

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
May 09, 2012

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

ALSO PRESENT: Joe Sperber, Assistant Building Inspector
Casey Raskob, Village Board Liaison

1. CALL TO ORDER:

The Zoning Board of Appeals Meeting of May 09, 2012 was called to order at 8:05 P.M.

2. 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 allowable building coverage for lot; side yard and rear yard variances for 3 patios; and side yard, total side yard and rear yard variances for deck.

Mr. Cervini came forward to present his application. He explained that he had been granted two side yard variances and a rear yard variance on 11/09/11 for an above ground pool. Since then, extensive construction has taken place for the pool and for 3 patios and a deck not addressed at the November 2011 ZBA hearing. He explained that he had not intentionally omitted the deck and patios at his last meeting with the ZBA and did not realize he needed variances because the new construction includes replacing (and extending) a deck and a patio, both of which existed when the home was purchased in 1996 and when he sought the variance back in November 2011.

He then went on to explain what was included in the application package. It included a narrative from which Mr. Cervini read a substantial portion. It also included 11 photos (labeled Pictures 1, 2, 3, 3A, 4, 5, 6, 7, 8, 9, and 10) of the pool, deck, and patios taken from different angles. He pointed out that Picture 1 showed the existing red decking and Picture 10 showed the existing patio that extends beyond its current proposed dimensions. Also included in the package was a statement of support from Mr. Cervini's neighbor, Jim Grimes, residing at 128 Hastings Avenue, and Attachment #1 and Attachment #2. Attachment #1 was a survey with notations showing where the former decking and patio were located. Attachment #2 was a survey showing the proposed new deck and patios. Mr. Cervini further pointed out that the package also included a memo to the ZBA by Mr. Sperber, dated April 26, 2012, that had a chart listing all the required variances along with an attached survey indicating and numbering the associated patios. As indicated on Mr. Sperber's chart, the following variances are being sought:

Patio #1	4-foot rear yard variance.
Patio #2	4-foot side yard variance.
Patio #3	4-foot rear yard variance and 4-foot side yard variance.
Deck	8-foot side yard variance, 20-foot total side yard variance, and 25-foot rear yard variance.
Building Coverage	882 square feet.

Ms. Stephens asked Mr. Cervini to explain what was granted at his last meeting with the ZBA in November 2011. Mr. Cervini replied that he had been granted a variance for the pool but was surprised to learn that he now needed variances for the deck and pavers/patios because they were there already and he was making modifications to both to accommodate the pool. He said he was basically taking out the old deck and patio and putting in new ones along with patio no. 2 and no. 3 and did not know there was Village code requirements for setbacks.

Mr. Macdonald asked what was the size of the original deck. Mr. Cervini replied that it was 30 feet by 24 feet, and that 120 feet of additional decking was proposed. He again added that the original deck was there when he purchased the home in 1996 and did not know it was an issue.

Mr. Olcott asked if the pool itself was compliant, to which Mr. Cervini replied that it was. It had been placed where it was intended as per the previous variance granted.

Mr. Macdonald asked why the pool had not been placed deeper so as to be level with the ground. Mr. Cervini said that he had wanted the existing deck to meet the pool level.

Ms. Schuyler asked if the plan proposed covering the entire lot area. Mr. Cervini indicated how the entire area would be covered by the deck and the three patios.

Chairman Davis then asked Mr. Sperber for a definition of a patio, which Mr. Sperber gave. Mr. Olcott then asked why a patio needs a setback. Mr. Sperber said that Village code required that any paved terrace needed a setback which is 4 feet except for a front yard setback which is 15 feet.

Ms. Stephens asked if the proposed patios were at grade, to which Mr. Cervini replied that they were. Mr. Cervini added that his property was oddly shaped and that it was 24 feet wide at the narrowest width and he had not realized that the original deck was non-conforming. Chairman Davis commented that Mr. Cervini was now adding to the non-conformity by building more than existed.

