaration under SEQRA adopted at your November 4, 2021 meeting, I am providing thirteen hard copies of my November 22, 2021 letter and December 1, 2021 letter from Ms. and Mr. Hadid, providing additional analysis and supporting photographic documentation to address the concerns made by the neighbor to the south of the Hadid property.

I respectfully request that the planning board place this matter on its next agenda so we can discuss these letters.

Thank you for your attention to this matter.

Yours very truly,

John C. Cappello

JCC/rmc
Encs.

cc. Dominic Cordisco, Esq. via email (dcordisco@drakeloeb.com)
Patrick Hines, P. E. via email (phines@mhepc.com)
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November 22, 2021

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Via Email Planningboard@townofnewburgh.org

Hon. John Ewasutyn and
Planning Board Members
Town of Newburgh Planning Board
21 Hudson Valley Professional Plaza
Newburgh, New York 12550

Re: Hadid – Grading Permit Referral
34 Susan Drive
Sec. 46, Block 5, Lot 21 (PB Project No. 21-10)
Our File No. 4276-003

Dear Chairman Ewasutyn and Members of the Board:

I am writing to request that the Board reconsider and rescind the positive declaration adopted under SEQR for the above-referenced building permit associated with the construction of the pool on the Hadid's property. Below is a discussion together with legal support for this request.

I. The erection of a pool on the property is a Type II action exempt from a SEQR compliance-6 NYCRR §617.5(10) states "Construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, underlying, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density" are Type II actions exempt from SEQR-compliance.

II. Chapter 83 "Clearing and Grading Law" does not require the submission of an Environmental Assessment Form or the conduct of SEQR review. We acknowledge that, while this application may not be subject to SEQR the Planning Board can conduct an environmental review of the application. However that review is limited to those delineated purposes provided in §83-2 of the law, see *Moriarity v. Planning Board*, 119 AD 2d 180 (2d Dept. 1986). These delineated purposes relate to potential for pollution of any existing water features, unnecessary destruction of trees, exposure to soil erosion, unnecessary modification to natural topography, failure to restore sites to an attractive natural condition, and to protect properties from increased runoff, erosion or sediment, to avoid any increased threat to life and property from flooding, increased slope instability and hazards from landslides and slothing, and avoid modifications to the ground water regime adversely affecting wells and surface water levels.

In addition, the Planning Board's consideration and issue of the permit is subject to the standards set forth in §83-10.

III. The Planning Board determination must be consistent with recommendations from the Town Engineer, Building Inspector and Superintendent of Highways. Section 83.8C requires that upon referral of an application to the Planning Board, said board must act "with recommendations from the authorized office Town Engineer, Building Inspector and Superintendent of Highways. In this case, the Planning Board, at its September meeting specifically acknowledged that it had all the information it needed to render its decision. The Board's consultant engineer acknowledged that the applicant's representative had addressed the comments from the geotechnical consultant who recommended appropriate security and raised no additional items to be addressed. We, therefore, believe that the Planning Board has in its possession information upon which it can base its determination in consistent with their recommendations of its consultants.

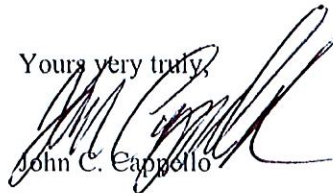
Nevertheless, the applicant is certainly willing to provide the Planning Board with additional information to allow you all to be comfortable with any decision the Board may make. This would include photos depicting and demonstrating that the view from the neighboring property, (while even though we believe this is not an issue appropriately before this Board), will not be severely impacted after all the work is complete. The applicant will also submit photo documentation of other pools installed and fill introduced onto many properties in this area due to slopes and grades which includes the properties adjoining this property on either side.

Further, the applicant is more than willing to meet on site with the entire board and/or individual board members, your consultants and/or with the adjoining neighbor who has issues with this project to discuss what has been done to address their concerns and potential additional reasonable modifications that the Board and its consultants may recommend.

