

Village of Croton-on-Hudson  
Zoning Board of Appeals Meeting of  
April 9, 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 April 9, 2014 was called to order at 8:05 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).

Chairman Davis reopened the public hearing on the Fallacaro application.

Mr. Fallacaro was present along with his attorney, Mr. Robert Hilpert, Architect Ed Gemmola, and Engineer Tim Cronin Jr. Mr. Hilpert began by making a clarification to last month's minutes. The minutes stated that Mr. Hilpert had said that the retaining wall was designed by Mr. Cronin. Mr. Hilpert was not sure if he actually said the wall was designed by Mr. Cronin or whether he said he believed it was designed by Mr. Cronin. In either case, he wanted it clarified that Mr. Cronin did not design the wall and that Mr. Cronin had simply met with Mr. Fallacaro to give him ideas as to how to address the drainage problem.

Mr. Hilpert then said that the drawings being displayed at tonight's meeting were the same ones submitted last month along with new drawings - the original Subdivision topographical maps and an erosion control map.

Mr. Macdonald asked who had originally submitted these drawings and Mr. Cronin said that they had been submitted by the Arrowcrest developer as a proposal in 1994 and that sheet numbers 2, 3, and 4 [Applicant's numbering] represented the Subdivision layout while sheet number 1 showed the erosion control plan for the section of the Subdivision that included the Fallacaro property. Chairman Davis got confirmation that these were the drawings prepared by Arthur J. Van Suetendael, III, and last revised 4/4/94.

To the best of his recollection Mr. Cronin gave more details of the conversation he had with Mr. Fallacaro about the wall some ten to fifteen years ago. Using the drawings he indicated the proposed location of the swale and the location of where the swale ended up. He said that he had suggested the use of pipes to control and collect the water and that the water would then be discharged at the location where it would have gone naturally before the development of the Arrowcrest Subdivision. He also suggested that flatter property could hold water better allowing it to percolate before it would run off Mr. Fallacaro's property and onto the neighbor's property below.

Mr. Hilpert then asked Mr. Cronin if he would agree with Mr. Hilpert's assessment last month that maximizing the area of flatness on the property would increase the percolation on site, which in turn would dictate the height of the wall. Mr. Cronin explained that he did agree.

Chairman Davis asked Mr. Cronin to what extent he was involved with Mr. Fallacaro's property. Mr. Cronin said the wall was pretty much constructed when he visited the property and that he was involved mostly with discussions regarding controlling the water for drainage purposes.

Mr. Fallacaro added that the wall Mr. Cronin had just spoken of was a prior wall, a rubble-type wall that had been left by the builder. He said water would come through that wall onto his neighbor's, Mr. Rosso's, property, where there was a catch basin, and that he would have his own workers clean Mr. Rosso's driveway after it would rain. At that time he had contracted to have the present day wall constructed using the rubble wall which was about 20 feet wide, as the basis for the new wall, and that the wall just got higher and higher to bring it up to grade. He and Mr. Cronin only spoke about drainage issues and the placement of the pipes. It was suggested that the main pipe be placed at the location of the main part of the existing wall.

Chairman Davis asked Mr. Fallacaro if he had a fixed design for the wall when it was started and Mr. Fallacaro said he did not and that the wall was built by a known local builder, Miguel Velardo, according to standards.

Ms. Wagner then asked Mr. Cronin if Mr. Fallacaro had said anything about golf when he was out at the Fallacaro property, to which Mr. Cronin replied in the negative. Mr. Fallacaro then interjected that the golf hole on his property seems to be an issue that keeps being brought up and he wanted it known that if it is a problem relating to the variance, he would be willing to get rid of it. Chairman Davis said that he personally had no issue with it. Mr. Hilpert added that Mr. Fallacaro's comments were likely in response to the letter addressed to the Zoning Board, dated April 4, 2014, from the Planning Board and included in tonight's documentation, in which the Planning Board said that the real reason for the wall was the desire for a golf hole on the property and not due to drainage issues. Chairman Davis said that the Zoning Board did not share that opinion.

Mr. Macdonald asked if the stone-lined channels shown on the site grading plan (on the uphill neighbor's property) were ever built and Mr. Fallacaro said they were not.

