

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
May 11, 2011

PRESENT: Seth Davis, Chairperson
Alan Macdonald
Doug Olcott
Roseann Schuyler
Rhoda Stephens

ALSO PRESENT: Joe Sperber, Assistant Building Inspector
Dan O'Connor, Village Engineer

1. CALL TO ORDER:

The Zoning Board of Appeals Meeting of May 11, 2011 was called to order at 8:05 P.M.

Ms. Stephens requested it be noted that there was no member of the Village Board present.

2. PUBLIC HEARING:

- a) **Paul Hirsh – 46 Thompson Avenue** – Located in a RA-5 District and designated on the Tax Maps of the Village as Section 79.09 Block 2 Lot 33. Request for side yard variance for an existing deck.

The applicant and owner, Mr. Hirsh, came forward to state that he was asking for a 7.65 foot side yard variance for an existing deck that is .35 foot from the property line. He explained that the deck had been built about 7 or 8 years ago when medical issues arose regarding his wife. She was diagnosed with breast cancer and then shortly thereafter fell and broke her leg in 16 places. There was no way to get her in and out of the house - there were too many steps in the front of the house and he couldn't get her in the back door; so some friends built the deck with a ramp. After 3 months, a carpenter came out and removed the ramp and built the steps that are there today.

Ms. Stephens asked if Mr. Hirsh and gone to the Village Engineer regarding the deck, Mr. Hirsh said he did, but he had too many things going on at the time (his late son-in-law was dealing with incurable lung cancer at the same time).

Ms. Schuyler asked if the applicant had planned on the deck being used with the barbecue on it or just as handicap access. Mr. Hirsh replied that he envisioned it just as handicap access, and had shown the builders of the deck where the property line was, but that they had gotten overzealous with the construction.

Ms. Stephens asked if the Fire Department might have concern with enough access to the home should the need arise. Mr. Sperber said he was not sure if the Fire Department had

any concerns but that there were 3 ways to get in the house, which was confirmed by Mr. Hirsh.

Mr. Olcott asked to whom the retaining wall belonged, and Mr. Hirsh replied that it was his neighbor's wall. Mr. Hirsh added that he has asked his neighbor many times whether the deck posed any problem for him and the neighbor said no. Ms. Schuyler confirmed with the Secretary that notice of this appeal had been sent out to the neighbors.

Chairman Davis asked for any comments from the public regarding the application to which there was no reply. Chairman Davis declared the public hearing closed.

Ms. Stephens stated she felt sympathetic for the applicant and all that he and his wife were going through at the time, but that ignorance of the law should not be used as a reason for having allowed the situation; however, no neighbor has objected. The Board agreed that was important. Mr. Olcott felt that the variance is substantial but is mitigated by its location on the side yard. Mr. Macdonald stated that the deck is 4.25 inches from the property line.

Ms. Stephens suggested that the Board could grant the variance but with a condition that it be in effect only as long as Mr. Hirsh owned the property, and there was precedent to do this. Mr. Sperber questioned how that would affect a potential buyer should Mr. Hirsh decide to sell. Ms. Stephens said that a potential buyer, if in contract, could come before the Board to request the same variance. Mr. O'Connor added that should he decide to try to sell, the deck could be removed and the stairs could remain.

A motion was made by Ms. Stephens to grant the 7.65 foot side yard variance with the conditions set forth in the Resolution for the existing deck built for emergency medical purposes. Seconded by Mr. Olcott, the vote carried 5-0, all members were in favor.

- b) **Peter Tsagarakis/Rakis Inc. – 6 Hudson Street, 215 So. Riverside Avenue & Bungalow Road** – Located in a RA-5 and C-2 Districts and designated on the Tax Maps of the Village as Section 79.09 Block 1 Lots 52, 53, 54, & 55. Request for variance from the requirements of Code Section 230-164(E) for extension of the expiration date on the two ZBA Special Permits under Code Section 230-51(C) and Code Section 230-52(B) and ZBA Area Variance under Code Section 230-49(C)(1) granted by the Board on May 12, 2010.

The attorney for the applicant, Gerald Klein, was present. He recapped the three requests that had been granted by the Board on May 12, 2010 and that construction was required to begin within a year of that date. The application, however, with the amended site plan, then needed to be heard by the Planning Board. He said that although the ZBA granted the requests on May 12, 2010, he did not receive the Resolutions from the ZBA until July 19, 2010 and the Resolutions from the Planning Board until October 12, 2010. He felt that, in essence, the applicant only had about a six month time frame, not a year, to address the issues. Along with a bad winter, he felt that this was not enough time to get bids from contractors and prepare the site, and was now asking for a one year extension.

Chairman Davis explained that the applicant was asking for an extension which poses procedural SEQRA issues. There is legislature pending currently before the Village Board that would designate requests for extensions and variances as Type II actions under SEQRA which would not require compliance with SEQRA. This legislative action has not been acted upon yet, so this application would have to be treated as an "Other Action" and would need to comply with SEQRA. That being the case, Chairman Davis further explained that all the Board could do tonight was to adopt a resolution to designate itself as the Lead Agency for the application and refer it to the Water Advisory Committee.