In summary, the applicant is willing and anxious to provide relevant additional information that the Board may request as it reviews this application. However, to jump to the procedural hoops, pay the unnecessary costs and expenses going through a formal positive declaration and preparation of an EIS will not provide the Board with anymore information as it relates to their final determination in this matter. This will result in needless delay and cost and will do nothing to make the situation anymore amenable.

We respectfully request that the Planning Board provide an opportunity at your next available meeting agenda for us to present and discuss this letter and agree on the procedure moving forward. I look forward to appearing before your Board.

Yours very truly,



John C. Cappolito

JCC/rmc

Cc: Dominic Cordisco, Esq. via email (dcordisco@drakelocb.com)
Patrick Hines, P. E. via email (phines@mhepc.com)
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Hon.. John Ewasutyn, Chair and Planning Board Members
Town of Newburgh Planning Board
21 Hudson Valley Professional Plaza
Newburgh, NY 12550

December 1, 2021

Re: Hadid Site Plan – Application 21-10
34 Susan Drive, Newburgh NY 12550
S/B/L 46-5-21

Dear Chairman Ewasutyn,

We were very surprised by what transpired during the Planning Board Meeting on November 04, when the subject of our Swimming Pool permit was addressed.

We had believed that all of the outstanding questions related to the installation of the pool and the placement of fill on the property had been fully addressed in previous meetings and submittals to the Town of Newburgh. These submittals included:

1. Site Plan submittal – 01/07/21
2. Clearing and Grading Application – 01/07/21
3. Revised Site Plan – 04/23/21
4. Project Narrative, Planning Board Application and EAF – 04/23/21
5. Revised Site Plan – 5/20/21
6. Barry Schuyler (Neighbor to north) Letter – 5/20/21
7. Cut & Fill Calculations – 5/20/21
8. Response to Planning Board Comments – 5/20/21
9. Revised Site Plan – 8/20/21
10. Revised Clearing and Grading Permit Application -- 8/20/21
11. Response to Planning Board Comments - 8/20/21
12. Geotechnical Report – 9/23/21
13. Response to Planning Board Comments – 9/23/21
14. Revised Geotechnical Report (slope stability analysis) – 11/04/21
15. Response to Planning Board Comments – 11/04/21
16. Letter from our attorney providing legal support for the requested rescission of the SEQRA Positive Declaration.

The Town Engineer had reviewed all of these documents and had no further questions related to the findings in these reports. Based on the lack of any further comments our engineer believed that the permit for fill placement would be approved during this meeting and that we would be asked to pay the fine for starting the construction before we were aware that we must apply for and receive an approved permit .

Instead, there was a comment period, followed by a vote on the completion of the SEQRA Environmental Assessment Form (EAF). During the comment period, only one person spoke against the approval of the permit, the neighbor to the south of our property, at 32 Susan Drive. Mrs. Manischalchi stated that the fill placement had “severely impeded” their river view from the basement window of their house and was concerned about the danger that the fill

slope would present to their young child playing in the yard. After the reading of the letter, the board voted for a positive declaration to the EAF noting that there were “significant adverse impacts to the environment” as a result of the pool construction, and that a full Environmental Impact Statement would be required before a permit for this work could be approved.

Given that all of the engineering issues with the fill placement and the pool construction had been adequately addressed previous to this board meeting, it is our understanding that the board had based their decision on the issues that were voiced by our neighbor during the meeting; this would be namely the impact on their view and the danger to their child. We would like to address these issues here one at a time.

Viewshed Impact

In regard to the view, most of the houses on the east side of Susan Drive own the property up to the railroad right of way along the river, and due to the topography, have an unobstructed view of the Hudson River to the east. The placement of the fill around our pool may partially obstruct the neighbors view to the north from their basement window, but it did not adversely affect the “viewshed from the rest of the house. Their view from the first and second floors of their home remain totally unobstructed. The view from their basement window is clear to the east, but is partially obstructed to the north by our fill placement and to the south by their own retaining wall (Attachment “A”).

