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FINAL APPROVAL: 11/14/07

VILLAGE OF CROTON-ON-HUDSON ZONING BOARD OF APPEALS
MEETING MINUTES OF OCTOBER 10, 2007.

MEMBERS PRESENT: Kathleen Riedy
Rhoda Stephens
Ruth Waitkins
Doug Olcott
Witt Barlow

ALSO PRESENT: Dan O'Connor, P.E.
Village Engineer

ABSENT: Joseph Sperber, Asst. Bldg. Inspector

Meeting came to order at 8:00 P.M.

The chairman of the Board announced the location of fire exists to all in attendance of the hearing.

HEARINGS:

Thomas Fallacaro, 3 Arrowcrest Drive. Located in a RA-40 District and designated on the Tax Maps of the Village as Section 67.15 Block 1 Lot 33. Request for a variance from Section 230-40 (A) (1) (B) with respect to a retaining wall being built less than five feet from the side property line, and Section 230-40(b) with respect to a retaining wall being built in a front yard, and Section 230-40(A) (1) (a) with respect to a retaining wall being built higher than 15 ft. (Request from applicant on 2/13/07 to adjourn until further notice).

Application adjourned.

Jeff & Karen Thornton, 100 Upper North Highland Place. Located in a RA-40 District and designated on the Tax Maps of the Village as Section 68.13 Block 1 Lot 15. Request for a re-instatement of a variance that was granted on July 12, 2006 and expired on July 12, 2007, with respect to a proposed construction of a two-car garage and Section 230-40(b) of the Village Code. (Hearing. Adj. on 9/12/07)

Thornton – Do you want me to start from the beginning?

Riedy – No. We are familiar with the application.

Barlow – (To Mr. Thornton) Would it be possible for you to move it back five feet?

Thornton – If you look at the area behind the garage, straight back, there is a tree that is 14 ft. 6 in. from the back of the garage. The base is three feet in diameter. If I were to move it back I would need to cut that tree down. I would like to get the garage done and I am willing to work with you to move it back farther, if we have to. (Referring to Plans...) The only other issue is a hill that starts from the street and goes down. The more I move it away from the street the more I have to fill. A contractor said I have to keep it more even. Even if I have any kind of water drainage system it would still make its way through the garage. The reason I have to add fill is because there is an issue with the height of the roof. The pitch of the roof to the back part of the hill can only be fifteen feet. If it is more I will have to get a variance for that. I have to maintain the back being 15 feet from the top of the garage to grade. It would also cost more money. I want to build this garage and am willing to work with you on this. My neighbors want to know when it will be done. They do not object to the distance from the street it has always been there.

Stephens – Do you have names and addresses of your neighbors that wrote letters?

Thornton - Chris Whelan, he wrote a letter for my original hearing.

Stephens – I was wondering if there were any additional letters.

O'Connor – Chris Whelan, he is at 101 Upper No. Highland Place.

Thornton – I did notice at the front of the garage it is covered with moss. It has to do with the water issue.

Barlow – What variance did you request?

Thornton - Not sure.

Barlow – It is a fifty foot Front yard.

Thornton – I am moving it to the left to be compliant with the side yard setback.

Riedy - Any other questions?

There was no reply.

Hearing closed.

Waitkins – Motion to grant the application as requested and according to plans submitted.

Stephens – 2nd the Motion

Vote: 5-0 In Favor – Waitkins, Stephens, Riedy, Barlow, Olcott

Carl & Sally Barnes, 10 Morningside Drive. Located in a RA-9 District and designated on the Tax Maps of the Village as Section 79.09 Block 6 Lot 46. Request for a front yard variance with respect to a proposed construction of a front porch. (Adj. on 9/12/07)

The Board acknowledged and made part of the record the following letters that were submitted:

September 24, 2007 Letter to Zoning Board, from Frank & Christa Ronci

September 24, 2007, Letter to Zoning Board, from Carl & Sally Barnes

Riedy – Did you receive copies of these letters?

Barnes – Yes. We found out what can be accomplished when we sat down and talked. Mr. Dymes laid out the front porch and roped it off and we looked from our neighbor's house and their dining room. We found that we misread the plans and the stoop is going a foot back from where it currently is. When we sat at the Ronzi's house they realized the obstruction of the porch would no longer be an issue. The Japanese Cherry tree is already there. We realized the parking would not be affected at all. There will be no extension of the width other than what the original variance required. The parking will be less affected because the stoop is going back farther. The porch will not come out as far. When we laid it out we came to a conclusion to use smaller railings on the small posts, which we intended on using to eliminate obstruction.

Riedy – So that is a change from the plans you submitted?

Barnes - No that is the same narrow support posts.

Riedy - That is the size reflected in the plans originally submitted?

Barnes - Yes.

Riedy – It says 6 ft. x 6 ft. fiberglass, New Orleans Style.

Stephens – It is a foot less now?

Barnes – No. What we thought the plans said and what they actually read was in reality two different things. Nothing has changed with the application.

Kathleen – You will need a four foot side yard and seven foot front yard to accommodate the construction of the porch.

Barnes – The four foot side yard is a continuance of the previous variance that was granted. We are now applying for that variance to be reinstated.

Stephens – So you just need the seven foot front yard variance?

Thornton - That is the way I understand it. That is what I misunderstood. Is it seven foot one inch or just seven foot.

Riedy – It is seven feet from what I understand.

Stephens – The revision was done on August 7, 2007.

Barnes – It is the old chimney flue. It is not a problem if it is recapped. If there is a problem and it needs to be recapped and extended the contractor will measure it to the contour. I brought pictures. I think they are duplicates pictures from what I submitted to you but I will submit these to be on the safe side.

Pictures submitted for the record.

