

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
October 17, 2012

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 October 17, 2012 was called to order at 8:00 P.M.

2. PUBLIC HEARING:

- a) **Hackenburg, John** - 7 North Ledge Loop. Located in a RA-25 District and designated on the Tax Maps of the Village as Section 68.17 Block 2 Lot 1. Request for variance to erect carport nearer to street on which the principal building fronts than such principal building.

Mr. Hackenburg presented his application. He explained that he could only place the proposed carport at the designated location on the included survey because of the unusual shape and features of his property. The placement was limited due to the septic fields at the front and wetlands towards the back. The proposed carport would be as small as possible to accommodate 2 cars with a gravel base and no walls - only railings between the 4 posts. He further explained that the carport would be located at the same gravel area where he currently parks and in response to Ms. Stephens question, he answered that there would be no extension of the current area used for parking.

Mr. Sperber clarified for Mr. Olcott that it was not a setback variance that was being sought but a variance for the placement of the carport in front of the primary structure due to the location of the septic fields, wetlands, and the paper street portion of Sunset Trail.

Ms. Stephens was concerned with the location of the carport in relation to the fire hydrant. Mr. Sperber said that the carport would be located behind the hydrant giving emergency responders access to it.

After confirming that the carport would be located where Mr. Hackenburg and visitors had historically parked, and would have a cedar covering, Ms. Schuyler added that she thought the design was very nice.

Mr. Macdonald asked about the sloping of the property. Mr. Hackenburg responded that the property slopes ever so slightly towards the septic fields. He said that the Village had installed a curb from the hydrant to the neighbors' house (the Burns' house) which had fixed a washout problem in the parking area. He added that the erection of the carport should not make any change to the drainage.

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

The Board had no issues with the application. Mr. Olcott made a motion to grant a variance to erect the carport nearer to the street on which the principal building fronts than such principal building with the condition that the carport not be enclosed and remain an open structure. Ms. Stephens seconded the motion. The motion passed with all members in favor.

- b) **Coxen, Colleen**, Agent for **Tyre, James & Anne** - 2 Cedar Lane. Located in a RA-9 District and designated on the Tax Maps of the Village as Section 79.13 Block 4 Lot 54. Request for front yard variance for existing carport.

Ms. Coxen stepped forward to present the application. She explained that the existing carport needs a 9-foot front yard variance. She added that a certificate of occupancy for the carport had been issued in 1961 without a variance.

Next, Mr. Sperber presented some background information. The front yard setback requirement of 25 feet for this property was the same back in the early 1960s (as per the 1931 Zoning Code for the B District). He said that the owners back in 1960 had gotten a building permit for the carport. The reproduction of the survey submitted at the time showed the carport 25 feet back from the property line. The person who reviewed it saw that the carport, as depicted on the survey, met the requirement for the front yard setback and issued the building permit. The carport was built and subsequently the certificate of occupancy was issued. Back then project areas were not being staked out and inspections did not include determination if setbacks were being met. A 1967 survey shows the carport lacking the 25-foot setback. The issue arose when a prospective buyer inquired as to whether he could enclose the existing carport, and if not at that time, the issue would have come up when the buyer applied for a building permit to enclose the carport.

Chairman Davis asked how many times the home had been sold since the certificate of occupancy for the carport had been issued, and Mr. Sperber replied that he did not know the exact number but it was at least a couple of times. The Board then got confirmation that the application was two-fold. A variance was being requested for the existing carport and a variance was also being requested to enclose the existing carport.

Chairman Davis said that this was going to be a difficult application for the Village. Discussion amongst the Board and the applicant brought forth a lot of questions and concerns:

- Whether the Village can now require a variance for the mistake it made by issuing the C.O.?
- Is an interpretation needed that would reserve the right of future Boards to review applications to enclose carports?
- Can a certificate of occupancy be revoked?
- Should the carport be deemed legal because a C.O. was issued?
- If the carport is deemed legal, and the new owner needs a building permit to enclose it, are we increasing the degree of non-conformity?

Chairman Davis then suggested that the matter be referred to the Village Attorney for his opinion regarding the legal status of the carport and how the ZBA should proceed. He added that the owner(s) and contract vendee have vested rights in the matter and the Board needs to proceed with caution. Speaking for himself, he said that he was reluctant to see the carport enclosed. If the Board were to take action, he would favor granting the variance for the carport but not allowing the enclosure.

Ms. Coxen stated that most of the carports on Cedar Lane had been enclosed and were probably closer to the street than the one at hand, and Ms. Schuyler responded that although there were vested rights at issue for what exists now, there were not necessarily rights to what would exist by enclosing the carport and increasing the impact of the structure. Ms. Coxen then asked if the Village had done “due diligence” and had granted the variance for the carport, would she need to be asking for the variance tonight to enclose it.

Chairman Davis stated again that there are vested rights and that he would like to adjourn the matter in order to speak with the Village Attorney to proceed in a legal manner so as not to put the Village at risk and to determine if the issue at hand is a variance or an interpretation. Ms. Coxen agreed to the adjournment.

