

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
March 14, 2012

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

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

ABSENT: Village Board Liaison

1. CALL TO ORDER:

The Zoning Board of Appeals Meeting of March 14, 2012 was called to order at 8:05 P.M.

2. PUBLIC HEARING:

- a) **Stephen & Amy Cappelli** - 31 Observatory Drive. Located in a RA-9 Zoning District and designated on the Tax Maps of the Village as Section 79.09 Block 7 Lot 35. Request for front yard variance, side yard variance, and total side variance for a wraparound front and side porch.

Chairman Davis started the meeting by announcing that Ms. Schuyler had recused herself from this application because she is a personal friend of the applicants. Next, Mr. and Mrs. Cappelli stepped forward to present their application. They said they wanted to construct a wraparound front and side porch for several reasons. Firstly, they explained that the house is on a cul-de-sac and that their children like to play in the cul-de-sac, so a porch would make it easier for them to watch the children as they played and would make the area family friendly. Even though the home is on the cul-de-sac, cars use the cul-de-sac. The porch would help them to set up a safer environment for the children. They feel the proposed wraparound porch would give them access to the backyard and enhance their property as well as the neighborhood. They further explained that it would not have been feasible to construct the deck on the other side of the house, and that their neighbors on the side of the proposed deck have their garage on that side of their property. The side deck would also cut down on the amount of deer traffic through that side of the house. They also plan to put up shrubbery along the property side line for purposes of privacy.

Ms. Stephens asked for a clarification of the amount of the variances being sought. The Board was referred to the chart prepared by Mr. Sperber showing a request for a 7-foot front yard variance, a 7-foot 4-inch side yard variance, and a 3-foot 4-inch total side yard variance.

Mr. Macdonald asked if the 8-foot width of the proposed side deck could be smaller. Mr. Cappelli replied that they wanted the side deck to be useable. Mr. Macdonald followed up with another question, asking to whom the split rail fence belonged. Mr. Cappelli said he was not sure.

Mrs. Cappelli then asked that the Board take note that her application package included four statements of support from neighbors residing close by. Chairman Davis read off the names and addresses of these neighbors. They were Barbara Constanzo of 25 Observatory Drive, Susan Becker of 34 Observatory Drive, L. M. Delliquadri of 33 Observatory Drive, and John Spring of 19 Observatory Drive. Chairman Davis also stated that the Board had received a letter of objection from Harold and Joan Coffey who reside directly next store to the Cappellis at 27 Observatory Drive, and another objection via a phone call from Mary Ayers also residing on Observatory Drive (#18). Chairman Davis then opened the hearing to the public.

Peter Coffey stepped forward. He was there to represent his parents, Mr. and Mrs. Harold Coffey, who had sent the Board the letter of objection. He said his parents were currently out of town but that they had strong objections to the proposed porch.

Mr. Tad Holland, residing at 32 Observatory Drive, stepped forward next. He gave a statement on how he felt the application did not meet much of the criteria in the zoning regulations for granting the variances. His main concerns were the aesthetics and density issues. He then mentioned that there was a big tree whose roots might be damaged were the yard to be dug up for the porch.

Chairman Davis gave Mrs. Cappelli an opportunity to respond. She said that Mr. Coffey has a tree with large branches, some of which have fallen on the Cappelli's property. She also questioned why he thought a front porch doesn't improve aesthetics, and she stated that she thought the house has a large enough front setback to handle the proposed front porch. She added that she has small children and many of her neighbors do not.

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

The Board then discussed the application. Ms. Stephens felt that the side deck was not necessary, and that the proposed front porch was attractive. Both Mr. Macdonald and Mr. Olcott felt that the side variance needed for the side deck was substantial. Mr. Macdonald also thought that the 10-foot width of the front porch was big, as the standard being 6 feet. Chairman Davis said that the opposition from neighbors was an important consideration for him. After Mr. Olcott said that he felt front porches do promote a better neighborhood, he questioned whether the applicants would consider just a front porch with no side porch or a more modest side porch. Chairman Davis proposed asking the applicants how they felt about that idea. Mr. Macdonald said he felt Mrs. Cappelli seemed opposed to the idea and added that the backyard could be accessed through the house so that there was no "need" for the side deck for access as stated by the applicant.