Barnes – Photo A – Shows the chimney section. The other shows the view from the Ronzi's window and how it relates to the porch and kitchen window. The third picture is the Japanese Cherry tree and the full length of the porch.

Riedy – Are there any other questions?

There was no reply.

Hearing closed.

Waitkins – Made Motion to grant a 4 ft. side yard variance and a 7 ft. front yard variance according to plans submitted.

Stephens – 2nd the Motion

Vote: All In Favor – Waitkins, Stephens, Riedy, Barlow, Olcott

Robert Klurfeld, 90 Truesdale Drive. Located in a RA-9 District and designated on the Tax Maps of the Village as Section 79.09 Block 5 Lot 10. Request to re-notice hearing and to request a re-issuance of a variance that was granted on January 10, 2007, for two front yard variances with respect to a proposed addition.

The Board acknowledged receiving and made part of the record the following correspondence with respect to this application:

Letter Mr. Klurfeld dated October 17, 2007

Letter dated October 10, 2007, to Zoning Board Chairman & Members, from Brad Schwartz, Esq. & Jody Cross, Esq. Zarin & Steinmetz, 81 Main Street, White Plains, N.Y. (Attorney's for the applicant).

Letter dated August 23, 2007, to Daniel O'Connor, Village Engineer, from Jay Hashmall, Bank, Sheer, Seymour & Hashmall, 399 Knollwood Rd, White Plains, N.Y. (Attorney's for Nancy Kennedy, 80 Nordica Drive, neighbor of the applicant).

Jody Cross, Zarin & Steinmetz, 81 Main Street, White Plains, N.Y., - I am here to represent the applicants Mr. & Mrs. Klurfeld and Susan Reardon, their architect is also here to represent them. As you know this is a variance application that was approved in January of 2007. Construction started on a 22 ft. x 24 ft. addition. It is a variance only for two side yard variances. All other setbacks are compliant with sq. footage and Floor Area Ratio. It came to light that there was an error in the noticing of the January 10, 2007, ZBA Hearing, which resulted in a stop work order being issued. We have re-applied and we are here for the exact same variance that was granted on January 10, 2007. We have submitted a letter along with nine letters from the neighbors in support of the application. Construction has already started and approximately \$65,000.00 has been

invested so far for this construction. We are requesting that the Board re-approve the same variance that was granted on January 10, 2007. Ms. Reardon, the applicant's architect will explain why the applicant's need for this variance outweighs any detriment to the community.

Susan Reardon – We are adding a 22 ft. x 24 ft. one story addition. On Truesdale Dr. it will be one story and on the Nordica Dr. side it will be two stories because it is on a steep slope. We are looking for two front yard variances because the house abuts two streets. There will be a 16 ft. setback on the Nordica Drive side and a 18.2 ft. setback on the Truesdale side. It is only an 11% increase in the setback. I want to address the five factors. It will not create any undesirable change to the neighborhood. This house will be no closer than the average size of the houses in this area. It will be no longer or wider. The improvements to the roofing, siding and garage will bring the house up to the standards of their neighbors. The previous application called for a bay window which will now be two smaller windows which will improve the esthetics. If the area variance is not granted the only means the applicant would have would be to add a second floor which would be undesirable for two reasons. It would overlook the neighbor's and an elevator would be necessary and out of budget. It has less than 14% of the average Floor Area Ratio, so that is not an issue. It is only 11% closer to the property line, so the variance requested is not substantial. It will have no adverse affect on the neighborhood or environment. Once the construction is completed there will be little noticeable affect. Trees will provide screening. The new two car garage will face the neighbors three car garage. There will be many trees kept to keep the woodsy affect of the neighborhood. The hardship was created by the Village. The variance that was granted on January 10, 2007 was pulled back. They have \$65,000.00 invested in the starting of the construction. We hope they will not lose any more money and that they will be able to continue with the construction.

Pictures shown to board

Riedy – Your pictures reflect that there will be three windows on the Nordica Dr. side.

Reardon – Correct.

Riedy - There is a window reflected in the master bathroom and laundry area. Where is the third window located?

Reardon – The third window that we are adding is facing the woods.

Riedy – (Referring to plans) So this is the Nordica Side and there will be three windows on the Nordica side? Referring to Drawing - Drawing A-1.2 is the Nordica Dr. side that has two windows on the master bedroom and master bath. Is that what you are proposing?

Reardon – Correct.

Riedy – Drawing A-0.1 – Do you have any plans for plantings in front of the Nordica Drive area?

Reardon – Yes, three six foot evergreen trees.

Discussion followed over plans.

Reardon – I have additional photos of views. Would you like them

Riedy – Yes. For the Record.

Reardon – Referring to pictures - The view on Nordica shows the Klurfeld's house and the neighboring houses from the street level, not the house level.

Discussion followed over photos.

Reardon – The photos show the two garages will face each other. The house on Nordica Drive sinks down towards the river and the houses on the other side are up hill on Truesdale Drive.

Discussion followed over pictures.

Riedy – On page one that is a copy of photo #2?

Reardon – One and two. These are the views looking down on Nordica Drive – photo one and four on page two – you can see two garage doors from both neighbor will face each other. That is the extent of the addition the garage doors. On picture three, if you walk down the sidewalk that is the view of the property that you see. It is mainly woods.

On the last page, pictures 5 & 6 is walking farther down Nordica Drive and looking back into the property and back into the road.

Riedy– On page one- photo #2, is there anything you want to note there?

Reardon – Looking across the street where you see the end of the building into the wood on the Nordica side, that is where the trees will be planted as well. It will shelter the foundation. The rest of the trees will stay.

Stephens – New trees will be placed near the road or foundation?

Reardon - Near the road for screening. C & D are looking over the adjoining neighbor's property. You can see their roof line is below the street level. On the following page, picture 1 & 2 shows similar views.

