

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
March 12, 2014

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

ALSO PRESENT: Joe Sperber, Assistant Building Inspector
Andrew Levitt, Village Board Liaison

1. CALL TO ORDER:

The Zoning Board of Appeals Meeting of March 12, 2014 was called to order at 8:00 P.M.

2. OLD 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).

Representing Mr. Fallacaro at tonight's meeting were his Attorney, Robert Hilpert, and Architect Ed Gemmola.

Mr. Hilpert explained that Mr. Fallacaro was not present tonight because he had a kidney transplant about one and a half weeks ago and he was doing well but was not allowed to be in crowds. He also said that he did not feel it necessary to again explain the variances being sought since he did that at the last ZBA meeting.

[Secretary's Note: The three separate variances being sought are: one for the height of the wall, another 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. 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).]

Mr. Hilpert then mentioned the documents he was presenting to the Board tonight, which included Mr. Hilpert's letter to the Board addressing the issues, three letters dated 11/4/08, 4/3/09, and 12/16/09 from Bernard Grossfield (a Consulting Engineer) to Mr. Fallacaro regarding the stone wall(s), and a set of drawings, which included a topographical map and an erosion and sediment control plan for the Fallacaro property. He also said that he had met with the Village Engineer, Dan O'Connor, since the last meeting to see if he and Mr. O'Connor were on the same page regarding the application. Mr. Hilpert said he hoped tonight's documentation package gave a full presentation and

that his letter included in the package addressed the five factors the Board would need to consider. He added that he would be happy to answer any questions posed by the Board tonight.

Chairman Davis stated that his main concern was that the application be looked at as if it were a new application coming before the Board back in 2001/2002 (before the wall was erected). The Board would then look at what variances are/were needed, and why they are/were needed. It would want to see before and after diagrams and have drawings that indicate where the drainage swale was, where its desired location was, and where it ended up.

Mr. Gemmola, used the Erosion & Sediment Plan, dated 4/16/99, to demonstrate and answer Chairman Davis' questions. He said Mr. Fallacaro's property was at the end of the drainage chain in the Subdivision and that he had witnessed the drainage issues but had nothing to do with the design of the wall. He added that the goal had been to slow the water down; to retain it. The water was to be funneled and redirected, giving it time to soak into the soil. The wall was built for this purpose and is doing what it was supposed to do.

Mr. Hilpert pointed out that the swale was called the "relocated swale" on the Plan. He also said that the original water course had been changed by the golf course and that each lot in the Subdivision had its own drainage plan. Before the construction of the wall, Mr. Fallacaro's property was eroding down the hill onto the neighbor's (Mr. Rosso's) property. He added that the wall was designed by Tim Cronin and built by Miguel Velardo, but that Mr. Fallacaro had no copy of the plans for the wall.

Chairman Davis asked if there had been any alternative plans, to which Mr. Hilpert replied that the present wall works. Chairman Davis countered with a question as to why 30 feet of wall was needed. Mr. Hilpert explained that a calculation had been performed to determine how much flat land was needed to allow for percolation which would slow the water down, along with the use of catch basins. The resulting amount of water would determine the "size" or height of the wall.

Chairman Davis said that the argument for the wall, as it stands today, is just hearsay and that the Applicant needs to show the Board that he looked at alternatives.

Mr. Hilpert said that Mr. Fallacaro had been under the belief that the wall was being constructed outside the required setback and that he did not know at the time that he needed a building permit.

Ms. Stephens pointed out that the Erosion & Sediment Control Plan that had been submitted tonight had been prepared by Ralph Mastromonaco, a local Engineer, and that Construction Note #4 of the Plan states: "The contractor shall be responsible for all applications and permits required for construction." Chairman Davis added that Tim Cronin, the Engineer who designed the wall, was also local.