Mr. Olcott ended the discussion by stating that if the main goal for the proposed project was to watch the children at play, they could do it with a smaller front porch.

Mr. Olcott made a motion to grant a 7-foot front yard variance, a 7-foot 4-inch side yard variance, and a 3-foot 4-inch total side yard variance for the proposed wraparound front and side porch. Ms. Stephens seconded the motion. The variance was denied with a vote of 0 in favor and 4 opposed. Ms. Schuyler abstained, having recused herself from the application.

After the vote, there was a consensus by the Board that it would welcome a re-design with a smaller front porch.

- b) **Christopher & Anne Marie Walsh** - 113 Benedict Boulevard. Located in a RA-5 Zoning District and designated on the Tax Maps of the Village as Section 79.13 Block 3 Lot 11. Request for front yard variance and interpretation/variance from two sections of the non-conforming provisions of the Zoning Code (legal non-conforming 3-family use in a single-family Zoning District) for second floor addition and retrofitting of first floor.

Mr. Walsh presented his application. He had included photos in the application package. He said that he and Mrs. Walsh had purchased the home four years ago. Back in 1985 the 2-car garage had been converted to living space. There are currently 3 bedrooms upstairs, and another bedroom downstairs in the converted garage space along with a den. The den and the bedroom downstairs had not been made well and are drafty. They have twin daughters and although each could have her own bedroom, one bedroom has a door opening out to the deck upstairs and his daughter feels uncomfortable in it, so she shares a bedroom with her sister. The proposed plan would add more space and each daughter would have a comfortable bedroom. The easiest solution with the least impact, including their budget, is to enclose the second floor deck. The end result would be they would have 4 bedrooms and gain a half bath. In order to squeeze 2 bedrooms over the converted garage area, they are proposing to cantilever out 3 feet on each side. Having a corner lot with 2 front yards, one of the cantilevered sides on Hastings Avenue would require a 3-foot front yard variance.

Mr. Walsh also stated that the project would result in other benefits. The upstairs tenant accesses his/her apartment via the deck and stairs which are in poor condition. The stairs would be redone. Another benefit would be an electric upgrade.

Questions from the Board followed. Mr. Macdonald asked if the electric upgrade would be made to the entire house and Mr. Walsh answered in the affirmative. Ms. Stephens asked if the house was currently used as a 3-family house, and again Mr. Walsh answered in the affirmative.

Another part of the application was to determine whether or not Sections 230-53A(1) and 230-53B(1) of the Zoning Code applied and would then result in the need for variances from them. The Board asked for Mr. Sperber's input. He said that those Sections of the

Zoning Code dealt with “use” and there was no proposed increase in “use”, so he did not see the need for variance. Chairman Davis, Mr. Olcott and Ms. Schuyler all expressed their agreement.

Mrs. Walsh added that the existing second floor deck above the converted garage was unusual and not normal and that enclosing it would make it more conforming to the neighborhood. The proposed alterations would only be seen from the Hastings Avenue side. There are no proposed windows on that side and only 2 windows proposed facing east on Benedict Avenue. He also said he had spoken to his neighbors about the project and heard no objections.

Mr. Macdonald asked where the current location of the master bedroom was. Mr. Walsh said it was on the second floor facing Benedict Boulevard. Mr. Macdonald then asked if he had thought about taking down the door to the outside in the bedroom upstairs. Mr. Walsh said he had, but hoped to do more than just that and re-doing the deck stairs. Mr. Macdonald then asked if Mr. Walsh knew when the house had changed from a 2-family to a 3-family house. Mr. Walsh said he could not say for sure when but that it was prior to 1961, and this was confirmed by Mr. Sperber from a document in the property file in the Engineering Department. Lastly, Mr. Macdonald asked how many electric meters will there be. Mr. Walsh said the project required that he add 3 electric meters outside. He also summed up the application by saying he needed to address the following issues in the structure: the electric, the stairs, the draftiness, the childrens’ bedrooms, and the extra bathroom.