Riedy – Photo A and B on page 5 where were they taken from?

Reardon – From the very end of the property. It really is not from the house.

Barlow – Street level?

Reardon – Yes. From the area shown in pictures 3 & 5. It shows the land falls steeply towards the river so every house across is from one level to the other.

Did you submit pictures to the Hashmall Firm? (Firm representing the Klurfeld's neighbor Nancy Kennedy).

Copy given to Norman Sheer. Attorney, Bank, Sheer, Seymour & Hashmall, 399 Knollwood Rd., White Plains, N.Y. who was present at the hearing.

Riedy – In your comments you mentioned the proposed size of the expanded home is not large by neighborhood standards and the Klurfeld's submitted a letter dated 10/17/07 to the Village Engineer's office that reflects the sq. footage (provided by the Village Assessor) of the homes in the vicinity.

Do you have copy of this letter and do you want to comment?

Copy was given to Ms. Reardon

Reardon – It is interesting that this addition will still be the second smallest house in the neighborhood. Sorry, the third smallest.

Riedy – You mentioned that the Klurfeld’s have expended \$65,000.00 so far. What for?

Reardon - Excavation, footing, concrete, steel, windows have been ordered, siding ordered and removed a door, footing drains.

Mr. Klurfeld - Fill has also been brought in.

John Camp, Contractor – Ms. Reardon has mentioned most of it. Footings, foundation, drainage, fill taken out and new fill brought in, siding, & footings. A substantial amount of work has been done.

Riedy – When did you begin construction?

Mr. Camp – Sept. 7th or 8th. It was after Labor Day. We also purchased a new boiler to accommodate the new addition.

Riedy – Mr. Klurfeld, I recall at the January hearing that in response to my question as to why you needed the new space you indicated your Mother-In-Law visits.

Klurfeld – She has since passed away and I have medical problems and I had open heart surgery. That is why there was a delay in starting the construction. So, from the time I met with the Kennedy’s, several years passed by.

Barlow – I was not here in January, but I was here in 2004. How does this plan differ from the one you submitted in 2004?

Klurfeld - The one in 2004 was to enclose the porch this is for an addition on other side.

Cross- There was another architect working on the addition at that time.

Klurfeld – The difference was the bay window was removed not to offend the Kennedy’s

Discussion followed over plans.

Riedy – Anyone else like to be heard?

Norman Sheer – Attorney for Nancy Kennedy – My client lives at 80 Nordica Drive. They live on the high side of the Klurfeld's house that looks down on their (Kennedy's) house. I do think you should understand the history of this property. This Board granted a variance for two front yards of seven feet each. It required twenty five feet. That in itself was an 88 % variance. The property was a pre-existing small lot short about 6 ½ %. They returned to the Board and asked for a series of variances for an undersized lot. I am not sure why, it was already a pre-existing small lot. Those variances were denied. However, a side yard variance was granted. In 2004 this lot already had three variances, a lot area, side yard, and front yard. Now the application is back before you. They are now asking for a 9 ft. variance from what is required. That is a 36 % variance, which is certainly substantial. The Kennedy's will speak as to what this means to them having this structure looking down on them. She does not believe the photos show correctly the location of the garage. It is taken from an angle. It is also unfortunate that this project has gone forward and affects my clients so directly. You need to determine who should bear the brunt of this mistake. Mr. Klurfeld spent money and we feel sorry for him. We also need to look at what impact it will have on the neighborhood and neighbors are here tonight to speak to that. Some said they have no problem, but they do not live across the street, and are not directly affected.

Riedy – Mr. Klurfeld raised the issue that the building permit was predicated on a variance that was fatally flawed and the Village concedes that the Village Statute was not met.

Sheer – That certainly is not one of the five factors your Board needs to consider. It needs to look at the variance that has already been granted and decide what you would have done if the matter came before you fresh.

Riedy – Assume for discussion that the Board looked at reasonable reliance.....

Sheer – I do not recall reasonable reliance in the issuance of a building permit. It is not one of the five standards that the Village Law requires you to address.

Kennedy – I live across the street. In 2004 I came before the Board and objected to the size and if properly notified I would have come to the January 2007 meeting and still object as to how it affects me personally. This addition lines up with my front door and this does line up with my two car garage. In 1961 neighbors did speak out and the neighbor who owned my house at the time spoke out and objected that it would be directly across from his house. The rear yard is Nordica where there is a garage and back basement door. It is nowhere near the property setback. This is only a manipulation to get the property setback as far as I am concerned. If we allow this, how can we as a

community say no to anyone else that wants a variance if it does not fit in this community. I challenged the square footage on all of them. The square footage that is listed for my house is incorrect and they are not disqualifying that document. I also think you can make the angles look anyway you want in the photos. The new foundation looks directly down at my property. Every day I would be looking down at this.

Riedy – Requested the applicants architect to give Mrs. Kennedy the green photo board to refer to.

Kennedy - It is all how you look at it and interpret it. Photo C – looking down, is what I would see and keep in mind, it will be two stories up and photo #2 is looking down on photo C.

Cross – Attorney for Mr. Klurfeld to Ms. Reardon the applicant’s architect – Is that accurate?

Reardon – Yes.

Kennedy – One letter I received today made reference to eleven neighbors within two hundred feet and it makes reference that my house is within one hundred feet. I do not see how other neighbors are within two hundred feet that are cited here.

Kennedy – The plans mention screening the new addition from neighbors to the south. I am not at the south only the Maccodo Inn. I am the only one affected. During the hearing in January there were several misrepresentations made such as there were several meetings with me and we met with the previous architect and approved the design. I met with Mr. Klurfeld and he tried to get me to agree and sign off and I never approved it and there is also a letter in file from the previous attorney that says he could never get me to agree to the design. So, that is why I object to that. If properly notified I would have been there in January objecting. As soon as I found out I took steps to get us to this point today. I am sorry we are here. Two wrongs do not make a right.

