

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
October 19, 2011

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

ALSO PRESENT: Joe Sperber, Assistant Building Inspector

ABSENT: Village Board Liaison

1. CALL TO ORDER:

The Zoning Board of Appeals Meeting of October 19, 2011 was called to order at 8:00 P.M.

2. OLD BUSINESS:

- a) **Peter Tsagarakis/Rakis Inc.** - 215 So. Riverside Ave. & 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. Request for two ZBA Special Permits under Code Section 230-51(C) and Code Section 230-52(B) for existing parking lot (Section 79.09 Block 1 Lot 52) on Bungalow Road.

Chairman Davis started off by explaining that the Zoning Board's task at hand was to review the Short Environmental Assessment Form submitted by the applicant, and along with the WAC's preliminary determination of consistency, decide whether or not to issue a negative declaration. The Board will also try to decide if conditions would be placed on the special permit when and if issued.

Mr. Ed Gemmola, Architect for the applicant, displayed previously approved site plans. Although these plans are null and void, he was using them as a basis for explaining what he believed the Boards (ZBA and WAC) wanted. He said that the applicant planned to continue the stone wall and fence along Hudson Street, and would also landscape along Hudson Street. He also reminded the ZBA that the special permit being sought had been granted years ago, renewed in May 2010, expired in May 2011, and dealt with parking only in the Bungalow Road lot (a residential area).

Mr. Macdonald then asked if the plans included any construction. Mr. Gemmola said no, and added unless the Board made it a condition.

Mr. Olcott then said he thought Mr. Gemmola would be coming back with specific plans for the landscaping. Mr. Gemmola said he was looking for guidance from the Board, but would be willing to landscape along Hudson Street and erect a fence with a gate between the Diner and the Hudson Street lot.

Ms. Schuyler asked about a barrier between the Diner and the Hudson Street lot, and Mr. Gemmola replied that the proposed locked fence would be the barrier.

Ms. Stephens then asked if the Hudson Street lot was for employees only. Mr. Tsagarakis, who was also present, replied that the lot was intended for employee use but customers are not stopped if they use it. He added that there was no access to the lot from Hudson Street. Mr. Tsagarakis also wanted to remind the Board that tonight's meeting was about the Bungalow Road lot. He further added that eventually he would address the Hudson Street lot to work out the issue of what to do with that lot.

Ms. Schuyler added that she understood tonight's agenda involved the parking on Bungalow Road, but explained that the applicant's request would be helped if no customer parking were allowed in the Hudson Street lot, which would demonstrate the lack of a need for additional customer parking.

Mr. Gemmola then showed photos of the site with a close-up of the wall on Hudson Street, and indicated that one possible scenario would be to install a wrought iron type fence along Hudson Street, and Mr. Tsagarakis added that he could also install the metal fence with a gate between the Diner and the Hudson Street lot.

Chairman Davis, explaining that the amended site plan from a year ago which had been approved was no longer valid, wanted to know how much of that plan, if any, the applicant was willing to do. Mr. Gemmola replied that he and the applicant were confused about what the Board wanted. Chairman Davis replied that the Board was looking for some kind of visual buffer on Hudson Street and that extending the fencing with a wrought iron type fence along with some landscaping seemed like a good idea.

Mr. Gemmola and Mr. Tsagarakis both agreed they would try to speak with Mr. O'Connor to come up with a plan, which most likely would be a continuation of the wall on Hudson Street and some kind of landscaping.

Chairman Davis clarified that the Board could not approve anything tonight, and asked that the applicant come back with a plan, and the Board would address it then. He then opened the hearing to the public.

Ms. Ginny Calcutti, of 19 Hunter Place, stepped forward to ask for clarification of the application before the Board. Chairman Davis explained that although tonight's review involved issuing a special permit for the Bungalow Road lot, the Board was entertaining discussion on the Hudson Street lot to possibly include items pertaining to that lot (which had been approved on the now void site plan), as condition(s) to the Bungalow Road lot

special permit. Ms. Calcutti added that although the Hudson Street lot was supposed to be used for employee parking, it was also being used by customers.

No one else stepped forward so Chairman Davis closed the public hearing.

Chairman Davis declaring the ZBA as Lead Agency in the matter, and having reviewed the revised EAF form, dated 10/18/11, and the Preliminary Consistency Review from the WAC, dated 9/26/11, made a motion to issue a Negative Declaration with regard to the issuance of a special permit for the Bungalow Road lot only. The motion was seconded by Mr. Olcott. The motion passed 5 - 0 with all in favor.

Ms. Schuyler followed it with a motion to refer the application back to the WAC for a Final Consistency Review. Chairman Davis seconded this motion and it passed 5 - 0 with all in favor.