Ms. Stephens asked whether the pool that was installed on the property ever affected the drainage situation. Mr. Fallacaro said that before the pipes were installed water would wash into the pool.

Chairman Davis summarized the issues saying that the Board would have to place itself back in time before the wall was built to determine if the drainage problems presented to the Board would have necessitated the granting of the variances.

Mr. Hilpert explained that he would be presenting the same arguments for the variances back then that he was presenting for the current application. He said the drainage issues existed and a larger flatter area on the property was suggested to address the problem. A flatter area necessitated a wall and the height of the wall was determined by the size of the flat area. He said that the wall was not built in secret; it was built during the day in public view with excavators present; that the builder of the wall made an error and unfortunately encroached into the setback. He said that yes there would have been better ways to address the drainage issue by possibly having the developer build the wall or with an easement to build the swale in the location outside of Mr. Fallacaro's property. As for filing for permits, he said Mr. Fallacaro did not know he needed permit(s) and admits that he should have gone to the Village to get help with a solution.

Mr. Hilpert then read excerpts from the letter, dated April 4, 2014, from the Chairman of the Planning Board addressed to the Zoning Board of Appeals, which was submitted to the Board as part of tonight's documentation. Mr. Hilpert said that the letter contained a lot of factual inaccuracies and that the Planning Board did not understand the agreed upon approach to the Zoning Board's part in the process of resolving the issue. He said that with consultation with the Village Engineer and with the Zoning Board's consent, it had been agreed that Mr. Fallacaro would seek the variances from the Zoning Board first and if granted (with probable conditions) would continue with the process and would then address the other outstanding issues in sequence, such as the structural soundness of the wall and the conservation easement. The variances from the Zoning Board were being sought first so that Mr. Fallacaro would not incur the additional substantial expenses associated with demonstrating the safety of the wall. He objected to what he said was the Planning Board's potential prejudice. He said that the Planning Board's urging in the letter to the Zoning Board to deny the variances due to the safety factor and multiple code violations goes beyond the scope of the Zoning Board and he objected to the Planning Board's characterization of Mr. Fallacaro as exhibiting willful disregard. He ended by saying that he would like the opportunity to respond to the Planning Board's letter since he had seen the letter for the first time today.

Mr. Macdonald said he had a problem with the Planning Board letter and that it should not be accepted by this Board. He said it needed clarification, especially paragraph 3 which he felt made an unfair comparison of the Fallacaro wall to the failure of the massive 75-foot retaining wall at Castle Gardens (next to the Henry Hudson Parkway in

Upper Manhattan). He said that wall was built about 80 years ago and has been failing for the last 30 years.

Ms. Wagner asked for confirmation from Mr. Hilpert that he thought the letter included a lot of unsupported statements. Mr. Hilpert did so confirm.

The Board then agreed that it had no problem with giving Mr. Hilpert time to reply to the Planning Board letter.

Chairman Davis re-opened the hearing to the public. With no one from the public stepping forward tonight, Chairman Davis closed the public hearing but said no more documents would be admitted to the record except for Mr. Hilpert's response to the Planning Board letter after which a vote would be taken at the Board's next meeting. Chairman Davis also noted that since last month's meeting, the Planning Board letter referenced tonight had been received into the record as well as a letter from Mr. Hilpert to the Zoning Board, dated March 19, 2014.

### **3. NEW BUSINESS:**

- a) **Keeseey, Kelly**, Contingent Owner - 43 Old Post Road South. Located in a RB District and designated on the Tax Maps of the Village as Section 79.05 Block 1 Lot 28. Request for a rear yard variance for an existing structure and a use variance for a proposed physical therapy business and greenhouses.

Along with Ms. Keeseey tonight to help present her application were her husband, Christian Keeseey, her attorney, Maria Modica-Snow, and her architect, Christopher Borchardt. Chairman Davis wanted it on the record that Ms. Modica-Snow is a personal friend of his and that Ms. Modica-Snow has represented him on several matters in the past.

Ms. Keeseey began the presentation. She said that she is hoping to purchase the property at 43 Old Post Road South but it is contingent upon her being granted the area variance and use variance she is seeking tonight.