Barlow- We have a letter from September 8, 2004 stating your objection. It asked the Board to limit the number of windows and provide screening. At that time, changing the windows and providing screening appeared to have satisfied your concerns.

Kennedy – Not satisfied, but brought to a minimum. I had to meet with the neighbors but I continued to object and do not feel it should be built.

Barlow – But in 2004, it appeared you would have no objection if screening was provided and windows removed.

Kennedy – Not what is there today, it is the addition that is built on top of it, looking straight down at my property.

Anyone else like to be heard?

Carol Shannessy – I am part owner of the Macodo Inn that is next to the Klurfeld's property. I feel bad it has come to this point. I agree the proposed addition is way too big for the lot and very unattractive. It is the pitch of the land, not just the house. The Mikado Inn is one story and Mr. Klurfeld is next to it. I also feel we are setting a precedent for this. How can you grant a variance if a precedent like this is set? I am not happy for my building. It is so big for the lot.

Riedy - Anyone else like to speak?

Cross – Regarding this will set a precedent, if you look at the shape and location of this lot it is unique, not many lots have two front yards. Zoning says this has two front lots. That is not something my client created and should not come into play at all. I do not understand how having a house facing another house is a detriment. I would like Mr. Klurfeld to address some issues.

Klurfeld – On the advice of my physician he suggested I not appear. But I am breaking his rules. I am not in the real estate business. We have been here forty five years. We have petitions from nine neighbors in support of this application. One of whom I went to tonight and he wrote a very strong letter in support of this. The property that I have will extend sixty six feet, so both the Maccodo Inn is in the 5,000 sq. foot range, and Kennedy is 5,000 sq. ft. My doll house is 1,000 sq. ft. I do not think it is asking too much to be able to entertain my family. My so did speak to Mrs. Kennedy two weeks ago and she kept repeating, it is too big. I do not understand it. It is smaller than hers and in keeping with the neighborhood and it is one of the tiniest in the neighborhood. Someone mentioned how property on Morningside Drive got into the picture the way she is situated. I did not expect Ms. Shannessy from the Mikado Inn. She invited me on some of the customs telling me it is customary to keep neighbors updated. My architect met with Mrs. Kennedy and agreed and shook hands. I did not realize I would need a secretary to take notes. I had a lot of medical problems and could not go ahead with the construction. I hired another architect and she incorporated everything we were talking

about and the beautiful bay window facing the street that she (Kennedy) fronts. We are not next to each other. She is way down. I remember someone at the last meeting asking me if I used a telephoto lens. I am not accustomed to that. She has a three car garage and I have a lovely view of five cars. If my son comes to visit from Boston I would like him to be able to pull into a garage. Is that asking too much? Every property owner abutting mine got a notice and she decided not to appear.

Riedy – The Board has consulted with the Village Attorney, James Staudt, regarding noticing under Village Code. In fact the required number of people were not notified.

Klurfeld – I am not surprised that she was not here because we resolved what we thought were most of the complaints.

Riedy – one complaint is the windows on the north side. Would you entertain making them smaller?

Klurfeld – We already addressed that. It was to be a huge bay window we made it small.

Riedy – would you also consider making the proposed windows smaller?

Klurfeld – Smaller? They are miniscule windows.

Reardon – On the Nordica side it will match other house windows, double hung, 38 x 48. We kept them small to match the rest of the house. There is one in the master bedroom and one in the master bath, but mainly it is wall.

Klurfeld – When we came three years ago one point Mrs. Kennedy made was that she moved to that house to get privacy. She has an open iron gate that anyone walking a dog can look right over her gate and see into her bedroom. So I do not understand the issue of privacy.

Klurfeld – I thought there were pictures submitted showing where the new garage will be and you do not even see her house from those pictures.

Reardon – (Submitted the pictures Mr. Klurfeld was referring to. (the pictures were originally submitted with the application)

Barlow – To Mr. Klurfeld – According to the transcript of the January meeting you said “I feel we have satisfied her demands for privacy and I have discussed it with Mrs. Kennedy and she seemed pleased”. So, you were truly under the impression she was satisfied.

Klurfeld – Maybe she did not remember the meeting, but we discussed it and shook hands.

Barlow – The attorney’s letter states Mrs. Kennedy was not convinced of the plans.

Klurfeld – He thought there would be a higher ceiling and a big bay window and my architect incorporated all these point into the new plans and we discussed it with Mrs. Kennedy in November of 2006 in her office.

Barlow – So, November you went over the new plans with the attorney in the office?

Klurfeld – Yes and we reduced the size as well. We met with Mrs. Kennedy and made revisions to the roof and agreed on twenty five feet and we changed it to twenty four feet and added the plantings for screening. We shook hands and she recommended a contractor. We lowered the roof and changed the windows and that is what happened in her office and there were three adults in her office. It was not he said, she said, and the changes were made. Me, my wife, and Roger Blaho, Architect, were at the meeting and we made changes accordingly.

Cross – Mrs. Kennedy mentioned an issue with the square footages. I just want to point out that the figures are the village figures, not Mr. Klurfeld’s numbers.

Mr. Sheer – The Village should not get side-tracked on who said what. It is easy to get sidetracked on neighbor’s feelings. The building is six feet short of what is needed. The 2004 application asked for a slightly larger front yard variance. In essence this is the same application this Board denied in 2004 and we are asking for you to deny it again this evening.

Riedy – Anyone else like to be heard?

There was no reply.

Hearing Closed.

