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VILLAGE OF CROTON –ON-HUDSON ZONING BOARD OF APPEALS
MEETING MINUTES OF SEPTEMBER 10, 2008

Members Present: Kathleen Riedy, Chairman
Rhoda Stephens
Doug Olcott
Alan Macdonald
Roseann Schuyler

ALSO PRESENT: Joseph Sperber, Asst. Bldg. Inspector

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

Kathleen Riedy, Chairman – Riedy – Introduced two new members of the Board, Alan Macdonald and Roseann Schuyler, and stated that the Board is looking forward to working with them and the village appreciates their service.

HEARINGS:

Maria Modica Snow on behalf of Margaret & Charles Henry, 48 Sunset Drive. Located in a RA-5 District and designated on the Tax Maps of the Village as Section 79.09 Block 4 Lot 50. Request for a side yard and total side yard variance with respect to an existing house that was built approximately 1949.

Maria Modica Snow – Was present as Attorney for the applicant.

Also Present – David Kurie – New Owner of 48 Sunset Drive.

Snow – The property was for sale at the time the ZBA Application was submitted on behalf of Margaret & Charles Henry. The closing took place prior to the date of the ZBA Meeting, because of mortgage constraints. A letter was sent to the Board stating that I represented both parties.

David Kurie – I live at 47 Sunset Drive and my wife and I are now the new owners of 48 Sunset Drive and Maria Modica Snow is authorized to speak on my behalf with respect to this application.

Maria Modica Snow – Stated that the applicant was requesting a side yard and total side yard variance with respect to an existing house. One side yard is 7.9 feet and the requirement under the 1931 Code and the current Code is 8 feet. The 1931 Code has no total side yard requirement and the current Code requires 20 feet and the property has 16.9 ft. The property was built approximately 1949.

Riedy – (To Joseph Sperber) – There is an application for a Certificate of Occupancy for this, correct?

Sperber – No. They actually need a variance. An application for a Certificate of Occupancy is needed when you are closing out a Building Permit. There is no open building permit for this house. They are only applying for a variance to make them comply with the 1931 Zoning Regulations in affect at the time the house was built or according to today's Code Regulations.

Discussion followed over plans.

Snow – When there was a title search there was no record of a Certificate of Conformity.

Sperber – In this case we would not offer a Certificate of Occupancy, but by virtue of a variance being granted the house would be considered to be legally non-conforming.

Olcott – Is this something your mortgage company is requesting?

Snow – Yes. We have money in escrow until we get the variance.

Riedy – Then I think it would make more sense for them to ask for variances according to the current Code Requirements.

Sperber – ...and to the best of our knowledge there has been no alterations since it was constructed.

Stephens – What would you have to do to make it comply with zoning?

Snow – They would have to remove one tenth of a foot of the house.

Riedy – My feeling is that we should review this under the current Code which would be for a .1 ft. for the side yard and 3.1 ft. total side yard. Therefore we would be granting the variance according to the current Code.

Riedy – (To Maria Modica Snow) – So, there are no construction plans, it will remain just as is.

Snow – Correct.

Riedy – How long did the Henry's live there?

Snow – Since 1963.

Riedy – (To Joseph Sperber) – There has been no evidence of any changes to the construction of the house since that time?

Sperber – No.

Anyone else like to be heard?

There was no reply.

Hearing closed.

Walter D. Schmidt, 213 Cleveland Drive. Located in a RA-5 District and designated on the Tax Maps of the Village as Section 68.18 Block 1 Lot 3 (Jacoby Street) and Section 68.18-1-65 (213 Cleveland Drive). Request for a variance/determination in accordance with Section 230-33 of the Zoning Law to establish that Lot 3 is a building lot. Variance required for improved lot #65: Lot Area. Variances required for vacant lot #3: Lot Area, Lot Width & Lot Depth.

Kathleen Riedy, Chairman of the Board stated that she will be recusing herself due to the fact that she had represented the applicant when he purchased the property, and would appoint Rhoda Stephen's as Acting Chairman for the hearing.

Norman Sheer, Attorney for Walter Schmidt was present.

Sheer – I represent Walter Schmidt and he is not here this evening due to illness. His son Adam Schmidt is present on his behalf.

Mr. Sheer stated that Mr. Schmidt was making an application for variances to allow construction on a lot that was originally considered two lots with two separate tax lot

numbers. It has been determined that these lots were identified as two separate tax lots but not buildable lots. Therefore, at the time the applicant constructed a new house on lot #65 the two lots were then considered by the Planning Board to be merged as one lot to allow construction of the house that has already been built on the corner of Cleveland. Mr. Sheer stated that the lot now in question (Lot #3) is one lot away from Grand Street.

Mr. Sheer stated for the record that there was an error on the applicant's application which referred to one of the Lots as Lot #1 which is incorrect and should be indicated as Lot #65.