Chairman Davis, stating that it being a public hearing, then asked if there were any comments from the public. There was no response, so he declared the public hearing closed.

Board discussion of the application followed. Mr. Olcott felt that the project would be an improvement and make the home more functional. He felt it was a reasonable request with no objections from neighbors. Mr. Macdonald felt that the current house towers now and would get even bigger with the proposed alterations and that there were other ways to achieve the desired goal. Ms. Schuyler said that on an economic level, the applicant is taking on a huge project. She also felt that the current second floor deck is weird and enclosing it would look better. Mr. Sperber added that the house directly across from this house had received a variance for a second floor.

Mr. Macdonald added that granting the variance would make the non-conformity larger and reiterated that he felt there were other means to achieve the goals. When asked by Chairman Davis if he thought granting the application would have an adverse impact on the neighborhood, Mr. Macdonald said he did. Ms. Stephens added that no neighbors came to the meeting to oppose the application.

With the discussion of the application over, Chairman Davis made a motion to rule that Section 230-53A(1) does not apply and that a variance from that same Section is not needed. The motion was seconded by Mr. Olcott. A vote was taken and the motion

passed 4 to 1 in favor with Chairman Davis, Mr. Olcott, Ms. Schuyler, and Ms. Stephens all voting in favor and Mr. Macdonald voting against it.

Chairman Davis then made another motion to grant a 3-foot front yard variance on the Hastings Avenue side for new construction and a variance from prohibition of Section 230-53B(1) which states “no building which houses a non-conforming use shall be structurally altered or enlarged”. Ms. Stephens seconded the motion. This motion passed 4 to 1 in favor with Chairman Davis, Mr. Olcott, Ms. Schuyler, and Ms. Stephens all voting in favor and Mr. Macdonald voting against it.

- c) **Laurel Gouveia** - 1300 Albany Post Road. Located in a RA-40 Zoning District and designated on the Tax Maps of the Village as Section 67.14 Block 3 Lots 10, 11, 12. Request for variance for five accessory structures regarding their placement on the property, variance from height restriction for one of these five structures, and variance from accessory apartment regulations and use of a trailer for another one of the five structures. All variances are being sought in order to legalize existing structures on the property.

Ms. Gouveia was being represented by Attorney Jody Cross of Zarin & Steinmetz and Architect Ed Gemmola. Chairman Davis stated that Ms. Cross was a professional colleague of his but saw no reason why he would not be able to rule fairly and objectively on the application. He added that he had referred cases to Ms. Cross in the past, but nothing recent and nothing to do with Croton.

Ms. Cross presented the application which included detailed documentation on the variances being sought, a copy of the Gouveia gift proposal, aerial photos of the entire property, existing plot plan, and elevation of the accessory structures. She explained that the applicant’s property consists of 3 lots totaling close to 16 acres of land. The variances being sought tonight all involve accessory structures all located on one of the 3 lots, and that there are actually six not five accessory structures at issue. A pergola was recently added to the list of accessory structures seeking variance. She said Ms. Gouveia took sole possession of the property when her husband passed away. She would like to legalize the accessory structures in order to bring them into compliance which in turn would help facilitate the proposed offering of the property to the Village.

All six structures are non-conforming under Village Zoning Code Section 230-40B because they “project nearer to the street on which the principal building fronts than such principal building”. They include an accessory apartment, a 1-car garage, a wood shed/office, a metal 3-car garage, a Quonset Hut garage, and a pergola.

Ms. Cross said that besides the variances from Section 230-40B for all six accessory structures, two more variances are being sought for the accessory apartment which is a converted trailer. These are Section 230-41H because the trailer is not part of the main structure, and Section 230-49B which prohibits the accessory parking of trailers. A 1-foot 1-inch variance from height limitation (Section 230-40A(1)(a)) is being sought for the Quonset Hut.

