

DRAFT FILED: 11/20/07
FINAL APPROVAL: 12/12/07

VILLAGE OF CROTON-ON-HUDSON ZONING BOARD OF APPEALS
MEETING MINUTES OF NOVEMBER 14, 2007

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

ALSO PRESENT: Joseph Sperber, Asst. Bldg. Inspector

The meeting came to order at 8:00 P.M.

APPROVAL OF MINUTES:

10/10/07 – Stephens made motion to accept the minutes
Waitkins – 2nd the Motion
Vote: 5-0 – In Favor

DECISIONS HELD OVER:

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 took place on 10/10/07 and Decision was held over until 11/14/07.

Kathleen Riedy, Chairman, acknowledged receipt of a letter from the applicants Melvyn & Amelia Howard requesting the Board to re-open the hearing to address their letter. The Board was also in receipt of a letter from a neighbor James R. Gurette, Esq. objecting to the applicant's request without scheduling and noticing another hearing.

The Board discussed the applicant's request and their concern with respect to making a decision without prejudice due to the fact the Board had already reviewed the letter. However, the majority of the Board agreed that everyone concerned had an opportunity to comment and express their concerns at the October 10, 2007 hearing. The hearing was officially closed on October 10, 2007 and only the decision was held over until the next meeting on November 14, 2007.

Waitkins – Made Motion not to re-open the hearing as requested by the applicant.
Olcott – Second the Motion
Vote: 4-1 In Favor - Waitkins, Olcott, Riedy, Stephens
Against - Barlow

HEARINGS:

Christopher O’Keefe, 38 Farrington Rd. Located in a RA-5 District and designated on the Tax Maps of the Village as Section 78.08 block 3 Lot 51. Request for an interpretation of Section 230-40 & 230-40(E)(1) of the Village Code with respect to an existing fence.

Kathleen Riedy, Chairman of the Board recused herself from the hearing stating that prior to receiving the application and letter from William & Donna Jacob, in opposition of the application she had once represented William & Donna Jacob. Therefore, she was recusing herself from the hearing and appointed Rhoda Stephens as Acting Chairman for the duration of the hearing.

O’Keefe– I am coming before you to clarify the Village Code. I have two different answers on the same issue. There is a letter from Joseph Sperber, Asst. Bldg. Inspector that was submitted with the application. About one year ago I contacted the Village Engineer’s office and told them what I was proposing to extend the existing fence in length and was told my proposal complied with the Code at that time. In order to remain in compliance the fence has to be 6 ft. in height.

Discussion followed with respect to how the height of a fence is measured and If it is measured from grade and if posts are included when measuring the height of a fence and how solid the fence is.

Mr. O’Keefe also pointed out that the Village Code has no definition of a fence and therefore he went to the dictionary and felt the dictionary’s definition of a fence was very clear.

O’Keefe – Approximately two months ago I was going to install a separate fence due to issues with other property owners and now I am being told it does not agree with the Code. I am asking the Board to tell me the definition of a fence and if it includes lattice and posts or just the fence. I was given a Code violation and I do not believe I am against the Code. I was given an appearance ticket and I think the decision was somewhat arbitrary. (Mr. O’Keefe read Section 230-40 & 230-40 (E) (1) of the Village Code). My fence is less than twenty five percent solid. If you look at Exhibit D you will see it is actually under twenty five percent solid. I was told that the posts were part of the fence and that is how it has to be measured. Are posts included in the measurement? If not it will be Exhibit E. I want clarification of the definition of a fence. Does it include

posts and lattice and everything in between or is it the interpretation that I am being told now, which is different than what I was told one year ago. That is somewhat arbitrary and capricious. That is not the intent of the Code. I want a definition of the Code and then maybe when I go back to the court I will not be in violation. If I am in violation then I need you to give me clarification.

Stephens – Are the posts permanently in the ground?

O’Keefe – It is a solid fence.