The neighbor did not quantify the amount of the obstruction, but it could be estimated that approximately 10% of the view from their basement windows have been impacted by the fill placement. The view east, towards the river from the basement is totally unobstructed as can be seen from the aerial photo included in Attachment “B” at the end of this letter. A 10% obstruction of a view from a basement window should not be considered to be a “significant adverse environmental impact”. We understand our neighbor’s concern regarding the reduction of the view from their basement. We have worked with our engineer to minimize this impact in the revised design of the fill placement that was presented to the Town.

Pool Construction

Mrs. Manischalchi questioned why the pool was not constructed on the existing “natural land grade” as was done with “every house that has a pool on Susan Drive.” This statement is incorrect. Due to the steep slope between the river and the houses on Susan Drive, the west end of the pool can be constructed on existing grade, however the east side of the pool must be placed on a considerable amount of fill in order to keep the pool level. As can be seen in the photo contained in Attachment “C” to this letter, the pools at #36, #38 and #42 all have a significant amount of fill placed on the east side, that is sloped at roughly a 2 on 1 slope until existing grade is met. The pool at #36 appears to have a fill placement that is approximately 12 feet high on the east side.

Slope Stability

In regard to the hazard presented by the slope of the fill to their child, it is important to note that at a 2 on 1 slope, the fill placement would not be much steeper than the slope of the neighbor’s property between their home and the Hudson River. Once seeded and stabilized, there would be no chance of erosion and the slope stability analysis performed by our geotechnical engineer determined that the 2 on 1 slopes were stable. The Town’s Engineer has

agreed, stating that the "...modifications to the plan addressed the geotechnical concerns of the site and the global stability of the project".

It could be noted that the lack of fencing along the railroad right of way, adjacent to the Hudson River, and the unprotected retaining walls on the neighbor's own property represent a greater hazard to their child than the slope of the fill on our property.

#32 Susan Drive Variance Application (2012)

In her statement to the Planning Board, Mrs. Manischalchi also quoted from the Board's Resolution dated February 2, 2012 concerning the Variance Application for her property at #32 Susan Drive. The Variance Application to the Board included the request for a side yard setback reduction to 10.4 feet where 30 feet is required by the code. This is the side that abuts the Hadid property. As she notes in her statement, the Resolution stated that "Neighbors present at the hearing... raised questions as to the impact of the proposed improvements upon their views of the Hudson River given the proximity of the home and the neighborhood to the River." At that meeting we were assured by the Board and the neighbor's engineer that the installation of the deck would "...not result in any serious, undesirable, detriment to surrounding property owners", so we had no objections to the proposed construction and the Variance was approved.

It is important to note that the construction of the deck at 32 Susan Drive did in fact partially block our view of the Hudson River to the south as seen from our basement windows. Please see the photograph listed as Attachment "D" at the end of this letter. Although this issue is similar to the impact that is being discussed in relation to our pool construction, we do not feel that this impact to our viewshed is significant because it is from our basement window, and does not impact the view from the main part of our house.

In summary, we do not understand the "Determination of Significance" made by the Town Planning Board for this project that resulted in a positive declaration on the EAF. STATE ENVIRONMENTAL QUALITY REVIEW states that the lead agency must "set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation".

Since the only issues that have been raised have been addressed by the submissions made to date and this letter with photographs, we believe that using this information and applying the criteria for determining significance and "reasoned elaboration" as required by Part 617.7(c)(1) of SEQRA, the board can determine that we have addressed all concerns. Please therefore rescind the positive declaration and issue a negative declaration under SEQRA or at least advise us of what additional information you will require to address the real issues of concern to make an informed decision without the needless expense of preparing an EIS. Once completed, we believe that our pool construction will enhance both our home and the neighborhood as well, and result in minimal impact to our neighbor's property. We would like to work with the Planning Board and our neighbor at #32 Susan Drive to come to an amical solution to this issue.