**3. NEW BUSINESS:
PUBLIC HEARING:**

- a) **Warren, Mary Ann T.** - 167 North Riverside Avenue. Located in a RA-5 District and designated on the Tax Maps of the Village as Section 67.19 Block 2 Lot 51. Request for rear yard variance for addition of new rear deck, walkway, and stairs replacing existing landing and stairs.

Ms. Warren presented her application. She explained that with the existing landing and stairs, she has to stand on the top step of the stairs to open her rear door, and this makes her feel unsafe. The proposed deck, walkway, and stairs would also give her rear access while her kitchen is being remodeled. Mr. Sperber explained that the proposed project would need a 10 foot rear yard variance.

Chairman Davis wanted the record to show that Ms. Warren's application included a statement from the neighbor directly behind her, Ms. Dorothy Arensburg of 4 Stevenson Place who had no objection to the application. Ms. Warren further explained that there was also a 5 foot Village sanitary and water easement between her property and that of Ms. Arensburg, and that the neighbors on the north and south were blocked by bushes.

Mr. Olcott questioned whether the proposed alterations would be visible from the street and Ms. Warren said they would not.

Ms. Stephens then asked what the plans were for under the deck, to which Ms. Warren replied that there were no plans for storage under the deck and it would be covered with gravel.

Chairman Davis then opened the meeting to the public, but no one came forward to speak. Chairman Davis then closed the hearing.

Chairman Davis asked if there were any reservations about granting the variance, to which Ms. Stephens replied she would like to make it a condition that there be no enclosed storage under the deck.

Mr. Olcott then made a motion to grant a 10 foot rear variance for the construction of the new deck, walkway, and stairs with the condition of no enclosed storage under the deck. The motion was seconded by Ms. Stephens, and the motion passed 5 - 0 with all in favor.

- b) **Franco, Leonard** - 89 Grand Street. Located in a RB District and designated on the Tax Maps of the Village as Section 78.08 Block 6 Lot 31. Request for lot width, side yard, total side yard, and minimum floor area variances in order to convert a single family house into a two family house.

Mr. Franco presented his application. He explained that he has lived in the Village for over 25 years, raised a family that has grown, and now finds that the house is bigger than he needs. Being that the house resides in a two family district, he would like to subdivide the house, creating a separate apartment. The new apartment would be accessed through the side yard via new exterior stairs. Currently compliant with Village code, the new stairs and new apartment require the variances being sought.

Mr. Sperber explained that the original structure was built as a single family in a RB zone which needed a side yard variance because the party wall is the property line on one side of the lot. Now that a two family structure is proposed, the setbacks are different for a two family versus a single family in a RB zone.

Mr. Olcott stated that he thought the lot width variance request was substantial, and Mr. Franco replied that he was not expanding the house; that the laundry room would be converted to the second kitchen.

Mr. Macdonald questioned whether additional parking would be needed. Mr. Franco replied it would not, and added that he felt the proposed change was in keeping with the neighborhood.

Chairman Davis opened the meeting to the public, and Margaret Shebanie McCallen of 91 Grand Street stepped forward to express her concerns. She explained that she was the neighbor sharing the party wall with the applicant. She was concerned with a possible increase in noise level, additional need for parking, a possible fire hazard with 2 kitchens, and an overall detriment to the integrity of her home. She requested that the Board take these all into consideration in its review. Mr. Franco then added that the two properties were separated by a firewall.

With no one else stepping forward, Chairman Davis closed the public hearing.

During the review process, Mr. Olcott stated again that the lot width variance requested was substantial, as was the total side yard variance request; Ms. Stephens stated that the issue was self-created.

Ms. Stephens then asked the Board if it thought there was any other place to put the stairs. Mr. Macdonald replied that he thought the applicant proposed the easiest solution for the stairs.

Chairman Davis asked if there was also a need for a minimum floor area variance and Mr. Sperber said there was because the applicant had only 575 square feet for a 600 square foot requirement.

Mr. Macdonald felt approval of the application would be setting an undesirable precedent and then reminded the Board that the adjoining neighbor was not supportive.

Mr. Olcott said the lot width requirement was there for a reason and that a two family house would probably mean more cars on the street.

Ms. Schuyler also felt that the proposed plan was a detriment to the next door neighbor in regard to a potential purchaser, and Chairman Davis added that should the applicant ever move, the granting of the variances would run with the land and not the owner.

