

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
January 8, 2014

PRESENT: Seth Davis, Chair
Alan Macdonald
Rhoda Stephens
Christine Wagner

ALSO PRESENT: Joe Sperber, Assistant Building Inspector

ABSENT: Doug Olcott
Village Board Liaison

1. CALL TO ORDER:

The Zoning Board of Appeals Meeting of January 8, 2014 was called to order at 8:06 P.M.

Chairman Davis began the meeting with several announcements. He first welcomed the new member of the Zoning Board, Christine Wagner, who is a lawyer with a background in litigation and labor employment. Next, he congratulated Mr. Macdonald for his reappointment to the Board for another 5-year term and thanked him for his past service to the Board. He then congratulated former Board member, Andrew Levitt, who was elected to the Village Board, and who has been appointed as the Village Board Liaison to the Zoning Board. Although Mr. Levitt was unable to attend tonight's meeting, Chairman Davis said Mr. Levitt plans to take an active part in the Zoning Board process.

For Ms. Wagner's benefit, Chairman Davis then gave a short rundown of the Zoning Board meeting procedure.

2. NEW BUSINESS:

- a) **Fallacaro, Thomas** – 3 Arrowcrest Drive. Located in a RA-40 District and designated on Tax Maps of the Village as Section 67.15 Block 1 Lot 33. Request for variances for existing accessory structure (stone retaining wall).

Thomas and Carlene Fallacaro were being represented tonight by their attorney, Mr. Robert Hilpert. Mr. Fallacaro was also present tonight. The application package presented to the Board included a write-up of the explanation as to why the variance(s) are being sought, along with photos of the Applicant's property with the retaining wall as well as a view to the neighbor's property most directly impacted by the wall.

Mr. Hilpert explained that there are 3 separate variances being sought tonight for the retaining wall which is treated as an accessory structure. One variance is for the height of the wall, another is for a portion of the wall which is closer than 5 feet from the property

line and the third, for a portion of the wall which is in front of the primary structure, as a consequence of the flag shape of the property. The Village Zoning Code Sections relating to the variances being sought are Section 230-40A(1)(a), Section 230-40B and Section 230-40A(1)(b). He said he was here tonight to try to give structure to the application process which touched upon a lot of issues relating to the Zoning Board, the Planning Board, and conservation. He said he was not sure if the Applicant had been before the Zoning Board in the past, but in any event, was seeking guidance from the Board as to what it was looking for.

Mr. Macdonald brought up other issues regarding Mr. Fallacaro's property, such as whether or not there was a certificate of occupancy for the pool and whether part of the deck was built on a conservation easement. However, all agreed the place to start was here tonight with the Zoning Board.

Chairman Davis explained that from the Board's perspective, we needed to put ourselves back to 2001/2002 and the Applicant needs to describe the property and why the retaining wall was built back then.

Mr. Hilpert contended that the retaining wall was needed because the swale across the property failed to handle water drainage issues. He continued, saying that the swale was not constructed where and how it was supposed to be as indicated on the subdivision map and that the swale was inadequate. The inadequacy of the swale resulted in mud washing down Mr. Fallacaro's property as well as his neighbor's property. Upon professional advice, and personal expense, Mr. Fallacaro took it upon himself to try to remediate the problem and build the stone retaining wall. At the time he did not know that he needed the variances. He added that although the wall was not built by an engineer and there are no signed and sealed plans for it, it has withstood the test of time and if needed, professional opinions regarding the wall could be obtained.

Chairman Davis said that safety is always an issue with the Board and that the Board would be concerned about the sufficiency of the wall. He said the Board would like to see full engineering reports along with full drawings and site plan and then the Board would review these materials as if it were looking at new construction.

Chairman Davis added that the Board would not tolerate a string of adjournment requests as had happened in the past, to which Mr. Fallacaro replied that he would like to get the process over with also, but it had taken this long to appear before the Board because he was waiting for the Building Department to tell him what was needed.