We have included the following photos that may assist the Board with their discussions on this matter:

Attachment A – #32 Basement Window

Attachment B - Aerial Photo showing Basement Viewshed Impact

Attachment C - Pools constructed at #36, #38, and #42 Susan Drive

Attachment D - View of #32 deck from Basement Window of #34 Susan Drive

Attachment E - Approximate Panoramic View from #32 basement Window

Thank you.

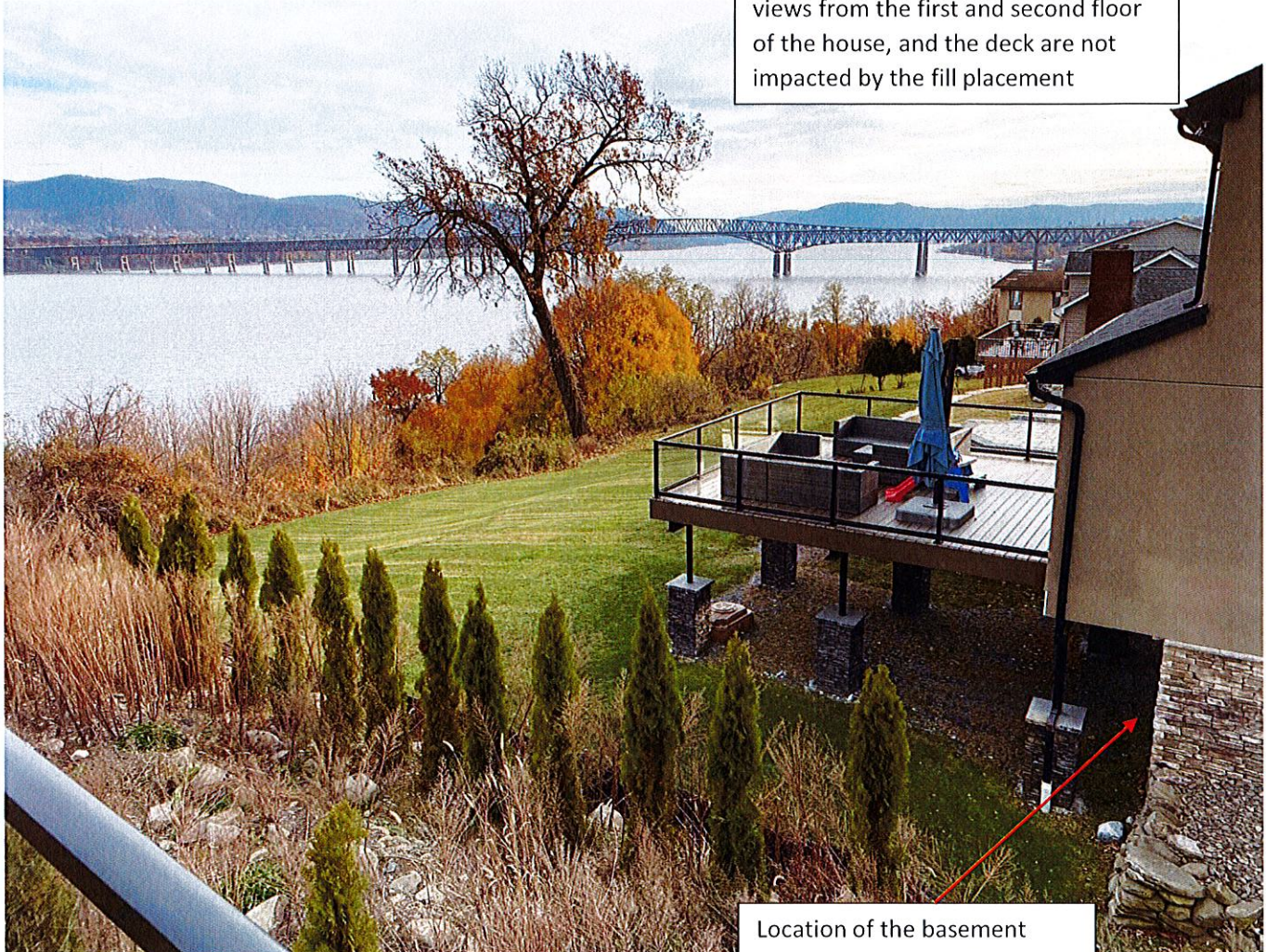
Sincerely

Sherifa Hadid

Sherifa and Dr. Ahmad Hadid

Attachment "A.1"

Mrs. Manischalchi stated that the views from the first and second floor of the house, and the deck are not impacted by the fill placement



Location of the basement window and sliding glass door under deck.

