

**DRAFT FILED: 05//19/09**  
**FINAL APPROVAL: 06/10/09**

**VILLAGE OF CROTON-ON-HUDSON ZONING BOARD OF APPEALS**  
**MEETING MINUTES OF MAY 13, 2009.**

MEMBERS PRESENT: Kathleen Riedy, Chairman  
Rhoda Stephens  
Doug Olcott  
Alan Macdonald  
Roseann Schuyler

ALSO PRESENT: Joseph Sperber, Asst. Bldg. Inspector

ABSENT: Richard Olver, Village Board Liaison to ZBA

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

The Chairman of the Board announced the location of fire exits to all in attendance of the meeting.

**APPROVAL OF MINUTES:**

4/7/09 – Stephens – Made Motion to accept the minutes with the following revisions:

Page – 3- Paragraph 10 - Will it interfere with anyone's vision  
**while** going up and down the street?

Paragraph 12 – I see that these plans are not stamped and  
you are depicting **the roof truss** as being  
4 ft. high.

Page -5- 1<sup>st</sup> Paragraph of Motion/Resolution second line:  
Section 230-40(B)

Olcott – Second the Motion

Vote: 4-1- In Favor – Stephens, Olcott, Macdonald, Schuyler

Abstained - Riedy

**HEARINGS:**

**Eugene & Kim Huelsman, 50 Morningside Drive. Located in a RA-9 District and designated on the Tax Maps of the Village as Section 79.09 Block 6 Lot 21. Request for a front yard set back variance with respect to an existing deck and a front yard variance according to Section 230-40(B) of the Village Code for an existing accessory structure (retaining wall) being closer to the street than the primary structure and possibly a front yard variance according to Section 230-33 for the retaining wall.**

Gail Kurawski, Agent for Caldwell Banker – Represented the applicant.

Kim Huelsman, Owner - I once lived on Cleveland Dr. and moved 11 years ago. Right before the closing the Title Company notified me that there was no Certificate of Occupancy for the deck. Peter Franzoso was the seller. When it was brought to our attention that the wood deck may be in violation of the Code, Mr. Franzoso, submitted a letter stating he would apply for the necessary variances, etc. at his own expense. He then submitted the necessary paperwork to the village for a variance and promised to take care of it. That was the understanding at the time of our closing and the attorneys signed off on closing. We later found out through village records that the previous owner, Peter Franzoso, who made the agreement to rectify the problem, had withdrawn his application for a variance and therefore, the situation was never rectified. We are now at the point where we have spoken to lawyers and we have now submitted an application for a variance. It would be a huge hindrance not to have it. I am not sure if taking it out would really be an option that could be done safely.

The applicant submitted photographs of the deck and retaining wall and Kathleen Riedy, Chairman identified each photo as “Exhibit A through F for identification purposes and requested the applicant to identify each photo by the exhibit identification when referring to the photos.

Ms. Huelsman – Exhibit “A” is the front deck that we are talking about. If removed you would be able to see from Exhibit “C” that there would be a big drop.

Kurawski – It would be a safety hazard. It would be about a six and one half foot drop. It would be so dangerous.

Olcott – Did he also install the parking area/retaining wall?

Ms. Huelsman – Yes.

Ms. Huelsman referred the Board to “Exhibit “F” and discussion followed over pictures.

Olcott – (Referred to Joseph Sperber, Asst. Bldg. Inspector) Joe, was a building permit ever applied for either of these structures (deck and retaining wall/parking area)

Kurawsky – We did not find out until we checked the village records that Peter Franzoso did apply for a permit and a variance as he originally promised at the time of the closing. However, after the closing he withdrew the application and it was never rectified. We also found out that he had agreed to remove the deck to appease the Village Engineer and instead he did nothing.

Ms. Huelsman – Submitted a copy of the letter of agreement from Mr. Franzoso dated May 12, 1998.

Kurawski – They would now like to rectify this so that in the future it does not happen to another buyer.

Stephens – What variances do you need?

Kurawski – We need a 4 ft. front yard variance for the existing deck and we need one for the existing retaining wall because it is considered an accessory structure which is also used to hold up the cars in the parking area and it sits beyond the footprint of the original structure. It is shown on the survey.

Sperber – It also needs a variance because it is closer to the street than the primary structure.

Riedy – Did Mr. Franzoso also construct the wall?

Huelsman – Yes. That is what I was told.

Olcott – Was the retaining wall/parking area part of the letter of agreement that was signed by Mr. Franzoso?

Huelsman – I assume it was.

Sperber – The retaining wall needs two variances. Because it is considered to be an accessory structure it is required to be five feet from the property lines, which they do not have and it will also need a variance because it is beyond the front footprint of the primary structure.