Stephens – Is it solid?

O’Keefe – I don’t understand what you mean by permanent.

Stephens – Can it be removed?

O’Keefe – No. You can also see it in Exhibit F or A, I am not sure. You can see it is a completely separate structure.

Barlow – If we were to determination that is not in your favor are you also looking for a variance? Why did you put up the fence?

O’Keefe – My neighbor is heckling me about shrubbery etc. It seems to be an issue going on in the neighborhood.

Stephens – Is the issue the shrubbery between.....

O’Keefe – It is between the shrubbery and the stockade fence.

Discussion followed over the location of the fence and shrubbery and trees.

O’Keefe – I came to the Engineering Dept. last year to be clear on what the Code allowed and how far it should be from the property line, etc.

Barlow – There was no issue with you extending it 25 ft.?

O’Keefe – No.

Stephens – So, you actually have two fences? That was a stockade fence?

O'Keefe – The lattice is under twenty five percent solid. So, it is in compliance. I am not in violation of the Code.

Waitkins – Is it attached to the other fence?

Barlow – According to the Code for a building it is always measured from grade. Why would it be different for a fence?

O'Keefe – I am agreeing with you. But, are the posts included? I think the six foot rule is for fences that are more than twenty five feet solid. This is under 25% solid. The Code does not give any height limitation for anything under 25% solid. The lattice is less than 25% solid. The Code states fences or wall with a height in excess of six (6) feet and more than 25% solid should conform to the requirements for a building. I do not think I meet that. It does not say that the fence has to be evenly spaced throughout.

Stephens – Are you saying the posts are not part of the fence?

O'Keefe – No. That is what the Building Dept. is telling me. That is why I am being cited. I think you measure at grade. Then I am in compliance. They are not measuring from grade but from the bottom of the lattice.

Barlow – I would like to hear from Mr. Sperber from the Engineering Dept.

Sperber – I think I am clear with what I wrote. If the Code did say to measure it from grade there would not be a problem here at all. The bottom of the lattice is six feet from grade. We do not think that can be included as part of the solid area.

O'Keefe – How would you measure a solid fence?

Sperber – As defined by the Code. Not more than 25% solid or six feet from grade.

Stephens – It is not just the current engineer and Mr. Sperber who is defining it as such, it has been defined that way by every Village Engineer.

O'Keefe – You are applying this definition to one half of this Code and not to the second half of the Code. You cannot pick and chose. I am not disagreeing with the Engineering Dept. but you have to apply the definition to the whole Code.

Stephens– He has given the same definition for many fences so he is not being arbitrary and capricious.

O’Keefe – I do not think he is being arbitrary and capricious to me but to the Code. You can’t pick and chose. It has to go across the whole Code. You need to apply it to the whole section.

Barlow – You have two fences that essentially form one barrier. You say because you put the other fence behind it you are making a barrier ten feet high and only the top part of the fence is measured. But, the bottom is solid.

O’Keefe – If you look at the pictures it is not solid. All anyone of us can do is literally interpret the Code. It clearly says... if you take that one section of the fence it is clearly not over 25% solid. What are you doing with the other half of the Code?

Discussion followed over the Code.

Barlow – From the other side it looks like a single barrier.

O’Keefe – But, you can see clearly from my side that it is not. If you measure from grade on up then it is in violation of the Code. They clearly are two separate structures. They did not say it was the same fence. They issued a citation for the new fence.

Stephens – Because of the citation I did a little extra homework because in the Code there is no clear definition of a fence, so I went to the Black’s Law Dictionary (6th Edition) to get a legal definition of a fence. It states a hedge, structure, or partition, erected for the purpose of enclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two contiguous estates. That is the legal definition.

O’Keefe – And I think I am not contending that mine is not a fence. Where do you measure it from? That is what it comes down to.