Stephens – Made Motion to grant the application as submitted with the condition that screening & windows will be provided according to the plans submitted.

Waitkins – Second the Motion

Vote: 3-2 – In Favor – Stephens, Waitkins, Olcott
Against – Riedy, Barlow

The Board requested to take a five minute break before continuing with the other hearings on the agenda.

Riva Mittleman, 14 Ridge Road. Located in a RA-5 District and designated on the Tax Maps of the Village as Section 79.09 Block 1 Lot 45. Request for a height variance for a new retaining wall that will replace existing wall.

Mittleman – We moved here in 1998 knowing it had a large retaining wall that would need to be replaced soon. It lasted nine years. There was no need for it to be replaced until now. We discussed it with the contractor and the design that we would like is prefabricated stone blocks following the contour of the land back to the house. The total height may be a little high. We would want it to go as high as fifteen feet. It is on a slope and the current wall is twelve feet at the highest point and farther back it is a three foot wall. We are merging it with the other wall and it will be closer to the house. AT one end it is five feet from the property line and at one end it is on the property line. There is an oak tree that we would like to preserve. We are replacing 4/5 of the wall and replacing it with stone blocks. The oak tree is on the left side. On the south side the original railroad tie was built over on the neighbor's property line. We want a new stone wall to go on the original property line. I spoke to my neighbor about this outlining. We will not be bringing the wall over the property line. The original wall is still there supporting their wall. I do not feel this is our responsibility to repair their wall. If they want us to fix that portion of the wall we will and finish it off. We need to discuss that with them. That portion will be a railroad tie. We will end the stone block on ours. I do not think they want stone block on their property.

Riedy – What color block?

Mittleman – Light and stone.

Riedy – The neighbors have also asked to be informed when work begins on the wall. You have no problem with that?

Mittleman – No.

Riedy –They also wanted drainage addressed because drainage is going on their property.

Mittleman – When they built their property next door it was re-routed. It is also on our plans to re-route it so no drainage will go onto their property. That is one of the notes on the engineers drawing.

Barlow – Where will you drain it to?

Mittleman - In the back of our house there will be drains in the wall and it will go into the woods.

Barlow – Whose property is that?

Mittleman - I was told it is a park.

O’Connor – On the left side on Ridge Road, how many houses are there?

Mittleman – There is the new house and then our house.

O’Connor- So you are next to the new house on the end?

Mittleman - Yes.

O’Connor - The details shows blocks and you are proposing to install plants?

Mrs. Mittleman – It will be every other block with plantings on top.

O’Connor – They say planter blocks every other block. Two blocks directly on top of each other and than the other block will be the slope back.

Riedy– What Section of the Code are we talking about?

O’Connor – Accessory Structure. Fifteen feet in height and five feet or more from the property line. This is on the side line and rear line. It is hard to see from the plan it may be right on the line or one half foot away.

Mittleman - At one end it is right on it and then it goes about one foot away.

O’Connor-A wall, if over 6 ½ ft. high, it is considered an accessory structure, if under, it would not be considered an accessory structure. An accessory structure requires a five foot setback. It looks like, but I can’t measure it, that it is right on the property line. We would have to say according to plans. It still needs to be reviewed during the permit process, but the application will not change. .

Riedy - Any other questions?

Hearing closed.

Riedy – Made motion to grant a variance to allow a 15 ft. high retaining wall to replace the existing wall according to plans submitted and with the following conditions:

The applicant agrees to be responsible for repairing the portion of the neighbor's timber wall that ties into the applicant's wall.

Stephens – 2nd the motion

Vote: 5-0 In Favor – Riedy, Stephens, Waitkins, Barlow, Olcott

Melvyn & Amelia Howard, 98 Penfield Ave. Located in a RA-5 District and designated on the Tax Maps of the Village as Section 79.09 Block 10 Lot 34. Request for a total side yard variance with respect to a garage. (Hearing was in September until 10/10/07).

The Board acknowledged receipt of the following letters they received in addition to the application and made them part of the record:

Letter dated October 8, 2007, to the Zoning Board, from Kenneth & Jane Laudon.

Letter dated September 10, 2007 to the Zoning Board, from Lori & Michael Noel, 90 Penfield Ave.

Letter dated September 8, 2007 to the Zoning Board, from Michael & Abby Spitzer, 119 Penfield Ave.

Letter dated October 10, 2007 to Zoning Board, from Daniel Howald, 103 Penfield Ave.

Letter dated October 9, 2007, to Zoning Board, from James & Nancy Guerette.

Gerald Klein, Katz & Klein, 202 Mamaroneck Ave. White Plains, N.Y. – I represent the Howard's the owners of 98 Penfield Ave. We are here for a side yard variance. On the south side of the property is a den, which is the subject of our request for a variance. The Village Engineer has determined and given his opinion that the property is composed of three lots 50 ft. x 125 ft. and the house on the south would be the same. Given the opinion of the Village Engineer, the home is composed of three lots. The home was constructed 1962. There will be a requirement for a total side yard of twenty feet and

one side yard being at least eight feet. On the north side where the screen porch is located the porch will be removed, so there is no issue on the side. This evening we are requesting you to issue a variance on the south side. In order to accommodate the middle lot being a separate lot we would need a 6.75 ft. variance along the southerly side. The other lots are vacant as we speak today. As we talk about the five factors for consideration these factors are; how it affects the neighborhood as it relates to the garage and den. If they were to cut back the garage by six feet there would be no necessity for the variance and the middle lot would be conforming and their lots would be conforming and in compliance with the Zoning Code. So the issue for the Board to deal with in consideration of the five factors is what affect the 16.75 feet would have as it relates to that encroachment on the side yard that would only affect the lot to the south which is the vacant lot. At the time they were to develop they would know in advance of the existence of these variances. Therefore, it is our position that this situation has existed for seventy or more years and therefore, no created by the Howard's. It will only affect the lot immediately to the south. We feel it would be a severe requirement to cut back six feet from the garage if the Board were to deny our request. That is the basic layout of our application.

