

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
November 9, 2011

PRESENT: Seth Davis, Chair
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 November 9, 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 indicating that the documents in front of the Board included a memo, dated October 31, 2011, to the ZBA from the Waterfront Advisory Committee issuing a final determination of consistency. He then asked Mr. Ed Gemmola, Architect and representative for the Applicant, to present the documents he had submitted to the Board.

Mr. Gemmola had submitted drawings and photos. He explained that because of economic reasons, the Applicant was not able to execute the more extensive plans originally submitted and approved, and subsequently rendered null and void. The drawings in front of the Board included extending the stone retaining wall along the front of Hudson Street, installing new metal picket fencing along 6 Hudson Street to match existing fencing along Hudson Street in design and height, and to continue landscaping along Hudson Street as per the landscape chart on the drawings. Mr. Gemmola said the plans also included installing a locked gate on a chain link fence between the Diner lot and the 6 Hudson Street lot. He also stressed that the special permit being applied for was only for the Bungalow Road lot which is located in a residential zone.

The Board studied the drawings and photos. Mr. Olcott, Ms. Stephens, and Ms. Schuyler all expressed concern that the proposed plan did not have the fencing extend all the way to the northeast corner of the Diner. They thought it would be unsightly as proposed. Mr. Gemmola said he could understand the Board's concern, had thought it might arise as an issue, and had Mr. Tsagarakis' authority to agree to extend the fence from the zone line to the Diner.

Mr. Olcott also asked for further details regarding the proposed landscaping, and Mr. Gemmola said that the specifics were included in the landscaping schedule and planting notes on the submitted drawings. Mr. Olcott followed up with another question, wanting to know when the landscaping might be implemented. Mr. Gemmola said due to the good weather we had recently experienced, Mr. Tsagarakis had already extended the retaining wall, and wanted to try to install the fence before the winter. Mr. Tsagarakis is hoping to do the landscaping in the spring.

The Board turned next to concerns over the maintenance of the proposed landscaping. Chairman Davis asked Mr. Sperber if there were any guidelines on the spacing of trees. Mr. Sperber said there were not; that it basically depended on the species of tree. Mr. Olcott then asked if there were regulations regarding the landscape maintenance and whether a landscape bond could be required. Mr. Sperber replied that it was a function of the Engineering office to see that the landscaping is maintained, that he was not certain a landscape bond could be issued and that landscapers usually include a warranty with their services.

Mr. Macdonald asked if raised beds would be used, and Mr. Gemmola pointed out that No. 4 in the planting notes read: "Place 4 inch topsoil on all planting beds". After reading all of the planting notes to the Board, he added that the Planning Board had inserted the planting notes, and that the notes probably would answer many of the landscape questions.

Mr. Olcott asked if the proposal included relocating the trash enclosure, to which Mr. Gemmola replied that it was not being included in the proposed plans at this time.

With no more questions from the Board, Chairman Davis opened the meeting to the public. Mr. Harold Lockwood of 11 Hudson Street came forward. He started off by asking about the status of the use of the 6 Hudson Street lot, and Chairman Davis explained that the Hudson Street lot was not part of the application before the Board; only the special use permit for the Bungalow Road lot was at issue. The 6 Hudson Street lot would only come into play if it had any bearing on any conditions attached to the Bungalow Road special permit, should it be granted. Chairman Davis then asked Mr. Sperber to give Mr. Lockwood an update on 6 Hudson Street. Mr. Sperber explained that 6 Hudson Street is a residential lot, and although it will be hard to enforce, the Village is prepared to issue summons to the owner of the Diner should the lot be used for any employee or customer parking, and that the plans included a chain link fence with a gate between the 6 Hudson Street lot and the Diner lot.

Mr. Lockwood then stated he had several concerns. First, he believes Village code requires that in order to go from a commercial zone to a residential zone, you need to enter the street first. Second, previously approved plans called for sod and seed to be placed on the 6 Hudson Street lot which was never done. Third, since the Applicant says he is having money issues, why not ask him to put up a bond to insure the work gets done.

Next, Mr. Charles Henley, residing at 7 Hudson Street, stepped forward. Mr. Henley gave a lengthy history of the Applicant and his meetings with the various Village Boards. He pointed out that Trustee Gallelli had put together a 5 page summary of violations and history, and asked if the Board members had read it. He summarized by saying that he felt that since 2008, the “process” had been very accommodating to Mr. Tsagarakis, that past approvals were out of line with the Village’s Comprehensive Plan, and hoped that the ZBA would be more sensitive to the residents. He said that he felt one could not separate the Hudson Street lot from the Bungalow Street lot; that they were one and the same. He felt that Mr. Tsagarakis had made promises time and time again that had been broken. He said that he and his neighbors would like to help in any way with the enforcement of no parking at the 6 Hudson Street lot. He also said that he felt that he had made a mistake by not filing an Article 78, and that he would not hesitate to do so now.