Ms. Cross then addressed the factors the Board considers when making a determination. She pointed out that all the accessory structures have existed between 8 and 25 years. The closest accessory structure, as well as the others, are well beyond the 50-foot front yard setback for the RA-40 Zoning District where the property is located and are hardly visible in the winter months and not visible from Albany Post Road in the other months. The only alternative would be to demolish the structures. She also feels that the request is not substantial and that granting the variances would not have an adverse impact on the environmental conditions of the neighborhood especially since the structures already exist. Although the hardship is self-created, legalizing the structures would facilitate the proposed gifting of the property to the Village.

Mr. Gemmola then showed the Board photos of the pergola since they had not been included in the application package.

The Board then asked questions. Mr. Olcott wanted to know more about the accessory apartment/converted trailer. Mr. Gemmola said it was pre-fabricated, on blocks with lattice around it. It is permanently anchored, supported structurally in the ground and not on wheels. Mr. Olcott then said his main concern was that they would be setting a precedent for trailers should they legalize it. Ms. Cross said that it would be a hardship for her client to build a permanent structure and that someone (the caretaker) was living there currently.

Mr. Macdonald asked if the house was on sewer or septic, and Mr. Gemmola replied that he was not sure.

Ms. Schuyler said that reading through the portion of documentation addressing the 5 factors of consideration for granting the variances brought her to the conclusion that much of the reasoning rested on the fact that the structures were pre-existing, and that if the applicant were coming before the Board at the time the accessory structures were being constructed, they would not be looked upon favorably. She said the fact that the structures exist should not weigh in favor of granting the variances.

Chairman Davis added that putting aside the possible gift to the Village, the Board has to ask what decision would have been made if we were talking about new construction. He said the issue needs to stand or fall on its own merit.

Ms. Stephens asked if the accessory apartment would need a special permit. Chairman Davis replied that it would but that on Village Engineer Dan O'Connor's advice, the area variance is being sought first.

Ms. Cross added that even if we were talking about new structures, they were at the least set back approximately 200 feet and would still have no impact on the environment.

In response to Mr. Macdonald's question, Ms. Cross told the Board what all the accessory structures were being used for, which was mostly storage.

Ms. Stephens then asked whether or not the accessory structures were permanently anchored. Ms. Cross said some were “anchored” similar to the way a shed would be anchored. Mr. Gemmola added that the Quonset Hut was on a slab. Then Ms. Stephens asked if any accessory structure other than the accessory apartment was heated. Ms. Cross said she didn’t think so.

Chairman Davis then opened the public hearing. Ginny Calcutti, residing at 19 Hunter Place, expressed her objection. She said that the applicant had a mini village and that she didn’t remember reading about all these structures. She said that legalizing the trailer would set an unfavorable precedent and that since it was on a slab it could easily be removed. She said the applicant should have gotten the variances when they were put up.

Dan Chesnard of 64 Farrington Road spoke next. He also expressed objection. His main point of contention was the converted trailer which he termed a mobile home. He said the Village does not allow them, and this mobile home has existed since 1997. It would be setting a precedent for mobile homes if it were legalized. He said that if there was a septic system, an oil tank, and water all hooked up, it was intended to be a permanent structure and that someone has been living there for years. He would like to see it removed.

Mr. O’Connor added that, regarding mobile structures, there were different ways to set them up. He explained that some could stay for years, and that there are different types of anchorage. The structure at issue is aged, not new, but this type of structure could be towed if necessary. He also added, in response to Board questions, that the converted trailer was heated by oil which is not unusual and has a septic system which would require a special permit issued by the Village Board and would require involvement of the county health department.

Ms. Calcutti then asked whether basically all the accessory structures were illegal, to which Chairman Davis replied in the affirmative and added that was the reason for the application. Mr. Chesnard added that the converted trailer had been brought in on wheels. Ms. Cross then interjected that some of the issues being raised were not relevant to the application.

Ms. Schuyler asked Mr. Sperber why the “accessory apartment” was being treated as an accessory apartment and not a single-family dwelling given the fact that it is not attached to the primary structure. Mr. Sperber said it meets all the other requirements of an accessory apartment and that this was the most direct way to try to legalize it.