Stephens – What would the hardship be if the variance is not given?

Klein – The garage and a portion of the den would have to be removed and renovation of what was left as well as the cost.

Stephens – Would the garage still be usable?

Klein – Not in the sense of the parking of vehicles. My clients park in the driveway not the garage. It is used more for storage.

Riedy – looking at topographical survey is there a Certificate of Occupancy for this house?

Klein - It pre-dates Zoning.

Riedy – is there a predate letter in the file?

Klein – I don't know.

Riedy– looking at the survey it looks like it is marking the original Harmon lots with respect to lots 22, 21 & 20 as noted on the Harmon Lots. You want a variance so the existing garage can remain?

Klein - Yes.

Riedy – The existing garage is how close to that lot # 20 lot line?

Klein – 6.36 ft.

Riedy – And there has to be twenty feet for total side yard and 8 ft. for one side yard?

Klein – Yes.

Riedy - Assuming that it is taken down, it will be in line with Lot #23, so your impediment and shortcoming is the lot #20 lot line.

Barlow – Did you measure the lot line to the house?

Klein – Yes. I measured it myself 8 ft.

Riedy – If there was a prior to zoning letter you would not be here.

Klein – I do not think so. I do not think it would have been viewed as a middle lot for itself.

Riedy – You made reference in your application to a letter from the Village Engineer (August 11, 2006). I do not have a copy.

Klein – submitted a copy.

Riedy – Does anyone have this letter?

Letter was passed around to members to review.

Riedy – How do you address their contention that this would be predicate by allowing this? If this application were denied would that render lots # 19 and #18 undevelopable?

Klein – It would mean my clients would need to consider knocking down six feet of the garage and den. It would not be predicate they are already separate lots.

Olcott – What if a point were made that the sale of the house would re-coup the cost of demolition of the portion of garage and house?

Riedy – Mr. Klein, some of us are reading the letters that were not submitted to the Board until this evening and there are neighbors that would like to be heard. Then I will call you back.

Klein – OK.

Riedy – Anyone else like to be heard?

Jim Guerette, Esq. 100 Penfield Ave.– I own property directly to the south of the property described by the applicants Attorney. I assume all of the Board Members have received my letter. All of the points made in there need to be read by everyone before making a decision on this matter. A number of points were made by the applicants Attorney. They say there are three lots from a sub-division many years ago. It lists the lots as a single meets and bounds description. This also existed prior to the Harmon sub-division. Maybe there is other history of this lot and whether they are legal lots. We know the applicants Attorney claims states they said there are three lots from a sub-division many years ago. It lists the lots as a single meets and bounds description. Why the single meets and bounds description? Maybe there is other history. I think this variance should not be granted until we check the history of this lot and whether they are legal lots and that we know it is in fact what it is being claimed to be. The second thing is that the applicant's attorney makes claim that you need to consider the five factors only based on the middle lot. Where in the Village Code does it say that? It says to be able to promote the health, welfare and esthetic welfare. You are obligated to consider the affect on the neighbors, environmental impact, etc. In no way does it say it considers the lot. You are in no way obligated to view this in that manner. The applicant has not done anything but make claims that a major detriment would occur, but the purchaser would automatically know that was the case.

Pictures were held up to show the Board the outline of the neighborhood.

Guerett - The pictures show that every single lot is not squeezed in and does not have substandard side yards.

Riedy – Are these photos included in your letter and does everyone have a copy of the letter?

Guerette – Yes. Eight percent of these lots are not these tightly sized lots. On this chart you can show how many lots on the block are larger. If this variance is granted you are giving the applicant a ticket to completely change the character of the neighborhood. Whether they can do it by making some other alteration...but they should not be granted the variance based on this application. They purchased it as a single residence and it was always listed with a single meets and bounds description. So, how does that not apply to them as far as getting this variance? It will be a sub-standard neighborhood. With respect to it cannot be achieved by some other means, this benefit does not go to them so they can have more esthetic, habitable living space to create a windfall. I would not say that this is the intent of the Village Zoning Code. The application requests a six foot

variance that is fifty percent of the side yard setback. That alone is sufficient basis to deny the application. The structure at issue is a garage and den. It is an imposing structure. It is not insignificant. A perspective purchaser should be able to rely on the Village Code. Section 230-2 says the purpose of the Zoning Law is the elimination of non-conforming uses not the encouragement of them. It should protect them from that detriment. The condition has existed many years they said, but again, it does not say no adverse affect. It is a short dead-end street. You have kids playing ball, riding bicycles, scooters, etc. it will exacerbate the situation. There are no turn arounds on that street. One important element is that there is actually a ravine behind all these properties. On the applicants survey you can see the steep slopes. It is a ravine that runs down to the duck pond. A letter from a neighbor says there is natural run off that leads to the river. None of that has been addressed by the applicant. The purpose of the letter is that the village has already determined there is problem. On our property to the north rear side, we have a retaining wall. There has been no indication from them that these issues would be addressed. They said it was not self created. Buyer be aware. They know it did not meet the bulk requirements and when the property was transferred it was transferred as a single family residence with single meets and bounds description. It is totally self-created. It is impossible for me to see how the granting of this variance will be consistent with the facts of the application and the Zoning Law. This will irreparably be degrading the neighborhood and the Harmon District if not the Village in whole. This Village Code is intended to protect and preserve. It is not for the applicant to create a windfall. For these reasons we strongly urge that this application be denied.

Riedy – Appendix “D”, what is this?

Guerette – That is a Google Map I can’t explain that. Ken created it.