He ended with 4 recommendations: 1) Deny the special use permit on the Bungalow Road lot 2) Close the 6 Hudson Street lot to parking altogether 3) Issue a timetable to Mr. Tsagarakis to restore 6 Hudson Street to its residential status 4) Should the Board allow Mr. Tsagarakis to go ahead with proposed plans, have him post a bond as suggested by Mr. Lockwood.

Chairman Davis then asked Mr. Henley what he meant by his recommendation to restore 6 Hudson Street to its residential status. Mr. Henley said he meant the construction of a house, and that if Mr. Tsagarakis didn’t want to do that, he should sell the property to someone that would.

Ms. Stephens then told Mr. Henley that she wanted him to know that the Board was indeed listening to his concerns and his neighbors’ concerns. Mr. Henley said he knew the Board was listening but had not been friendly to the neighbors, and felt that the process was not moving in a positive direction.

Chairman Davis asked if anyone else wanted to speak. No one stepped forward, so Chairman Davis closed the hearing.

The Board began its discussion by Mr. Macdonald stating that he thought a “performance bond” was a good idea. Mr. Olcott agreed.

Ms. Stephens said she had been to the Diner recently and parking was definitely an issue. Cars were parking in the Hudson Street lot and had there been an emergency, it would have been extremely difficult to exit the lot.

Ms. Schuyler said she witnessed the same situation on a recent visit also. Ms. Schuyler also liked the idea of a performance bond as well as a landscape bond as conditions to the variance. She added that the Applicant had not demonstrated a business need for parking on the Hudson Street lot, and then asked Mr. Sperber about incidental parking.

Mr. Sperber explained that incidental parking involved two contiguous residential lots in the same ownership where the vacant lot can serve as parking for the improved lot. The number of parking spots depends on the type of dwelling on the improved lot.

Chairman Davis put forward his perspective. He said that back in 2004, the attempt to change zoning of 6 Hudson Street from residential to commercial was appropriately rejected, and last year by approving the special permits he had hoped to achieve a global resolution of this issue. He stressed that the Board had considerable leverage which it should use. He also stated that although the 2 lots were tied together as a business, from a legal point of view they stand on their own.

Ms. Schuyler wanted to make it clear that by granting the special use permit, the underlying zoning of neither lot would change. The Board would just be allowing a special use in a residential zone.

The Board then discussed the conditions it would attach to the granting of the special permit with particular attention to the term of the permit. Mr. Olcott, suggested a one-year special permit with a renewal option if the property remained violation free. Chairman Davis suggested making that a condition of the resolution.

Replying to the Board's inquiry, Mr. Sperber said that Section 230-160 of the Village Code dealt with violations, but that there were no specifics about the term of a special permit. Chairman Davis then added that the granting Board decides the term of the permit.

(See ZBA Resolution dated 11/9/11 for conditions 1 through 7.)

A motion was made by Mr. Olcott to grant one-year special permits under Code Section 230-51(C) and Section 230-52(B) for the existing parking lot on Bungalow Road with 7 conditions. The motion was seconded by Ms. Stephens. The motion passed 5 – 0 with all members in favor.

b) 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.

Chairman Davis explained that although the Zoning Board had made its supplemental list of Type II actions quite a while ago, it had needed to wait for the Village Board to adopt its resolution first. Tonight the Zoning Board would formally adopt its list. Chairman Davis then read the 3 items on the list, and said he saw no changes needed.

Mr. Olcott then made a motion to adopt the list of Type II actions to supplement the list of Type II actions contained in the New York State SEQRA regulations. Ms. Schuyler seconded the motion which passed by a vote of 5 - 0 in favor.

Ms. Stephens wanted it noted that the Village Board liaison was not present.

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

- a) **Cervini, Carlo** – 124 Hastings Avenue. Located in a RA-5 District and designated on the Tax Maps of the Village as Section 79.09 Block 10 Lot 44. Request for variance from two side lot lines and rear lot line setback requirements for an above-ground pool.

Mr. Cervini stepped forward and presented his application. He explained that he is seeking 3 variances - a 2 foot variance for the northwest side yard, a 2 foot variance for the rear lot, and a 5 foot variance for the northeast side yard, in order to install an above-ground pool.