She then gave a short history of the property which was summarized from the letter to the Zoning Board that accompanied the application. She said the first mention of a greenhouse in Village records was back in 1948 when a temporary special permit was granted to the previous owner (grandfather of the current owner) for a non-conforming use in the two-family residential district. This was followed by additional Zoning Board approvals for additional greenhouses that ran into the late 1950s. The last mention of the variance was in the January 27, 1959 Planning Board minutes in which the owners (Robert A. Swanson and Frank B. Swanson) requested that the Planning Board review the business' status with regard to upcoming revisions to zoning laws and Ms. Keeseey said no such review was found in subsequent minutes. She said the property was run as a greenhouse/florist up until 2008 when the economy took a down turn and the present

owner put the property up for sale that year. In the meantime the special permit use had expired.

Ms. Keesey said she is a physical therapist, presently working in Briarcliff Manor, who would like to open her own physical therapy clinic and she is “into” organic gardening which is why she would like to reestablish the use of the greenhouses. She added that the property has suffered some damage from being vacant since 2008 and also from Hurricane Sandy. She said that the Swanson Greenhouses have been a part of the Croton community for close to 65 years and that although the location is in a residential district, the property is surrounded by the High School, Bethel Cemetery, Bari Manor, and a 1-family house which adds to the uniqueness of the area.

With no proposed change to the existing footprint, the plan as illustrated with the accompanying site plan drawing is to turn the storefront into the physical therapy practice; add 3 more parking spots and 1 handicap parking spot along with the revitalization of the greenhouses. Only “clean” food would be grown without the use of pesticides, germicides, etc, for their own consumption along with the possibility of selling fruits and vegetables to local farmers markets and local chefs. One greenhouse would be soiled-based while the other greenhouse would be for aquaponics. The rear yard variance being sought is for one of the existing greenhouses.

Ms. Stephens asked if Ms. Keesey planned on selling any produced items on the premises, to which Ms. Keesey replied in the negative.

Mr. Olcott asked if any area variances had been sought in the past for the subject property and Mr. Sperber said there had been none and that the applicant was trying to bring the greenhouses up to code.

Ms. Stephens asked about intended signage and Ms. Keesey replied that the new sign would be small, 2-feet by 2-feet, and would be replacing the same size old sign.

Mr. Borchardt remarked that the applicant was taking a wellness approach with the use of new technology and said that there would be educational opportunities for the students with the High School being right across the street. Ms. Keesey added that in the future, she would look into the possible use of solar energy.

After getting confirmation that no one would be living on the premises, Chairman Davis said that it was a clear cut use variance application. Along with input from Village Engineer Dan O’Connor and Mr. Sperber, the application was established as an Unlisted Action under SEQRA with the applicant having supplied the necessary Coastal Assessment Form (CAF) and Short Environmental Assessment Form (SAF). Chairman Davis then said that the Board would need to make a motion to declare itself the Lead Agency and to refer the application to the Waterfront Advisory Committee (WAC) for a preliminary determination of consistency with the Local Waterfront Revitalization Program (LWRP).

Chairman Davis then opened the hearing to the public and Ms. Deborah Schor, residing at 4 Red Maple Ridge, stepped forward first. She said she has known the Keeseys for four years and that they were very knowledgeable with regard to organic gardening. She was supportive of the application and said she was very excited about the proposed plan.

Mr. Pete Sedlmair, the neighbor at 39 Old Post Road South, spoke next. He said he thought the idea was great but had some concerns regarding potential noise, and inadequate ventilation and parking. Chairman Davis assured Mr. Sedlmair that if the variances were granted, the Board could include very specific conditions if necessary. Chairman Davis also suggested that Mr. Sedlmair and the Keeseys have a dialogue regarding any concerns.

Mr. Borchardt addressed the concern over ventilation. He said that the greenhouses were set up for ventilation; that there was natural ventilation and that the louvers would be repaired as well as the replacement of the ventilation unit in the front with a newer more efficient one.

Chairman Davis addressed the noise concern saying that the Village has a noise ordinance and Mr. Keeseey said that the aquaponics pump was relatively quiet. Mr. Keeseey also said that as far as the parking situation, there would be potentially only 1 patient each half hour.