Chairman Davis then opened the hearing to the public. No one came forward but it was noted that a letter had been received by the Board from Frederick W. Turner, residing at 35 Truesdale Drive, proposing a compromise that the existing carport be legalized as is, with the condition that it never be enclosed.

- c) **Peter Tsagarakis/Rakis Inc.** – 215 S. 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 renewal of Special Permit under Code Section 230-51C and Code Section 230-52B for existing parking lot (Section 79.09 Block 1 Lot 52) on Bungalow Road.

Chairman Davis explained that the application before the Board tonight was for the renewal of a special permit for the Croton Colonial Diner’s existing parking lot on Bungalow Road. He then asked Mr. Sperber to review his (Mr. Sperber’s) memo to the Board, dated September 27, 2012, regarding the status of the conditions which had been placed on the Board’s resolution granting the special permit back on November 9, 2011.

All conditions had been met except for the removal of the guide rail (part of condition 1), lack of establishment of grass turf on the 6 Hudson Street lot (condition 4), and posting of a performance bond with the Engineer's Office (condition 5).

Mr. Tsagarakis who was present along with his son, Dino Tsagarakis, spoke next. He stated that he was very upset, and did not understand why he was before the Board tonight and that the Board was being unreasonable with the conditions of the special permit. He especially thought the idea of the performance bond or "life insurance on plants" was ridiculous. He said he has already spent a lot of money and has always tried to do the right thing but feels he is being choked with these conditions.

Mr. Olcott told Mr. Tsagarakis that he had completed about 90% of the overall plan and that the Diner property was looking good.

Chairman Davis then explained to Mr. Tsagarakis that the special permit had been issued in November of 2011 with 7 conditions clearly listed and if he had a problem with them he should have been talking with the Village Engineer or with the Board much sooner than today. He further added that the conditions had been very hard to negotiate, with the Board trying to balance the applicant's rights with the concerns of the neighbors.

Both Mr. Tsagarakis and his son asked if the Hudson Street lot could be treated as a separate issue from the Bungalow Road lot to which Chairman Davis replied that the Board was looking at the totality of the ownership. Ms. Schuyler voiced her agreement with the Chair. She explained that, prior to the issuance of the special permit, customer parking had been taking place on the Hudson Street lot – a residential lot. By agreeing to close off the Hudson Street lot, the Board then understood the need for additional parking on Bungalow Road and agreed to the special permit with the conditions, thus tying the two lots together. She also felt that the Board had been reasonable with its conditions and that if Mr. Tsagarakis had a problem with them he should not have waited to renewal time to express them.

Chairman Davis suggested that the application be adjourned so that Mr. Tsagarakis could think about the outstanding conditions: completion of the landscaping plan, the grass turf, and the bond. He explained that if the applicant felt that this would cause a hardship he would need to present legal arguments to the Board. He added that all that was needed on the Hudson Street lot was grass, not sod. He said that Mr. Tsagarakis could come back in front of the Board and make a request that the special permit be granted without conditions based on what has already been done and the Board would discuss it but it is up to Mr. Tsagarakis to see where he stands on the conditions, where he would like to be in relation to the conditions, and how he would like to go forward. Chairman Davis then opened the hearing to the public.

Mr. Charles Henley, residing at 7 Hudson Street, stepped forward. He stated that the 3 lots have always been linked together in past applications and that any attempt to separate them should be rejected. He added that because all the conditions of the special permit had not been met, the Bungalow Road lot should be shut down. He also would like to see

the Hudson Street lot restored to a residential area and wanted to know if there was a current effort being made to re-zone the Hudson Street lot to commercial status. Ms. Schuyler responded to this. She said that the lot is zoned residential, is currently being used consistent with residential usage, and there had been no change in its zoning classification. Chairman Davis added that the Board can not force anyone to build a house on a residential lot and explained that a residential lot is one with a house on it or vacant land waiting for a house.

Mr. Harold Lockwood of 11 Hudson Street spoke next to express his support for the need of a performance bond. He also wanted to know if the applicant's property taxes had been paid and whether issuance of the special permit could be withheld for outstanding taxes. At this point Peter Tsagarakis left the meeting. Ms. Stephens told Mr. Lockwood that the property taxes had nothing to do with zoning.

Then in response to Mr. Henley's question of what should be expected next, Chairman Davis said he would like to see the applicant come back in front of the Board, hopefully with documentation supporting his argument, and possibly with an agent with authority to act on his behalf. He then adjourned the application.

After some discussion amongst themselves, the Board felt that the outstanding points of contention could be worked out. A strong argument could be made that the guide/guard rail needed to be kept, that the Hudson Street lot just needed some grass, and that with so much landscaping completed, the bond could be kept to a minimal amount. The Board suggested that Mr. Sperber try to reach out to Mr. Tsagarakis and his son to work through some of the issues.

3. APPROVAL OF MINUTES:

Ms. Schuyler then made a motion to approve the minutes of the July 18, 2012 Zoning Board of Appeals meeting. The motion was seconded by Ms Stephens. The motion passed 5 - 0 in favor.

4. ADJOURNMENT:

The meeting was adjourned at 9:58PM.

Respectfully submitted,

Toni Cruz
Zoning Board Secretary