Mr. Hilpert said that the Erosion & Sediment Plan was drawn before Mr. Fallacaro had purchased the property and that, again, Mr. Fallacaro did not plan to build within the required setbacks of the property. He said, Mr. Velardo who built the wall, just got off course probably due to the fact that the line “of construction” was irregular. He was trying to optimize the square footage on top; the more flat land on top, the more water it can take to percolate.

Chairman Davis said the Board needed a report as to the necessity of the existing design of the wall.

Mr. Macdonald asked if Mr. Fallacaro had ever received a Stop Work Order with regard to the wall. Mr. Hilpert replied in the negative but did say that he had received violations.

Mr. O’Connor, also present at tonight’s meeting, then told the Board that the Village did not see the wall being built and had no knowledge of it until after it was done, probably due to the fact that there was construction going on in different areas in the Subdivision. He added that there had been violations (with regard to Planning Board approval, wetlands area, building permits) so there are numerous issues with regard to the property - the wall just being one of them.

Mr. Hilpert replied to Mr. O’Connor’s statement, saying that he and the Applicant had come up with a logical plan to seek the variances for the wall first. If the variances were to be denied, it makes no sense to go on to the other areas at issue. He added that the wall has been standing for 12 years; there is no more soil in Mr. Rosso’s garage from Mr. Fallacaro’s property; and the other neighbor, Ms. Candido also benefits from the existence of the wall.

Mr. Olcott asked if Mr. Cronin had any records regarding the wall. Mr. Hilpert said that as far as he knows he does not but said it might be worthwhile to bring Mr. Cronin before the Board, again stressing that the wall was a sophisticated system that had shown no degradation, no erosion, and was doing what it was supposed to do. He summed it up by saying that “it (the wall) works.”

Mr. Macdonald said he agreed that leveling the property would help to slow water down and Mr. Hilpert said that is why the wall needs to be as high as it is. Mr. Hilpert then mentioned the third variance for a portion of the wall which is in front of the primary structure, and Chairman Davis told Mr. Hilpert that the Board had no problem with that variance because of the flag lot configuration of the property.

There was some discussion then as to whether the wall(s) would be considered as 1 wall or 3 walls. Mr. Sperber clarified that all 3 tiers of the wall encroached the setbacks at one point or another. Chairman Davis said that to him it was 1 structure, 1 system with 3 walls operating in tandem.

Mr. Hilpert said that the wall was not unpleasant looking, but Chairman Davis said that was a matter of taste and opinion. Mr. Hilpert replied that although the wall might not be aesthetically pleasing to some neighbors, all had benefited from it by keeping the problem of erosion in check.

Chairman Davis said procedurally the Board could vote tonight but recommended that the Applicant try to come back with more competent evidence to explain why “this” wall?; why “in this space”? If there are valid answers to these questions, he continued, then one could go to the neighbors and say that if this wall did not exist, your property would be washing away. He said that the absence of evidence is construed against the applicant.

Mr. Olcott expressed concern that a favorable vote, without further evidence, could set a precedent – anyone who had built something in the past could use the argument that “it’s working”, and that what Chairman Davis proposed was a reasonable course of action.

It was agreed that the application be continued to the next meeting in April.

Before the end of the meeting, the Secretary checked to see if she received a letter from Domna Candido, of 1299 Albany Post Road, who had emailed the Secretary earlier in the day to say she had a letter for submission to tonight’s meeting. The letter had arrived at 8:32P.M. The letter expressed opposition to the Fallacaro application and was submitted to the record.

3. APPROVAL OF MINUTES:

Ms. Stephens made a motion to approve the amended minutes of the January 8, 2014 Zoning Board of Appeals meeting. The motion was seconded by Ms. Wagner. The motion passed 4 - 0 in favor. Mr. Olcott, having not been present at last month’s meeting, did not vote.

Ms. Stephens also welcomed Village Board Trustee, Andrew Levitt, as Village Liaison to the Zoning Board and thanked him for attending tonight’s meeting.

4. ADJOURNMENT:

The meeting was adjourned at 9:15P.M.

Respectfully submitted,

Toni Cruz
Secretary, Zoning Board of Appeals