Ken Ladden – 124 Penfield – The picture of that house is in the pictures we sent to you. It was built 1906. It is situated next to us. You can see it on the Tax Maps and the elevation maps. That is a property that is also 4,000 sq. feet on a 200 ft. x 125 ft. lot. The Simone's lot is 125 ft. x 75 ft. There is a satellite image of Penfield Ave. and two adjacent streets. The Simone’s is one thousand sq. feet on a 200 ft. x 75 ft. lot. There is a landscape view and a satellite view. The properties are quite large and low. The adjacent streets to the west and east you can see the housing density situation on standard lots, not substandard lots. If the applicant is allowed this variance what will happen is the density of those lots and the property value of our lots will decline. The reason for the assessment is research and literature. What you find is the single largest factor in determining the density of the surrounding block. The value of my property, the Spitzer’s property and even the Howard’s property will decline. We have purchased a derelict house and a considerable capital was invested to restore it. Many neighbors have made similar investments and will be similarly affected and our value of our

neighborhood will decline. The applicants will also receive a windfall and we do not feel the Board should allow this to happen. One mission of the Zoning Board is to preserve the property value and to keep the lots standard not substandard. The variance that is requested will create at least one substandard lot.

Riedy – Anyone else like to be heard?

Thomas Simone – 160 Maple and 91 Penfield. I am the representative of the oldest remaining original family on that block. The Elliott's are the aunt and uncle of the previous Mayor Elliott.

Mr. Simone stated that he grew up in that area he is familiar with the property and the Nelsons who lived across the street. He also stated that there are others that know the property well. He also stated that when he was growing up everyone he played with had a bigger lot.

Simone – I hope the Board will consider that that neighborhood should be preserved and that house should be preserved. I would hate to see that house cut in pieces to make the neighborhood a lot less pleasant and I hope the Board will take that into consideration. I used to play in that ravine they referred to and the stream that goes into the duck pond. I would hate to see that whole area being changed. I think it is also the only natural forest that is left and also the wild flowers.

Riedy – Is there anything else with respect to this application that you would like to say?

Simone – It would change Zoning.

Riedy – Anyone else like to be heard?

Jane Lowden – 124 Penfield – There are people who did not present a letter and Mr. Rossman left the meeting early. It would be a shame to cut up the property. We are directly across from the empty lot. Mary Pound around the corner on 98 Onieda Ave., their children play on scooters. I would be disappointed if it changed. When surveying the lot the surveyor said he wants to put three lots, but I don't see that.

Riedy – Do you share the same sentiments that were previously shared?

Lowden – Yes.

Theodor Simone. – I also share 91 Penfield – I grew up playing in that house and on behalf of that house please do not let them remove the garage and den portion it is glorious.

Thelma Feldman – My neighbors and I agree with what they said.

Stephen Goe – 120 Penfield Ave.. – I concur with everything that was stated in opposition of this development. We purchased our property in 2005. At the time we purchased one of the decisive factors was the neighborhood itself, low density housing. We have twins two years old with health issues. Traffic issues were a concern. One child has Cerebral Palsy. On a legal issue that came to my attention after seeing a more detailed survey, it conflicts with the survey that I have of my own property. The North property line looks a little farther north than the survey I have of my property. That brings questions of minimum requirements for these three developments. The previous owner shows that the property line, the fence and the hedge, was slightly inward of lot #25. I would say these surveys need to be called into question. At this point we have three different surveys with three different points of view and we need to determine if these lots are developable lots. I feel this is an unfortunate situation. People tend to stay in the neighborhood and we intend to raise our children here and our opposition should be as valuable...

Mr. Spitzer - 118 Penfield Ave.– We moved here in 1973 or 1974. We thought there would be no further development, so we did not know what we were getting or what we thought we were getting. We have been offered to sell one of our lots and we said no that we want to keep it as is.

Klein – I ask the Board to keep in mind the nature of our application and the comments received from the neighbors seem to be don't subdivide. This is a Zoning Board, not Planning. If it was a sub-division it would be before the Planning Board. If my client were to demolish the garage and den we would not even be before you.

Mr. Klein, pointed out that some of the property owners in the area also have multiple lots and have preferred to keep their home on the larger lot and that is a valid opinion for those persons to hold.

Mr. Klein – If it is zoned for a 50 ft. x 100 ft. lot, that is what my client has for these three lots. So, that is why we request that you bear in mind that you are talking about a variance not a sub-division.

Neighbor – what about the surveys not being correct and the drainage that goes right into the Hudson River?

Gurrett - They would have you believe that the Zoning Law means they can take that lot and do whatever they want. It does not. It has ruined the health safety and esthetic

values. That is what we are talking about tonight. We are talking about the Law and the Five Factors. He is not talking to that and this variance impacts on that. This completely goes against what the Village Law says. I think it is important for you to respond to that. I think you should read the Village Code with respect to this.

Klein – As to the letter from the Village Engineer, that was being circulated, may I see that?

Mr. Klein was given a copy of the letter to review and it was agreed that a copy would be given to him.

Hearing closed.

The Board agreed unanimously to hold the decision over until the next meeting.

Ronald Napolitani, 379 So. Riverside Ave. Located in a C-2 District and designated on the Tax Maps of the Village as Section 79.13 Block 2 Lot 36. Request for a front yard, side yard, height, and floor area ratio variance with respect to Section 230-35 of the Village Code and for a variance with respect to Section 230-35 & 230-42.1 of the Village Code with respect to parking.

Ronald Napolitano – I feel it is an undue burden to put this application before the Zoning Board at this time. I may not need the variances that I am proposing. I am going to address my plans with the Planning Board first. Therefore, I would like to withdraw this application.

The Board unanimously agreed to withdraw the application.