The Owner of 32 Susan Drive stated that the view from the basement window was impacted by the pool construction at 34 Susan Drive. The view from the deck level behind the house was not impacted because the deck was above the pool level.

Attachment "A.2"

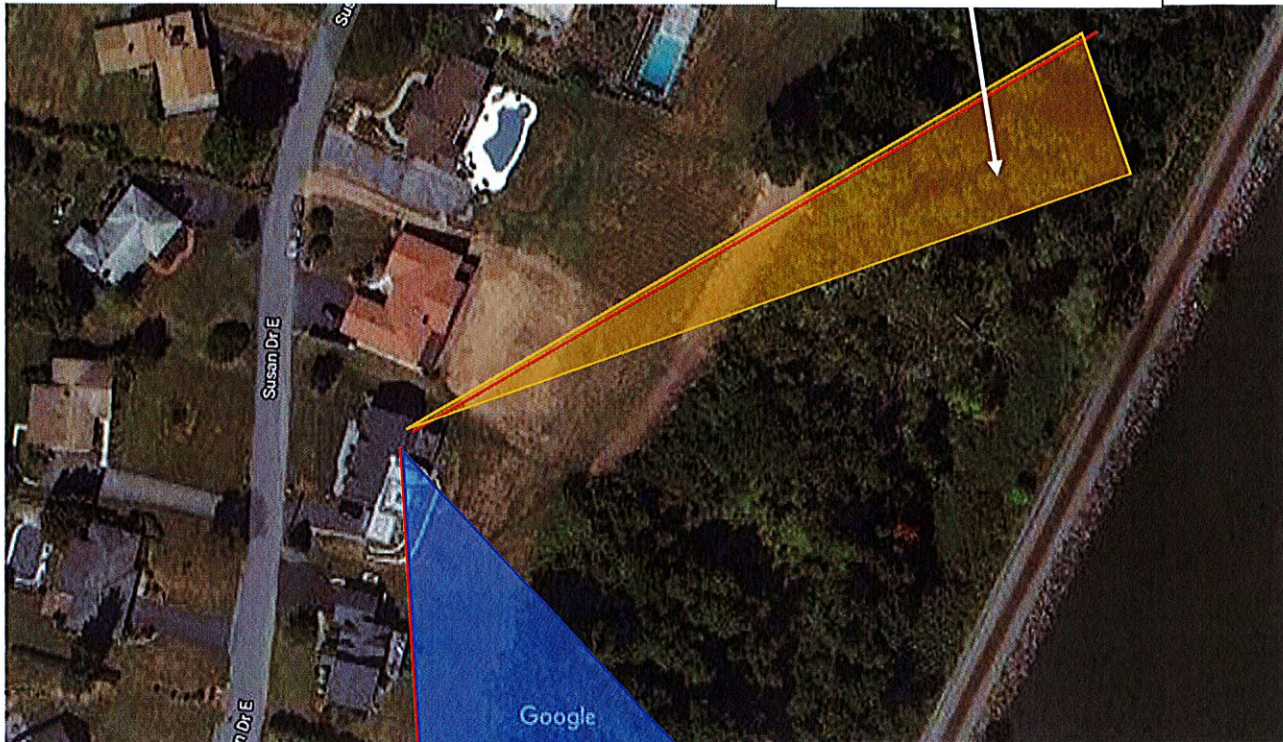


This photo shows that basement window and door which the owner at #32 says has the view impacted by the construction of the pool at #34. The view is still impressive as can be seen from the reflection in the windows. The retaining wall on the south side of the basement blocks the view to the south in about the same degree as the fill placement at #34. The view of the river is also blocked by the large stone columns installed at the base of the support columns.