Mr. Olcott then made a motion to grant a 25 foot lot width, a 12 foot side yard variance, an 18 foot both side yards variance, and a 25 square foot minimum floor area per dwelling variance in order to convert a single family house into a two family house. The motion was seconded by Ms. Schuyler. The vote was 1 to 4 opposed; Chairman Davis was in favor, while Mr. Macdonald, Mr. Olcott, Ms. Schuyler, and Ms. Stephens were opposed. The request for variances was denied.

- c) **Guinee, Megan** - 91 Truesdale Drive. Located in a RA-25 District and designated on Tax Maps of the Village as Section 79.09 Block 5 Lot 6. Request for front yard variance, and variance to increase perimeter of building prior to application to Village Board for special permit for an accessory apartment.

Dayton Guinee, husband of Megan Guinee, presented the application explaining that a front yard variance was being sought to repair the front staircase and landing which they feel is unsafe in its current condition, and a variance to increase the perimeter of the building for plans to create an accessory apartment. The accessory apartment would include altering the garage, which in turn would reduce the slope of the driveway allowing for safer access in and out of the garage.

Chairman Davis wanted to clarify that the application for the accessory apartment will need to be presented to the Village Board and that tonight the ZBA was reviewing the setback variances that would be needed for the accessory apartment. Mr. Sperber pointed out the chart he attached to the application showing the variance specifications. He also pointed out that the lot is substandard and qualifies as an existing small lot.

Mr. Olcott asked if there would be any increase in the height of the house, and Mr. Guinee replied that the garage, currently in disrepair, was going to be lowered, which would eliminate the current practice of accessing their own garage using the neighbor's yard.

Chairman Davis remarked that he didn't think the Board had ever seen an application for an accessory apartment appear in front of the ZBA before the Village Board, and Mr. Dayton replied that they could have gone a different route and applied for a building permit to re-do the garage and then subsequently renovate for the accessory apartment, but instead chose this route. He also added that they had no plans to use the accessory apartment as a source of income or to seek out tenants.

Ms. Schuyler related to the applicant that she thought the application package was very comprehensive, and Mr. Olcott wanted it noted that the documentation included a letter of support from the applicant's neighbor, Susan Lunden of 118 Truesdale Drive, who wrote that she believed the proposed changes would be an improvement to the Guinee's home as well as the neighborhood.

Chairman Davis opened the meeting to the public and with no one stepping forward to speak, closed the hearing.

Mr. Olcott stated that he supported the application due to the fact that it would increase the safety of the front stairs and would improve the driveway slope. He also said that the applicant could build a new garage with the proposed dimensions, without requesting a variance for the side lot and that the proposed plans were superior to what he could build "as of right".

Ms. Stephens said she felt the proposal presented no undesirable change; Mr. Macdonald said that he thought it was an improvement and Ms. Schuyler added that the alleged difficulty (the steep slope) already was there when the home was purchased.

Chairman Davis reminded all present that the Board was not addressing the accessory apartment; the Village Board would do so.

This was followed by Mr. Olcott making a motion to grant a 5.19 foot front yard variance and a building perimeter variance for a potential accessory apartment. The motion was seconded by Ms. Stephens. The motion passed 5 to 0 with all members in favor.

- d) **De Bonis, Bonnie** - 30 Hunter Place. Located in a RB District and designated on Tax Maps of the Village as Section 67.20 Block 4 Lot 67. Request for variance from height and location restrictions of fence on side lot line.

Ms. De Bonis stepped forward to explain her application. She was seeking a variance for 4 out of 8 panels of an existing stockade fence on a side lot. Each of the 8 panels was labeled in her documentation and she was seeking the variance for existing panels 1 through 4.

Chairman Davis asked her to explain what was going on with panels 5 through 8. Ms. De Bonis explained that the stockade fence is next to a chain link fence that had been put up first. The contractor for the stockade fence, having difficulty due to the existing chain link fence and trees in the side yard, placed panels 5 through 8 on the neighbor's property, and had staggered them resulting in varying heights.

Mr. Olcott said that at the top of the fence (towards panel 1) was not so imposing, but that towards the bottom (towards panel 8), it was imposing.

Ms. Stephens asked when the fence had been erected, to which Ms. De Bonis replied July of 2010.

Mr. Olcott asked if the Village had erected the stockade fence in the front of the property, and Ms. De Bonis said that it had done so.

Chairman Davis asked if the Village fence had been erected after the stockade fence at issue. Ms. De Bonis said no; her fence was erected after the Village fence. She further explained that the existence of trees behind panels 1 through 4 would make it difficult to relocate that portion of the fence. She also expressed concerns regarding her dog, which is a very large and strong Akita. Although she said the dog is a gentle giant, she feels the chain link fence alone is not strong enough to secure the dog.