Chairman Davis then noted that there were members in the audience who wanted to speak, but Chairman Davis first wanted to express the Board's desire to find out what were the intentions of Mr. Klein's client, having heard that he intended to change the plans that had been approved. Mr. Klein responded that he had no indication from his client that he was going to change the plans that had been approved by the ZBA and the Planning Board.

Mr. Olcott asked about the status of the bidding, to which Mr. Klein replied that his client was in contact with contractors. Mr. Olcott felt that even though there had been procedural delays, there should have been enough time to complete the bidding process. Chairman Davis concurred.

Chairman Davis also expressed the Board's concern with granting a full year extension, and that the Board, as well as members of the public, had concerns that the applicant take all decisions made by the Board seriously and adhere to the plans as submitted.

Chairman Davis, stating that it being a public hearing, then asked if there were any comments from the public.

Mr. Charles Henley of 7 Hudson Street stepped forward. He spoke primarily in regard to Hudson Street. He felt that since the variances had been issued, the only things that the applicant had done were to tear down the house on 6 Hudson Street, tear down the barrier wall that separated the Diner from 6 Hudson Street, and put up some cheap fencing along Hudson Street. He felt that none of the expectations from the applicant had been met, and that the applicant had a long history of not following plans and willfully violating Village Code, adding that before the house on 6 Hudson had been torn down, it had some 12 violations from the Village Engineer, and that he had used the property for parking without authority. He also added the applicant also owns 8 Hudson Street, and that the applicant's property on Bungalow did not have a special permit for some 12 – 15 years. Mr. Henley expressed his suspicion that the applicant's ultimate goal was to seek re-zoning. He also said that having attended all the past ZBA meetings regarding the application, he has never seen anyone at the meetings who has spoken in the applicant's favor, and that Mr. Tsagarakis has never shown up at any of the meetings. He feels the application is unpopular with neighbors as shown by the petition he presented at a past meeting and presented again today along with photos of the site at the present time, and

listings of past violations. He asked that the Board grant no extensions, align any and all permits with the October deadline, and define any resolutions by the Board to include that any rights to special variances not be transferred to future owners. His fear is that the applicant wants to assemble multiple properties for commercial use. He left the Board with 2 questions: 1) What happens in 3 years when and if the ZBA re-assesses the situation and finds a negative impact? and 2) How the use of 6 Hudson Street, a RA-5 property, can be balanced with the 2003 Village Comprehensive Plan, which recommends no re-zoning should occur which would permit commercial development outside those areas currently zoned for commercial development?

Next, Mr. Harold Lockwood of 10 Hudson Street came forward. He stated that he agreed with Mr. Henley. He also said he did not understand how the applicant needed more time to get bids when someone taking on such a major project would want to determine the cost first, in order to determine if he or she could proceed. He also pointed out that a masonry wall was supposed to be erected where the fence now stands, and that the excuse was cold weather, but it has not been cold for at least a month or two and still there is no masonry wall. He also wanted to know what happens if the permit is not renewed – does the applicant have to take out the new parking lot on Hudson Street, sell the property at 6 Hudson Street, and put a house back up?

Chairman Davis asked for any more comments from the public regarding the application to which there was no reply. Chairman Davis declared the public hearing closed.

Chairman Davis asked if Mr. Klein had any more comments. Mr. Klein wanted to make it clear that his client had no intention of bringing 8 Hudson Street into the picture. Ms. Schuyler expressed that although she was sympathetic to the fact that it took quite some time to get the final approval on the variances, the temporary fence installed does not constitute commencement of work as proposed in the approved site plan. Mr. Klein assured the Board that this was just temporary work until the final work could be performed. Ms. Stephens asked whether Mr. Klein would accept a 6 month extension if granted. Mr. Klein said he would abide by the Board's decision, but he is asking for a year. Ms. Stephens then asked if the applicant had spoken to any contractors yet, to which Mr. Klein replied that he has not been privy to the conversations, but that in fact his client had spoken with contractors. Mr. Olcott then asked if the applicant had filed for a building permit yet. Mr. Klein said he had not. Mr. Olcott stated that the filing for the building permit could have been done during cold weather.

Chairman Davis (reiterating that the Board was procedurally mandated and limited in regards to this appeal), made a motion to make the ZBA the Lead Agency for the application, and requested that notice be circulated to the other Agencies for comment, and that the application be referred to the Water Advisory Committee. Ms. Stephens seconded the motion. The voted was in favor 5 – 0.

3. NEW BUSINESS:

Review of Resolution to adopt a list of Type II actions to supplement the list of Type II actions contained in the New York State SEQRA Regulations.

After some discussion with Mr. O'Connor, the Board decided to change the order of the items on the list, making the second action #3, and the third action becoming #2.

Ms. Stephens made a motion stating that the ZBA has no objections to the Village Board being the Lead Agency and to submit its list of Type II actions, as amended, to supplement the list of Type II actions contained in the New York State SEQRA Regulations. Ms. Schuyler seconded the motion. The motion passed 5 – 0 in favor.

4. APPROVAL OF MINUTES:

The minutes of the April 13, 2011 Zoning Board of Appeals meeting, as amended, were approved unanimously.

5. ADJOURNMENT:

The meeting was adjourned at 9:54PM.

Respectfully submitted,
Toni Cruz
Zoning Board Secretary