Mr. Sheer - The first variance needed is lot area for Lot #3. The requirement for Lot area is 25,000 sq. ft. and the applicant is requesting a variance to allow a lot area of 10,853 sq. ft. It will also need a lot width variance. The requirement for lot width is 125 ft. and the applicant is requesting a variance to allow a lot width of 90 ft. They will also need a lot depth variance. The requirement for lot depth is 150 ft. and the applicant is requesting a variance to allow a lot depth of 112.56 ft. Mr. Sheer referred the Board to a survey that was submitted with the application. Mr. Sheer further stated that if these variances were to be granted for Lot #3 the applicant would also need a lot area variance for Lot# 65. The requirement for lot area is 25,000 sq. ft. and the applicant is requesting a variance to allow a lot area of 18,291 sq. ft.

Discussion followed over survey.

Mr. Sheer stated that the Zoning Board is required by law to consider the five factors when making their decision and one of the five factors is "Detriment to nearby properties". Mr. Sheer referred the Board to a copy of the Village Tax Maps to show how much of the area surrounding this property was developed under the old Tax Maps. Some lots are shown to be bigger and some are smaller. Mr. Sheer stated that of the fourteen houses on the block, eleven are on lots similar to the applicants.

Stephens – Are you referring to Jacoby Street?

Sheer – No. The whole block starting with Lot #65 with the existing house lot and going up that side of the street, moving up Cleveland Drive.

Schuyler – You believe that to be the case but we do not know that for sure.

Discussion followed over the Tax Map and how there are other lots in the area that also are insufficient with respect to lot depth, area, and frontage.

Mr. Sheer stated that it is hard to say this request will be a detriment to the neighborhood, when in fact, it will be consistent. With respect to if the benefit can be achieved by some other method; the owner owns no other lots in order to be able to get more area or depth. Another factor to consider is whether or not the variance is substantial. Although these are fairly substantial, if you look at the neighborhood, it is not substantial compared to other homes in the neighborhood or blocks surrounding it and there will be no affect on the environmental conditions. The size of the lot is consistent with other lots in the area. At the last hearing neighbors spoke about drainage problems. Mr. Sheer stated that if you look at the sketch map it is clear this is not a lot that can support a "MacMansion". Mr. Sheer stated that there is a tremendous ability today to infiltrate drainage and there are storm drains just on the corner of this lot. Whatever excess comes down off the driveway and roof will go directly to the storm drains. Mr. Sheer stated that with respect to whether or not the hardship is self-created; "Of course it is" but the Village Law specifies that it is a factor to be considered, but not a bar to deny".

Mr. Sheer referred to the fact that Lot #3 has a shed located in the rear of the property and stated that shed will be removed.

Stephens – But, you are actually creating a lot.

Sheer - It is an existing Tax Lot.

Stephens – But, it was merged when the house on Cleveland was built. You are actually creating a lot.

Sheer - It is an existing tax lot that is not merged.

Schuyler – Stated that the applicant is asking for more than one half of what the requirements are.

Discussion followed over measurements of other properties in the area which are also substandard and part of the old "Harmon" Subdivision many years ago.

Stephens – But you are actually creating a lot. When the applicant submitted his application to the Planning Board for Minor Site Plan Approval to build the house on Lot#65 he showed the lot as one because he needed to use Lot #3 in order to meet all of the requirements necessary to construct the house. He is now asking to use Lot #3 as a separate lot and thus now creating two sub-standard lots.

Sheer – It is an existing tax lot.

Discussion followed over plans.

Schuyler - When the house was reconstructed was it larger or smaller than the previous house that was there?

Mr. Schmidt –Larger.

Discussion followed over plans.

Stephens – Do you have anything to show that this is a separate lot?

Sheer – The tax map.

Stephens – I mean when they purchased the property.

Macdonald – The tax maps show the same lot lines as you are proposing now?

Sheer – Yes.

Discussion followed over plans.

Sheer – The point is, if we could build a house that conforms to all the setbacks we would not be asking for all these setbacks.

Stephens – Anyone else like to be heard?

Chris Caulfield – 1 Jacoby St. – I am the adjacent property owner. I would like to state for the record that I was never properly notified for this meeting. I am not trying to get this postponed. I just want to get this settled. It has been established at the last meeting that it was indeed one lot. I thought the last meeting put this out of everyone's mind that it was indeed not a buildable lot. One thing the town tries to do is keep trees. It has been established that the drop on that property is over 15 ft. and that seems pretty steep. That would be a pretty big drop. You would think that he would be concentrating on the lots in the area of Jacoby and Grand, not the other lots down the block for comparisons. I think it will be a detriment to the neighborhood and if this variance is not substantial I am not sure what is. I think this was self-created. It is not a buildable lot. They say it was merged when they purchased the property to build the house on Cleveland and I feel that should be the end of this issue.