Chairman Davis then asked Ms. De Bonis if she had seen the comments submitted by the neighbor sharing the property line with the fence on it, Josh Spieler of 36 Hunter Place, who has issues with the entire fence. Ms. De Bonis said she had not.

Mr. Olcott said that the fence appeared waist high at the top of the fence from the neighbor's parking area.

Mr. Macdonald asked the applicant if she was planning to go through the process of moving 4 panels, why not move the other 4 as well, and Ms. De Bonis replied that doing so would result in a lack of any privacy at all. Without panels 1 through 4, she would be looking into the underside of her neighbor's car and would lose all privacy from the street and the neighbor.

The meeting was then opened to the public by Chairman Davis.

Ginny Calcutti, residing at 19 Hunter Place, came forward to express her support of the application. Next, Salvatore Cianfaglione who lives at 25 Hunter Place came forward to support the application. He was followed by Bruno Pesavento of 38 High Street who said he had no opposition to the application.

Chairman Davis wanted it noted that the application documentation also included letters of support from the following:

Cary Andrews and Loomis Mayer, 20 Hunter Place
Vito and Ginny Calcutti, 19 Hunter Place
Sara Miller-Pojman, 4 Hunter Place
Salvatore Cianfaglione and Judy Cianfaglione, 25 Hunter Place
Sheryl Parker, 1230 Albany Post Road
Loretta Riley, neighbor
Loretta Oppitz and George Oppitz, neighbors
Malcolm Jones, neighbor
Joe Mullins, 2 Lounsbury Road
Mr. & Mrs. Benjamin Abbatiello

The public hearing was then closed.

In reviewing the application, Mr. Olcott felt that topography was a factor, and said that if you stand where the neighbor parks his car the fence is about waist high. Neighborhood traffic also needed to be considered. The neighborhood was one with a lot of small houses on small lots.

Mr. Macdonald thought that if the Board granted the height variance, everyone would want 9 foot high fences, and that trees would be more desirable. He also added that he thought the Village fence in the front of the property presented a danger for Mr. Spieler backing out of his driveway. Mr. Sperber said he had proposed that such fences be limited to no more than 4 feet and to comply with front yard setbacks.

Ms. Stephens and Chairman Davis both said that they believed the placement of trees in place of the fence would not block headlights. Chairman Davis also added that the visual impact of the fence was important; however, the Village fence was higher.

Ms. Schuyler said that the facts that were presented made the application unique. She felt that from the street the fence did not appear too high. While she understands the Board would not want to set a precedent, she did not see an undesirable change by granting the variance, and that vehicular traffic should not be an issue.

Chairman Davis commented that if the variance is granted, the resolution would include a condition that panels 5 through 8 would need to be removed and lowered.

Mr. Macdonald again stated that he thought panels 1 through 4 created a dangerous situation for the neighbor pulling out of the driveway.

Ms. Stephens agreed with Mr. Macdonald that there was potentially a dangerous situation. She also wanted it noted that the ZBA had sought guidance from the Village Board on several issues, one of which was fences. The Village Board has not moved on the request in over a year. That lack of action has resulted in the ZBA allowing things to go on that she feels personally should not, but that without guidance and/or clarification from the VB, its hands are tied. She also wanted it noted that no Village liaison was present at the meeting.

Chairman Davis said he would write a letter to the Village Board or liaison, citing a lack of action by the Village Board on the matter of fences and asking once again for guidance. As for the application before the Board, he felt that the Village fence on Ms. De Bonis' property did not help matters. If panels 1 through 4 were dropped in height, it would look terrible along side the Village fence. As a result, he said he was inclined to grant the variance.

A motion was made by Ms. Schuyler to grant a variance from Village Code Section 230-40E(1) for 4 fence panels, identified on the enclosed diagram and stamped by the Engineering Department on September 29, 2011, as Panel (1), Panel (2), Panel (3) and Panel (4) at the height indicated with the condition that Panels (5) through (8) be removed and relocated to the applicant's property at a height of no more than 6 feet in order to comply with Village Code Section 230-40E(1).

Ms. Stephens seconded the motion. A vote was taken, and the motion passed 4 to 1 with Chairman Davis, Mr. Olcott, Ms. Schuyler, and Ms. Stephens in favor and Mr. Macdonald opposed.

4. APPROVAL OF MINUTES:

Ms. Schuyler made a motion to approve the minutes of the September 14, 2011 Zoning Board of Appeals meeting, as amended. The motion was seconded by Mr. Macdonald. The motion was passed 5 - 0 in favor.

5. ADJOURNMENT:

The meeting was adjourned at 10:35 P.M.

Respectfully submitted,

Toni Cruz
Secretary, Zoning Board of Appeals