Ms. Stephens asked about the planned hours of operation and Ms. Keeseey said it would likely be from 7 to 11 in the morning and 4 to 8 in the afternoon/evening with no hours on Sunday.

Ms. Keeseey's application documentation also included three letters of support from the following neighbors:

- Jennifer and Robert Seale, of 37 Old Post Road South
- Josh Blumenthal, of 27 Old Post Road South
- Whitney Webster and Myles McDonnell, of 23 Old Post Road South.

Chairman Davis then made a motion to declare the Zoning Board of Appeals the Lead Agency under SEQRA and to refer the matter to the WAC for a preliminary recommendation of consistency with the LWRP. Ms. Stephens seconded the motion and the motion passed with all 5 members of the Board voting in favor. Chairman Davis declared that the hearing would remain open.

Next, Ms. Modica-Snow addressed the Board and spoke about the factors of consideration for the area variance and the use variance. With regard to the area variance she said the granting of the variance would effect no change to the neighborhood since the greenhouses have existed since the 1950s. She said the only other way to resolve the area variance issue would be to take down the greenhouse that encroached on the rear

yard setback and although the variance request is for 17.1 feet, it is not substantial in relation to the entire property. She also said that it was clearly not self-created.

Chairman Davis said since the application would be on the Zoning Board's agenda for the next two meetings, it would hold off on the vote for the area variance and vote on it along with the vote for the use variance at the third meeting.

Ms. Modica-Snow then addressed the use variance factors of consideration. She said that physical therapy and greenhouses were both permitted accessory uses in an RB zoning district; that the only thing missing was a house. She said that the neighborhood was very different from anywhere else in the Village and that if one were to drive by this neighborhood, one would not think it was a residential area. Just a short distance away are different zoning districts. She said the area is unique and therefore the hardship is unique to the property. She said that granting the use variance would not alter the neighborhood due to the fact that the greenhouses have been there for a very long time and had been operational as greenhouses up until 2008. Continuing, she said that building a house on the property instead would change the character of the neighborhood and that the hardship was not self-created. Ms. Modica-Snow ended by saying that the renovated greenhouses would be pretty and that the plan would help revitalize the area.

Ms. Keeseey then addressed the potential alternative uses of the property and went through a return on investment analysis with detailed documentation backup. She presented four different scenarios which all included demolishing the greenhouses and building a new structure or structures on the property. Scenario #1 was one single-family 2000 sq. ft. house; scenario #2 was two detached single-family houses, each 1500 sq. ft.; scenario #3 was two attached single-family condos, each 1500 sq. ft.; and scenario #4 was one two-family house. The first three scenarios all resulted in a loss with the fourth scenario showing a profit of only \$3,630 (a return of less than 1%).

Chairman Davis noted that the relevant statute for granting the use variance requires that the applicant cannot demonstrate a reasonable return on investment.

Ms. Wagner asked whether there might be a possible change regarding the purchase price and Ms. Keeseey replied that the purchase price was already set in the contract. Ms. Keeseey wanted it noted that the original asking sale price was \$647,000 and that her contract had it at \$135,000. She said the fact that the sale price went down so much was proof of the argument that not much can be done with the property to achieve a reasonable rate of return.

Ms. Modica-Snow said that she felt that she and Ms. Keeseey had presented strong support for this particular property for this particular use. Chairman Davis said the application was a totally unique situation and that they did do a good job, as did Mr. Olcott and Ms. Stephens. Mr. Olcott added that he thought the comparisons of the various scenarios and analysis were very good and that the construction cost per square foot was even on the conservative side. He also added that the information regarding the length of time that

the subject property had been on the market and the numerous price reductions to make the property saleable was an important factor for the Board to consider.

Chairman Davis again said that the hearing would remain open and asked the Secretary to write a memo referring the application to the WAC.

**4. APPROVAL OF MINUTES:**

Ms. Stephens made a motion to approve the amended minutes of the March 12, 2014 Zoning Board of Appeals meeting. The motion was seconded by Ms. Wagner. The motion passed 5 - 0 in favor.

**5. ADJOURNMENT:**

The meeting was adjourned at 10:15P.M.

Respectfully submitted,

Toni Cruz  
Secretary, Zoning Board of Appeals