

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
December 12, 2012

PRESENT: Seth Davis, Chair
Andrew Levitt
Alan Macdonald
Rhoda Stephens

ALSO PRESENT: Joe Sperber, Assistant Building Inspector

ABSENT: Doug Olcott
Village Board Liaison

1. CALL TO ORDER:

The Zoning Board of Appeals Meeting of December 12, 2012 was called to order at 8:00 P.M.

Chairman Davis began the meeting by welcoming the new member of the Board, Andrew C. Levitt, who is an experienced lawyer and who was appointed by the mayor. He added that the outgoing Board member, Roseann Schuyler, was an excellent and valued member of the Board who will be missed.

2. PUBLIC HEARING:

- a) **Stefanie Sovak**, Agent for **Robert Ferguson** - 11 Prospect Place. Located in a RB District and designated on the Tax Maps of the Village as Section 67.20 Block 4 Lot 13. Request for non-conforming use status for existing accessory structure (2-car garage) under Section 230-53 or alternatively a use variance under Section 230-13 to allow an existing accessory structure (2-car garage) without a primary structure on the lot.

Stefanie Sovak was present to represent the applicant, Robert Ferguson. Also present was the applicant's daughter, Patty Lapre, and his son, Fred Ferguson. Ms. Sovak was asked to present the application. She said Mr. Ferguson was in Florida and that his son and daughter were here to help with the historical background if needed. Her client is requesting that a non-conforming use status be granted for the existing 2-car garage structure. The lot at issue was part of a larger lot purchased by the applicant in the late 1970's. A subdivision of the lot was approved by the Village Planning Board in 1979, resulting in one lot with a home on it, the other with the garage. The lot with the home was subsequently sold and Mr. Ferguson has had ownership of the other lot with the garage for the past 33 years. Ms. Sovak believes that the legal non-conforming use of the garage was implied at the time the subdivision was approved because there was no mention of a non-conforming use variance requirement as a condition of the subdivision in 1979 or at any time since then. She further explained that Mr. Ferguson has now placed the property up for sale and that a potential buyer has been told that there is an illegal structure on the property. She feels that any issues with the garage should have

been brought up at the time of subdivision approval and to ask to legalize the structure now after 33 years would be onerous to Mr. Ferguson who needs to sell the lot for retirement purposes.

Mr. Macdonald asked what kind of storage was taking place at the garage. Ms. Sovak replied that it was personal storage and Mr. Fred Ferguson added that there have been cars and motorcycles at times stored there. Ms. Sovak then added that granting the request would not produce any change in the neighborhood.

Chairman Davis was of the opinion that the best approach to the application was to treat it as a request for an interpretation and that procedure under Village Code allowed the Board to act as hearing an appeal from determination of an officer of the Village (in this case, Joe Sperber, Assistant Building Inspector) and rule on the legality of the non-conforming use of the garage. The process would still be a notice proceeding, and there would still be a hearing that would be opened to the public for comment. Chairman Davis asked Ms. Sovak if the approach was agreeable to her. She replied it was.

Ms. Stephens asked Ms. Sovak if her client was in the process of a sale. Ms. Sovak said there was a potential buyer.

Chairman Davis opened the hearing to the public.

Chairman Davis then brought up the issue of cleanup of the property. Ms. Lapre said she believed it had been taken care of and Mr. Sperber said he was satisfied with what had been done.

Ms. Stephens and Chairman Davis both agreed that whether or not the variance is granted, the lot remains a residential area and should be maintained as such.

Mr. Michael Silfen, residing at 8 Prospect Place, asked if the intent was to build a home on the lot. Ms. Sovak said she did not know the intent of the potential buyer. If the variance were to be granted, the lot could stay as is with the garage or a single family home could be built on it.

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

The Board then discussed the application. Chairman Davis felt that the Board needed to look at what the Planning Board had been contemplating back in 1979 at the time of the subdivision approval. He pointed out that the Planning Board knew there was a house on one lot and a garage on the other and believes that this leads to a strong conclusion that the Planning Board would not have divided the property into 2 lots and left one illegal. He then read from the 1979 Planning Board resolution, pointing out that the only two conditions included in the resolution involved 1) recreation payment and 2) adequate off-street parking.

Mr. Levitt pointed out that the garage was mentioned in the Planning Board minutes from March 27, 1979 – the date of the resolution. Ms. Stephens pointed out that although the garage was mentioned in the minutes, it was not mentioned in the resolution.

Mr. Macdonald said he felt that the intent of the subdivision was to subdivide the lot and then build on the resulting lot with the garage. He then asked what was applied for in the original application back in 1979. Mr. Sperber replied that there is no copy of the application in the property file, but that the minutes say that the applicant was just asking for a subdivision.

After reviewing the March 27, 1979 Planning Board resolution and minutes, Chairman Davis stated that the Board needed to go back to the interpretation of the 1979 resolution and the only reasonable interpretation is that by the Planning Board granting the subdivision the garage became legal – a legal non-conforming use. He said the Planning Board knew of the existence of the garage and the Zoning Board needs to look at the continued use over the past 33 years.

The Board brought up other areas of concern, such as changing the non-conforming use from one use to another. The Zoning Code would not allow that. Another concern was undesirable uses. The Board agreed the lot would not be allowed to become a parking lot or storage lot but would be required to be maintained in conformity with the requirements pertaining to residential districts.

Chairman Davis then made a motion to issue an interpretation, based on the findings enumerated in the resolution, that the use of the structure on the property for the purposes of parking vehicles and storing personal property be deemed as a legal non-conforming use, while at the same time preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community. The motion was seconded by Mr. Macdonald. The motion passed 4 – 0 with all members voting in favor.

3. APPROVAL OF MINUTES:

Ms. Stephens then made a motion to approve the amended minutes and resolution of the November 14, 2012 Zoning Board of Appeals meeting. The motion was seconded by Mr. Macdonald. The motion passed 3 - 0 in favor. Mr. Levitt abstained, having been appointed to the Board on December 10.

Ms. Stephens wanted it noted that neither Village Liaison had been present at tonight's meeting.

4. ADJOURNMENT:

The meeting was adjourned at 9:15PM.

Respectfully submitted,

Toni Cruz

Secretary, Zoning Board of Appeals