Schuyler – Are you now in contract to sell?

Huelsman – Not yet.

Riedy – (To Mr. Sperber, Asst. Bldg. Inspector) – Has the Village Engineer’s office consulted with Mrs. Huelsman about the whole process here? Assuming the ZBA grants the variance, what would be her next step?

Sperber – To get a Building Permit and Certificate of Occupancy for the existing deck and existing accessory structure/retaining wall.

Riedy – Will you be looking at the footings for these walls?

Sperber – We would request a licensed architect or engineer to provide stamped drawings and we would ask them to probe in certain areas to see how far they can go to look for the footings and see how far down they are.

Riedy – So they would look for footings at least 42 in. deep?

Sperber – With the retaining wall we could probably go less than that. There may be some areas it exceeds that and other areas it may not go to 42 in. deep.

Stephens – If the variance is granted, it would be contingent provided it is considered structurally sound.

Sperber – We would not issue a Building Permit or a Certificate of Occupancy without that being the case.

Riedy – So this may only be the beginning of the process for the applicant and plans drawn by a professional will be a cost to the applicant.

Huelsman - We have already discussed that.

Kurawski – We understand that and we were told that by Gary Yates a licensed architect.

Macdonald – A major concern is to have a guard rail so a car will not go off the wall.

Huelsman – Referred Mr. Macdonald to “Exhibit F” of the photos that were submitted.

Macdonald – That is not enough to prevent a car from going off the wall. An engineer would know how to deal with that. That could be a major safety hazard. There is another

neighbor of yours that has a regular metal guard rail on his. You might want to consider the same.

Kurawski – Do you think that instead of wood it should be some sort of metal?

Macdonald – Yes or some sort of masonry, steel, etc.

Sperber - If we get plans and they are approvable and we think there are items we need to address, we will address them with notations to the plans. Such as; perhaps making sure they put ballards spaced a certain distance and there could be vertical or horizontal barrier, etc.

Riedy – Any other questions?

There was no reply.

Hearing closed.

Macdonald – Made Motion to grant a 4 ft. front yard variance for an existing deck and a 5 ft. front yard setback according to section 230-40(B) of the Village Code for an existing retaining wall. The granting of this application is predicated upon the findings of the engineers involved that the 9 ½ ft. retaining wall is adequate and according to plans stamped and approved by an engineer at the time the Building Permit is issued.

The Board further requires the applicant to provide an adequate guard rail for the parking area above the retaining wall in order to assure safety measures are in place.

Riedy – Second the Motion

Vote: 5-0 - All In Favor – Macdonald, Riedy, Stephens, Olcott, Schuyler

### **DISCUSSIONS:**

The Zoning Board Members spoke briefly with respect to the new Zoning Changes that are taking place within the village. The Zoning Board unanimously agreed that they would like to be included in the process of revising or creating new Zoning Codes. Especially, since it is the ZBA that is expected to enforce the Codes.

Respectfully submitted,

Janice Fuentes  
ZBA Secretary  
5/14/09

## RESOLUTION

**Eugene & Kim Huelsman**, have applied to the **Zoning Board of Appeals** of the Village of Croton-on-Hudson, for a front yard variance with respect to an existing deck and a front yard variance according to Section 230-40(B) of the Village Code for an existing accessory structure (retaining wall) being closer to the street than the primary structure.

The property, at 50 Morningside Drive, is located in a RA-9, District and is designated on the Tax Maps of the Village as Section 79.09 Block 6 Lot 21.

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 environment, character of the neighborhood or detriment to nearby properties. The deck and the retaining wall have been in existence for more than ten years.

There were no objections from the neighbors.

The benefit sought by the applicant cannot be achieved by any other method.

The hardship was not self-created. The applicant was not the person who constructed the existing retaining wall and existing deck. The applicant operated in good faith and in reliance on a letter dated May 12, 1998, which was prepared and signed by the previous owner, Peter Franzoso, and given to the applicant at the time of the closing under the supervision of two attorneys.

**NOW, THEREFORE, BE IT RESOLVED**, that the application is hereby **Granted** as follows and with the following condition.

Macdonald – Made Motion to grant a 4 ft. front yard variance for an existing deck and a 5 ft. front yard setback according to section 230-40(B) of the Village Code for an existing retaining wall. The granting of this application is predicated upon the findings of the engineers involved that the 9 ½ ft. retaining wall is adequate and according to plans stamped and approved by an engineer at the time the Building Permit is issued.

The Board further requests that the applicant provide an adequate guard rail for the parking area above the retaining wall in order to assure safety measures are in place.

Riedy – Second the Motion

Vote: 5-0 - All In Favor – Macdonald, Riedy, Stephens, Olcott, Schuyler

5/13/09