Application withdrawn.

Respectfully submitted,

Janice Fuentes
ZBA Secretary
10/10/07

RESOLUTION

Jeff & Karen Thornton, has applied to the **Zoning Board of Appeals** of the Village of Croton-on-Hudson, Requesting a Re-instatement of a variance that was granted on July 12, 2006 and expired on July 12, 2007, with respect to a proposed construction of a two-car garage and Section 230-40(b) of the Village Code.

The property, at 100 Upper North Highland Ave., is located in a RA-40, District and is designated on the Tax Maps of the Village as Section 68.13 Block 1 Lot 15.

A public hearing having been held after due notice, this Board from the application and after viewing the premises and neighborhood concerned, finds:

There will be no undesirable change to the character of the neighborhood or detriment to nearby properties.

There were letters submitted from the neighbors stating they had no objections.

The proposed variance will not have an adverse affect on the physical or environmental conditions of the neighborhood or district.

NOW, THEREFORE, BE IT RESOLVED, that the application to re-instate variance granted on 07/12/06 is hereby **Granted** as follows:

Waitkins – Motion to grant the application as requested and according to plans submitted.

Stephens – 2nd the Motion

Vote: 5-0 In Favor – Waitkins, Stephens, Riedy, Barlow, Olcott

10/10/07

According to Section 230-164 (E), “Unless work is commenced and diligently prosecuted within one (1) year of the date of the granting of a variance or special permit, such variance or special permit shall become null and void”.

RESOLUTION

Carl & Sally Barnes, has applied to the **Zoning Board of Appeals** of the Village of Croton-on-Hudson, for a front yard variance with respect to the proposed construction of a front porch..

The property, at 10 Morningside Drive, is located in a RA-9 District and is designated on the Tax Maps of the Village as Section 79.09 Bock 6 Lot 46.

A public hearing having been held after due notice, this Board from the application and after viewing the premises and neighborhood concerned, finds:

There will be no undesirable change to the character of the neighborhood or detriment to nearby properties.

There were no objections from the neighbors.

The variance requested is not substantial

The proposed variance will not have an adverse affect on the physical or environmental conditions of the neighborhood or district.

NOW, THEREFORE, BE IT RESOLVED, that the application is hereby **Granted** as follows:

Waitkins – Made Motion to grant a 4 ft. side yard variance and a 7 ft. front yard variance according to plans submitted.

Stephens – 2nd the Motion

Vote: All In Favor – Waitkins, Stephens, Riedy, Barlow, Olcott

10/10/07

According to Section 230-164 (E)), “Unless work is commenced and diligently prosecuted within one (1) year of the date of the granting of a variance or special permit, such variance or special permit shall become null and void.

RESOLUTION

Riva Mittleman, has applied to the **Zoning Board of Appeals** of the Village of Croton-on-Hudson, for a height variance with respect to a proposed retaining wall that will replace the existing wall.

The property, at 14 Ridge Rd, is located in a RA-5, District and is designated on the Tax Maps of the Village as Section 79.09 Block 1 Lot 45.

A public hearing having been held after due notice, this Board from the application and after viewing the premises and neighborhood concerned, finds:

There will be no undesirable change to the character of the neighborhood or detriment to nearby properties.

There were no objections from the neighbors. The applicant agreed to repair a portion of her neighbor's wall that ties into a portion of the applicant's wall.

The proposed variance will not have an adverse affect on the physical or environmental conditions of the neighborhood or district.

NOW, THEREFORE, BE IT RESOLVED, that the application is hereby **Granted** as follows:

Riedy – Made motion to grant a variance to allow a 15 ft. high retaining wall to replace the existing wall according to plans submitted and with the following conditions:

The applicant agrees to be responsible for repairing the portion of the neighbor's timber wall that ties into the applicant's wall.

Stephens – 2nd the motion

Vote: 5-0 In Favor – Riedy, Stephens, Waitkins, Barlow, Olcott

10/10/07

According to Section 230-164 (E), “Unless work is commenced and diligently prosecuted within one (1) year of the date of the granting of a variance or special permit, such variance or special permit shall become null and void.

RESOLUTION

Robert Klurfeld, has applied to the **Zoning Board of Appeals** of the Village of Croton-on-Hudson, to appeal for two front yard variances with respect to a proposed addition.

The property, at 90 Truesdale Drive, is located in a RA-9 District and is designated on the Tax Maps of the Village as Section 79.09 Block 5 Lot 10.

A public hearing having been held after due notice, this Board from the application and after viewing the premises and neighborhood concerned, finds:

The benefit sought by the applicant cannot be achieved by any method, feasible for the applicant to pursue, other than an area variance. Upon review of the 2004 and 2007 proposed plans, it is clear that the applicant made concessions to the neighbors in opposition by decreasing the size of the addition, replacing a proposed bay window with two smaller windows, and the applicant further agreed to provide screening as indicated on plans that were submitted in 2007.

Due to the applicants need for the addition because of health issues, the alleged difficulty was not self-created and denial of the application would cause a hardship to the applicant.

The proposed variance will not have an adverse affect on the physical or environmental conditions of the neighborhood or district.

NOW, THEREFORE, BE IT RESOLVED, that the application is hereby **Granted** as follows:

Stephens – Made Motion to grant the application as submitted with the condition that screening & windows will be provided according to the plans submitted.

Waitkins – Second the Motion

Vote: 3-2 – In Favor – Stephens, Waitkins, Olcott

Against – Riedy, Barlow

10/10/07

Draft Resolution Filed: 10/12/07

Final Approval: 11/14/07

According to Section 230-164 (E)), “Unless work is commenced and diligently prosecuted within one (1) year of the date of the granting of a variance or special permit, such variance or special permit shall become null and void.