Chairman Davis then asked the Village Engineer, Daniel O'Connor, who was attending tonight's meeting, whether he would be able to sufficiently review any new drawings submitted by the Applicant. Mr. O'Connor said he would not and suggested that a structural engineer do the review. Chairman Davis said that if the ZBA hired such an engineer, he would have to be paid by the Applicant.

Mr. Fallacaro then expressed some resistance to the idea, saying that there were past engineering reports, that the wall has stood the test of time and that the only thing lacking was a sealed set of plans.

Ms. Stephens wanted to clarify to the Applicant that the Zoning Board of Appeals is a quasi-judicial board with certain rules to be followed and that the retaining wall had been built without meeting requirements. Chairman Davis added that the Zoning Board process was different than the Planning Board process.

Mr. Hilpert said that he understood that the Zoning Board and the Planning Board would be concerned with the integrity of the retaining wall; however, if his client were to spend the money on the engineering review, come back to the Zoning Board for the variances and the variances were to be denied, it would not make sense. Mr. Hilpert then suggested that he and his client proceed with trying to satisfy the Zoning Board first. He said he also understood that if the variances were to be granted, they could come with conditions and if those conditions were not satisfied, the Board could reconsider its actions. If the variances were denied, the Applicant would have to decide how to proceed from there.

The Chairman was in agreement to proceed in this manner. To make it clear to all, he said that the Board would like the Applicant to come back before the Board with full engineering support of the 1999 Erosion and Sediment Control Plan included in tonight's documentation. He said it would be helpful if an engineer could walk the Board through where the swale was supposed to be and why it was built where it is now. Questions such as why the Applicant really needed to do what he did, what else he might have done, and what else he might have considered, need to be answered.

Ms. Stephens asked when the wall had been built and when was the first time Mr. Fallacaro came to the Zoning Board, to which Mr. Fallacaro replied 2001 and 2006, respectively.

Chairman Davis then opened the hearing to the public and Ms. Domna Candido of 1299 Albany Post Road stepped forward. Her house is also part of the Arrowcrest Development and is downhill of the Fallacaro property and most directly impacted by the retaining wall at issue. She said she was concerned with the safety of the wall and feared it might give way. She said she has trust issues with Mr. Fallacaro stemming from the past regarding a tree topping incident that became a legal issue and from the lack of permits for the work performed. She then passed out pictures of the retaining wall from her property. She said she understood that the wall does now exist, but would like to have the Village, through an independent engineer if needed, pronounce the wall safe.

Chairman Davis asked if Ms. Candido's principle concern was the safety of the wall and she replied that it was.

Mr. Macdonald asked if Ms. Candido had seen any increase or decrease in water issues since the wall was put up. Ms. Candido replied that there was no change but added that

she didn't know of and was now first hearing that there were drainage issues that in the Applicant's opinion necessitated the need for the wall.

Ms. Wagner asked that if we could turn back the clock would she have objected to the wall. Ms. Candido said she would have objected to a very high boulder wall, and for the same reason, concern that it might give way; in one word – safety.

Chairman Davis requested (with Ms. Candido's agreement) that a site visit to Ms. Candido's property be scheduled.

Chairman Davis then said pursuant to the discussion tonight, the Board would be continuing the hearing. He asked that the Applicant stay in touch and keep the Board informed about his timing to get the requested documentation together. He asked that if the Applicant will not be ready for the February ZBA meeting, he report to the Village Engineer. Mr. Hilpert said that February would probably be a problem but would likely be ready for March. Chairman Davis suggested the Applicant work with Mr. O'Connor and that Mr. O'Connor and Mr. Sperber keep the Board in the loop.

3. APPROVAL OF MINUTES:

There were no minutes to approve; all past minutes having been approved.

4. ADJOURNMENT:

The meeting was adjourned at 9:20P.M.

Respectfully submitted,

Toni Cruz
Secretary, Zoning Board of Appeals