Attachment "B"

Viewshed Impact to Basement Window

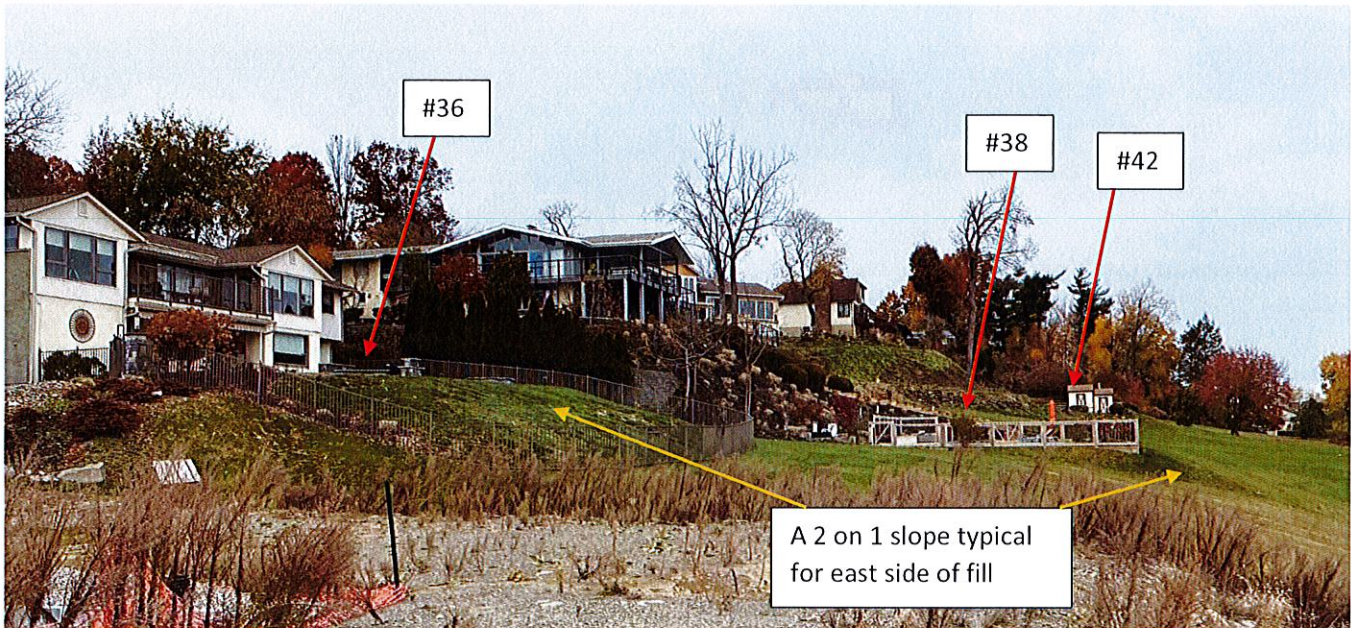
#32 Basement View to the north Blocked by #34 Fill Placement



#32 Basement View to the south partially blocked by #32 Retaining Wall

Attachment "C"

Pool Construction in the Neighborhood



Similar pool construction techniques were used to build the pools at #36, #38, and #42 Susan Drive. Note that the west end of the pools are placed at existing grades while the east side of the pools require fill to build the pools level due to the steep slopes between the houses and the river. The fill slopes on the east side of the pools are all at about 2 on 1, which will be the same as the final grades proposed by the Engineer for #34.

Attachment “D”

Deck at #32 Partially Blocking the view from the Basement Window of our Home (#34)



Attachment “E”

Approximate View from the Basement Window of #32 Susan Drive



Current view from the #32 basement elevation as taken from the foot of the fill from #34 property. Panoramic photo taken. The actual view would have more visibility to the north and less from the south due to the loss of the view shed due to the #32 retaining wall. A photo could be taken by Mrs. Manischalchi from inside the basement to get a better idea of the view.