Chairman Davis asked to whom did the two frame garages shown on the survey belong. Mr. Cervini replied that they belonged to neighbors, and he further clarified, in response to Ms. Schuyler's question, that one belonged to his neighbor on Oneida Avenue and the other belonged to his neighbor on Penfield Avenue.

Chairman Davis asked how far away is the closest neighbor's house and Mr. Cervini replied that it was very far. Chairman Davis also noted that the application included a letter from the Applicant's neighbor, Jim Grimes, residing at 128 Hastings Avenue, which expressed no objection.

Ms. Stephens and Ms. Schuyler both asked about fencing around the pool. Mr. Cervini replied that there would be fencing but he was waiting to see if he obtained the variances before he determined how high the fencing would be. Mr. Sperber added that the existing fencing around the panhandle portion of the lot should be sufficient but that a 48-inch high (from grade), self-closing, self-latching fence would be required on the left side access to the pool area. Mr. Macdonald asked if the stockade fence along one side yard had been put up by the Applicant. Mr. Cervini said it was there when he purchased the property.

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

Reviewing the application, Ms. Schuyler noted that the panhandle shape of the property made the placement of the pool an issue, and Mr. Olcott added that there was really no other choice as to placement. Chairman Davis agreeing that there was no other place to

put the pool, also reminded the Board that there was no objection from any of the neighbors.

Ms. Stephens then made a motion to grant a 2 foot variance for the northwest side yard, a 2 foot variance for the rear yard, and a 5 foot variance for the northeast side yard. Mr. Macdonald seconded the motion, and the motion passed 5 - 0 with all in favor.

- b) **Chapman, Roy** – 24 Wells Avenue. Located in a RA-5 District and designated on the Tax Maps of the Village as Section 78.08 Block 7 Lot 32. Request for side yard variance and total side yard variance for a cantilevered house addition for kitchen expansion.

Mr. Chapman came forward to explain that he was planning on expanding the kitchen by constructing a cantilevered addition that would require a side yard variance and a total side yard variance. He added that the house had been constructed originally in 1940.

Mr. Sperber explained that although the house had been built prior to the 1961 zoning code, the variances being sought were based on the present setback requirements. He also explained that the setback requirements and variances at issue were carried out to 3 decimal places because that is how distances were shown on the proposed site plan. Thus, the variances being sought are a 1.015 foot side yard variance and a 5.036 total side yard variance.

Ms. Stephens asked when the house was purchased and whether there had been any structural changes since then; Mr. Chapman replied that he had purchased the home in 1986 and had not made any structural changes since then.

Ms. Schuyler pointed out that a letter of approval from Mr. Chapman's neighbor closest to the proposed kitchen expansion, Gloria McCann of 22 Wells Avenue, was included with the application.

Mr. Olcott confirmed with the Applicant that an additional 8 foot extension was being proposed to the front of the house that did not require a variance.

Ms. Stephens asked if the existing galley kitchen was not working for Mr. Chapman and his family, to which Mr. Chapman replied that was correct. He added that he had a large family with one daughter almost 6 feet in height.

Chairman Davis, Ms. Stephens, and Ms. Schuyler all agreed they had seen previous similar applications in the past. Those applications had similar property layouts and had been built when conformity to code allowed for smaller side yards.

With no more questions from the Board, Chairman Davis opened the meeting to the public. No one stepped forward, so Chairman Davis closed the public hearing.

While reviewing the application, Chairman Davis asked if anyone had a problem with the cantilevered design proposed. No one did. Mr. Olcott stated that the requested variance was reasonable and not substantial, and Mr. Macdonald stressed that the requested variance was just about making the existing kitchen wider. Mr. Sperber pointed out that the plan called for the side door to be eliminated.

Ms. Schuyler then made a motion to grant a 1.015 foot side yard variance and a 5.036 foot total side yard variance with the condition that the proposed addition, match the existing portions of the home.

Mr. Macdonald seconded the motion and the motion passed with a vote of 5 to 0 with all members in favor.

4. APPROVAL OF MINUTES:

Mr. Olcott made a motion to approve the minutes and resolutions of the October 19, 2011 Zoning Board of Appeals meeting, as amended. The motion was seconded by Ms. Schuyler. The motion was passed 5 - 0 in favor.

5. ADJOURNMENT:

The meeting was adjourned at 10:45 P.M.

Respectfully submitted,

Toni Cruz
Secretary, Zoning Board of Appeals