Schyuler – Do you have drainage problems on your lot?

Caulfield - I have been here four years and the first year I did, but since then, no.

Sheer - The Site Plan & drainage will be reviewed carefully and the neighbors will be taken into consideration. Also, as in many cases the drainage situation improves when a new house is built.

Mr. Claulfield – When the applicant built the new house, Mr. O’Connor said he did not want to see any more water draining down that area and now we are here with this application.

Gary Eisinger – 210 Cleveland Drive – My property is diagonal from the lot in questions. I do feel the character of the neighborhood will change. The references the applicant’s attorney is using are houses on Grand Street. I think he should be referencing the houses on Jacoby and Cleveland where the lot is located. I think it does change the character of the neighborhood of Jacoby and Cleveland. I am diagonally across from Mr. Schmidt’s current house on Lot #65 and the character of the neighborhood was what attracted me there. Also there is a lot of water coming down and it does drain to the stream and I request the variance not be granted.

Stephens – Anyone else like to be heard?

Ken Rose – 2 Jacoby Street – At the last meeting Mr. Caulfield submitted pictures showing what happens when it rains. My views do not change tonight. I do not consider Grand Street as a part of our area to be compared. So, I would like to voice my opposition to this application.

Stephens – Anyone else like to be heard?

Sheer - The Planning Board will not allow someone to build a house, if run-off is increased. There is a way to channel and to infiltrate it. Secondly, hardship is simply not a standard for granting or denying a variance. I know Mr. Schmidt came here in June 2008 and said he was ill. I explained, hardship such as health does not make you entitled to a variance. If you look at this Tax Map you will see we are entitled to a variance.

Ken Rose – My property is at the lowest point. It will increase the slope area and with a heavy rain it will come across Jacoby Street onto my property.

Sheer – Perhaps I used a technical term the Board does not understand. Infiltration for run-off is used to channel it into a tank so it is absorbed underground. It is used in Westchester today because run-off is a great concern. That is why the laws have changed. Because, no one ever thought of run-off and drainage like they do today.

Stephens – Anyone else like to be heard?

Eisinger – I grew up in Rockland County. I loved the way development was managed and growth controlled. I feel very strongly that building a house on this property will change the character of the neighborhood down Jacoby Street into Cleveland Drive.

Macdonald – Did you have a perk test done on this lot?

Sheer – Yes. I do think my client said he did and it was fine.

Stephens – Anyone else like to be heard?

There was no reply.

Hearing closed.

Respectfully submitted

Janice Fuentes
ZBA Secretary

9/10/08

RESOLUTION

Margaret & Charles Henry, has applied to the **Zoning Board of Appeals** of the Village of Croton-on-Hudson, for a side yard and total side yard variance with respect to an existing house that was built approximately 1949.

The property, at 48 Sunset Drive, is located in a RA-5, District and is designated on the Tax Maps of the Village as Section 79.09 Block 4 Lot 50.

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.

The alleged difficulty was not self created. The house was built in the 1940's and the survey was not accurate.

There were no objections from the neighbors.

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

In order to conform to present Zoning Regulations, one tenth of a foot would have to be removed.

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

Stephens – Made Motion to Grant a .1 ft. side yard variance and a 3.1 ft. total side yard variance to bring the setbacks into conformance with the current Zoning Regulations.

Schyuler – Second the Motion

Vote: 5-0 – In Favor

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

Walter Schmidt, has applied to the **Zoning Board of Appeals** of the Village of Croton-on-Hudson, for variance/determination in accordance with Section 230-33 of the Zoning Law to establish that Lot #3 is a building lot. Variance required from improved Lot #65: Lot Area. Variances required from vacant lot #3: Lot Area, Lot Width & Lot Depth.

The property, at 213 Cleveland Drive, is located in a RA-25, District and is designated on the Tax Maps of the Village as Section 68.18 Block 1 Lots 3 & 65.

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

An undesirable change will be produced in the character of the neighborhood and a detriment to nearby properties will be created by the granting of an area variance.

The requested area variance is substantial.

The proposed variance will have an adverse effect and impact on the physical & environmental conditions of the neighborhood.

The alleged difficulty was self created when the applicant moved the lot line using both lots for the minor site plan approval for the house that was built on Lot #65. Moving the lot line again would create a non-conformity with both lots #3 and the improved lot #65.

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

Olcott – Made motion to grant a Lot Area Variance of 14,147 sq. ft., Lot Depth Variance of 37.44 ft. and a Lot Width Variance of 35 ft. for the Vacant Lot #3 and to grant a Lot Area Variance of 6,709 sq. ft. for the improved Lot #65 and determine that Lot #3 was a separate building lot.

Stephens – Second the Motion

Vote: 4-0 - Opposed – Olcott, Stephens, Macdonald, Schuyler

1- Abstained - Riedy

APPLICATION DENIED

9/10/08