Mr. Macdonald asked whether granting the variances was a matter of all or none, and Chairman Davis said the Board could pick and choose which, if any, variances to grant or deny.

Ms. Calcutti then wanted to know if the property would be re-assessed if Ms. Gouveia were granted the variances. Mr. Sperber said there is the possibility that the assessment could be reduced and that the value/assessment was not directly linked to the structures.

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

Chairman Davis started the discussion of the application by asking if any Board member was in favor of legalizing the converted trailer. No one was in favor. Then he said that regarding the rest of the structures, he was not terribly happy with some structural aspects of some of the buildings, but would be hard-pressed to object to them if this was a new application.

Mr. Olcott said he felt the issue was mitigated by the fact that the remaining structures could not be seen from the road. Mr. Macdonald felt that one structure could have been used instead of six or seven to achieve the same goal. Chairman Davis disagreed saying that when the trees are bare, all the structures can be seen and one bigger structure instead of the six or seven would have a worse visual impact.

Ms. Stephens compared the layout of these accessory structures to those on the Rockefeller Estate and said she wished they had done something similar. Board members agreed the Quonset Hut was unsightly.

Ms. Schuyler said that the use of these accessory structures bothered her; that some were being used to store papers, and that a better alternative would be to rent storage space.

Mr. Macdonald asked if storage of an antique fire truck was a permitted use, as was being done by Ms. Gouveia. Chairman Davis said he believed there was no prohibition.

Ms. Schuyler then added that a variance for a 2-car garage and workshop had been sought and obtained back in 1974, so Ms. Gouveia was aware of the variance process.

Mr. Sperber said that after a discussion with Mr. O'Connor, he was made aware that when the main house was built, a rear yard variance was granted in 1965 to the prior owner and it was understood that any additional structures would not comply with setbacks.

Ms. Stephens said that because of the way the house is situated, everything else has to be in front of the main house and closer to the road, but the types and uses of these structures are not what the Board would want to see.

The Board ended the discussion of the application and then decided to break the granting or denial of the variances into four motions.

Motion #1: Chairman Davis made a motion to grant a variance for the converted trailer/accessory apartment from Section 230-49B which prohibits the accessory parking of trailers. Mr. Olcott seconded the motion. The motion was denied with a vote of 0 to 5 with all members opposed.

Motion #2: Chairman Davis made a motion to grant a variance for the Quonset Hut garage from Section 230-40B which states that "no accessory building shall project

nearer to the street on which the principal building fronts than such principal building”. The motion was seconded Mr. Olcott. The motion was denied with a vote of 0 to 5 with all members opposed. This variance denial made the vote on the height variance of the Quonset Hut garage unnecessary.

Motion #3: Chairman Davis made a motion to grant variances for the 1-car garage, the wood shed/office, and the metal 3-car garage from Section 230-40B which states that “no accessory building shall project nearer to the street on which the principal building fronts than such principal building”. Mr. Olcott seconded the motion. The motion was denied with a vote of 2 to 3; Chairman Davis and Mr. Olcott voting in favor and Mr. Macdonald, Ms. Schuyler, and Ms. Stephens voting against it.

Motion #4: Chairman Davis made a motion to grant a variance for the pergola from Section 230-40B which states that “no accessory building shall project nearer to the street on which the principal building fronts than such principal building”. Mr. Olcott seconded the motion. The motion passed with a vote of 5 to 0 with all members in favor.

3. APPROVAL OF MINUTES:

Ms. Stephens wanted it noted that no Village Board Liaison was present at the meeting.

Ms. Stephens then made a motion to approve the minutes and resolutions of the February 8, 2012 Zoning Board of Appeals meeting, as written. The motion was seconded by Ms. Schuyler. The motion passed 5 - 0 in favor.

4. ADJOURNMENT:

The meeting was adjourned at 10:20PM.

Respectfully submitted,

Toni Cruz
Zoning Board Secretary