Chairman Davis asked Mr. Sperber to confirm that the 3 patios were being treated as paved terraces which require 4-foot setbacks and that the deck was being treated as attached to the house requiring the same setbacks as the house. Mr. Sperber did so confirm. Mr. Cervini then confirmed for Chairman Davis that the variances being sought would allow him to build right up to the property line.

Ms. Stephens asked Mr. Sperber if the tree in the backyard was safe where it is situated and Mr. Sperber replied that the applicant had taken great care to protect it.

Chairman Davis asked that it be noted that the application included a statement of support from the applicant's neighbor, Jim Grimes, residing at 128 Hastings Avenue. Mr. Cervini said that his neighbor on the east side of his backyard, whose garage sits next to the Cervini property line, also had no objection. Chairman Davis added that neighboring residents had been sent legal notice and those in support as well as those opposed could have come to express their opinions.

Chairman Davis opened the hearing to the public. No one stepped forward, so Chairman Davis closed the hearing.

Discussion of the application followed. Mr. Macdonald said he had no problem with the patios but did have a problem with the deck. He felt that building an elevated deck to the property line would set an undesirable precedent. Chairman Davis explained the Board's standard is to treat the application as if the applicant were coming in with new plans, and therefore agreed with Mr. Macdonald. Ms. Stephens said that although she was very sympathetic because of the unusual shape of the lot, she wished the applicant had come in sooner before so much construction had already taken place. Chairman Davis also said that he wished discussion regarding the deck had taken place at the prior variance application and that the application was a difficult one. Although the variances sought for the patios were only 4 feet, in terms of percentage, this represented asking for 100% variances.

Mr. Macdonald asked the Board if a temporary variance could be issued. Chairman Davis said the Board could not do so, but suggested that they might do something similar to what had been done with the Paul Hirsh resolution back in May 2011 and June 2011, and include a condition that the variance be granted for the length of the applicant's(s') residence. The pool could stay regardless, but if the applicant(s) should move, setback compliance would need to be re-established for the patios/pavers and the deck.

Chairman Davis then asked Mr. Sperber whether a variance would still be needed if Mr. Cervini had wanted to just rebuild the existing deck along with the pool and if he had any idea when the original red deck had been constructed. In response Mr. Sperber said that the deck does not show on the property card or the 1961 survey which was used to grant the past variance and building permit. To the best of his knowledge it was constructed sometime between 1961 and 1996 when the home was purchased by the Cervinis. He added that had the deck been included in the approval process in past permitting application(s), the variances would still have been needed. They would have been needed regardless if the deck had been treated as an accessory structure or as attached to the building, and the percentage of variance would still have been 100% regardless.

Mr. Cervini said that because of the odd shape of his lot, making the deck compliant would leave little or no deck. He seemed agreeable to the idea that the variance might be granted for the duration of his (and his wife's) residence.

Mr. Olcott added that he too had no problem with the patio/pavers but did with the deck. As a result, it was suggested that a condition could be included with the granting of the variance for the deck and building coverage.

The Board noted that even though Mr. Cervini had now come before the Board twice and legal notices had been sent out twice, there had not been any voiced opposition. It also noted that the variances, although substantial, were mitigated by the existence of neighboring garages along two property lines, and that at this point it would be a financial hardship to remove the structure.

Mr. Olcott then made a motion to grant without condition the variances requested for the 3 patios, and to grant the variances for the deck and the building coverage conditionally, so long as the applicant(s) remain in the house as primary residents. The deck and the building coverage would need to be brought into compliance with Village code when the residency ends. Ms. Schuyler seconded the motion. The motion passed 5 - 0 with all members voting in favor.

3. APPROVAL OF MINUTES:

Ms. Stephens then made a motion to approve the amended minutes and resolutions of the April 11, 2012 Zoning Board of Appeals meeting. The motion was seconded by Mr. Macdonald. The motion passed 5 - 0 in favor.

4. ADJOURNMENT:

The meeting was adjourned at 9:45PM.

Respectfully submitted,

Toni Cruz
Zoning Board Secretary