Stephens – I also thought, if it were to be stated, that this is really not a fence, then I went to another definition of a wall. The Black’s Law Dictionary (6th Edition), which states, Wall – An erection of stone, brick or other material raised to some height, and intended for purposes of privacy, security, or enclosure.

O’Keefe – Then it is clearly not a wall.

Stephens – We have different interpretations of whether it is a fence or a wall, measured from grade, etc.

Olcott – You said you were getting misleading information from the Building Dept. Did you propose the second fence to the Building Dept?

O’Keefe - At first I wanted to extend the existing fence. I just wanted to make sure it was in compliance of the Code.

Olcott – Did you go back to the Building Dept. for an interpretation before you put it up?

O’Keefe – No. In essence they said it applied to the first section but not the second. So, I am getting two different interpretations. If it is measured from grade, I agree. If not measured from grade, then the other Section of the Code should not be measured from grade either. You can’t pick and chose what applies.

Stephens - If it starts up here and its open down here...(referring to pictures submitted with the applicant’s application).

Discussion followed over open space in fences and if it is considered part of a fence and how it relates to the Code and if something might have been left out of the Code when the Code was changed..

O’Keefe – From what I recall they just changed the height of a fence from five feet to six feet.

Stephens – Any other questions?

O’Keefe – excuse me I would like to interrupt. We are here for an interpretation of a fence, so I would like to ask that we limit the comments to the interpretation.

Donna Jacob – 38 Farrington – Referred to pictures and the height of the fence and stated that there are also trees that were planted at the same height and at the same time the fence was installed. Ms. Jacobs stated that the applicant’s intent was to block a major view of hers and to create a permanent visual barrier to her view.

Stephens – Submitted a letter to Mr. O’Keefe that was sent to the Board by Ms. Jacob. (Letter was made part of the record).

O’Keefe – (After reading the letter) – This is speculation. It really does not block the view. It is not true.

Jacob – Why would there be 10 ft. trees planted in that area only?

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O’Keefe – We are here for the purpose of an interpretation only. Would you like to stick to that?

The Board agreed to close the hearing.

Hearing Closed.

Respectfully submitted,

Janice Fuentes
ZBA Secretary
11/14/07

RESOLUTION

Christopher O'Keefe, has applied to the **Zoning Board of Appeals** of the Village of Croton-on-Hudson, for an interpretation of Section 230-40 & 230-40(E) (1) of the Village Code with respect to an existing fence.

The property, at 36 Farrington Rd., is located in a RA-5 District and is designated on the Tax Maps of the Village as Section 78.08 Block 3 Lot 51.

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

The Board unanimously agrees that the intent of the Code was to limit barriers and they further agreed that the intent of the Code was to measure the height of a fence from grade and the open area shown on the applicant's plans are not to be included in the 25% solid calculation of this particular fence.

NOW, THEREFORE, BE IT RESOLVED that:

Stephens – Made Motion to accept the interpretation that was submitted by the Village's Asst. Bldg. Inspector on October 26, 2007, with respect to the applicant's submittal.

Olcott – Second the Motion

Vote: 4-0 – In Favor – Stephens, Olcott, Waitkins, Barlow

11/14/07

RESOLUTION

Melvyn & Amelia Howard, has applied to the **Zoning Board of Appeals** of the Village of Croton-on-Hudson, for a total side yard variance with respect to an existing garage.

The property, at 98 Penfield Ave., is located in a RA-5, District and is designated on the Tax Maps of the Village as Section 79.09 Block 10 Lot 34.

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 hardship to the applicant. The Lot on the North side of the property can be developed without needing a variance.

The benefit sought by the applicant can be achieved by some other method other than an area variance.

The variance requested is substantial.

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

Stephens – Made Motion to grant a 6ft. side yard variance as submitted.

Waitkins – Second the Motion

Vote: 5-0 – **AGAINST** – Stephens, Waitkins, Riedy, Barlow, Olcott

APPLICATION DENIED

11/14/07