

Village of Croton-on-Hudson  
Zoning Board of Appeals Meeting of  
May 14, 2014

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

ALSO PRESENT: Joe Sperber, Assistant Building Inspector

ABSENT: Christine Wagner  
Village Board Liaison

**1. CALL TO ORDER:**

The Zoning Board of Appeals Meeting of May 14, 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).

Although the public hearing on this application was closed on April 9, 2014, the Board allowed a continuation of the application tonight to allow Robert Hilpert, Mr. Fallacaro's Attorney, to submit a response (at Mr. Hilpert's request) to the letter addressed to the Zoning Board by the Planning Board dated April 4, 2014. Mr. Fallacaro and Mr. Hilpert saw the letter for the first time as part of the documentation at last month's meeting of April 9, 2014.

Chairman Davis started off by saying that he took issue with parts of Mr. Hilpert's response letter and he read the portions of the letter at issue. On page 1, paragraph 3, he disagreed with the statement that "this Board agreed with Applicant at a prior meeting that for purposes of its decision, there would be a presumption that the walls were 'safe'.....". He said the Board made no such presumption. Chairman Davis said he had no problem with the rest of the sentence "with Applicant retaining the duty to factually support that presumption before the Planning Board, and that any positive grant of the Zoning Board of Appeals would be conditioned on Applicant's reasonable demonstration of the safety of the walls....." Chairman Davis then quoted from page 2, paragraph 2, which stated "the Planning Board also expressed concern with the appearance of the retaining walls and their 'massive bulk.' We submit that concerns such as 'massive bulk' are wholly subjective and certainly not part of the Board's consideration. Nor, are they part of the balancing test." Disagreeing with that statement, Chairman Davis said that the

balancing test stands on its own and that the appearance of the walls was certainly something with which this Board had concern. With regard to page 3, paragraph 1, Chairman Davis said he did not necessarily agree with Mr. Hilpert's characterization, but agreed with the statement that "It is respectfully submitted that the proper consideration for your Board on this Application is not the opinion, speculation and innuendo contained in the Planning Board's letter, but the balancing test set forth in Section § 7-712-b of the Village Law and Section 125-129(C)(2)(b) of the Zoning Code..." and added that the Planning Board's opinion is what it is and that the Zoning Board's duty is to deal with those sections of the law. Lastly Chairman Davis said that the Board accepted the statement made in the last sentence of page 3, paragraph 1 - "However, I did not request permission to make this submission out of concern that this Board will be prejudiced by the Planning Board's letter, but because I felt it necessary to formally refute on behalf of the Fallacaros, the opinions and factual inaccuracies which I believe are contained in the Planning Board's letter and correct, or at least balance fairly, the record of this matter".

Before the Board began to deliberate on the application, Chairman Davis pointed out that the hearing had taken place and that there was an extensive record with regard to the application. He emphasized once again that the Board was obliged to look at the application as if it were hearing about it for the first time and it was new construction. He also wanted it made clear that any allegations made about motives were not a concern of this Board.

Chairman Davis added that he was having difficulty with approval of the application. He said the Board should probably vote on each variance separately and that most likely the variance for the wall being nearer to the street line than the primary structure would be granted due to the flag shape of the lot. He then asked the rest of the members of the Board for their thoughts.

Mr. Olcott said he was finding the application a difficult one. He thought that the safety of the wall was an issue for the Planning Board, should the application be approved by this Board. His main concern was setting precedent for others who might build without permits and then come before the Board after the fact.

Mr. Macdonald questioned why someone didn't try to stop the construction when it was being built. Ms. Stephens said it was never called to anyone's attention, and Mr. Sperber agreed with Ms. Stephens, adding that the wall(s) are far removed from the road.

Mr. Macdonald added that he has seen other walls in the same subdivision; that the subdivision has no storm water plan at all, and that Mr. Fallacaro actually did his neighbor a favor and stopped the water runoff onto the neighbor's property. He also felt the requested variance was not that big.

Ms. Stephens said she was having issues with deciding at what point one is breaking the law rather than bending it.

Chairman Davis said Mr. Macdonald's arguments would have been persuasive at the time the wall was built, but the Board had nothing to support why the wall was built where it was and why that high, and he disagreed with Mr. Fallacaro's statement that 50% of what comes before the Zoning Board is existing construction.

Mr. Macdonald said he thought that it would be quite costly to have the Applicant take down the wall or rebuild it for a couple of feet.

With Mr. Olcott's concurrence, Chairman Davis said that approval might be setting an undesirable precedent. He thought that the Board was being asked to approve something without any chance of modification and with neighbor objection. He also said that he would have definitely voted against approval if it were coming before the Board at the time of construction. He added that voting in favor could cause a vast whittling away of the Board's power.

Ms. Stephens reiterated that she was concerned with upholding the law, and Mr. Macdonald reiterated that denial would force the Applicant to spend a great deal of money.

Mr. Olcott said he was beginning to side with Mr. Macdonald's opinion. He said the Board was trying to move the project forward for review by the Planning Board. Although he said he disagreed with how Mr. Fallacaro went about the construction of the wall, there had been no stop order issued, nor surveillance of the wall at the time of construction. Other than setting precedent, he saw no value in voting against the application.

Mr. Fallacaro said he had learned his lesson.

Ms. Stephens said although it was wrong that Mr. Fallacaro did not seek a variance at the time of construction, the alternative of tearing down the wall would be worse and might result in a disaster.

Mr. Macdonald felt that Mr. Fallacaro didn't know he needed a variance until after the wall was built.

Chairman Davis said he was treating the three walls as one wall system and that the wall was too big and too close to the property line. He said again that the Board needs to look at the application as if it were new construction.

After hearing the Board's thoughts, Chairman Davis said that should the Board vote tonight, it was looking like a 2 – 2 vote, so he would like to have a full Board's vote instead. Chairman Davis asked the Secretary to set up a special Zoning Board meeting with all five members present at which time a vote would be taken. The Applicant was in agreement.

- b) **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.

Chairman Davis made a motion that as Lead Agency under SEQRA, and based on the review of the Environmental Assessment Form submitted by the Applicant and upon the Waterfront Advisory Committee's preliminary recommendation of consistency with the Local Waterfront Revitalization Program (LWRP), the Board issue a Negative Declaration pursuant to SEQRA. The motion was seconded by Ms. Stephens. With a vote of 4 - 0 in favor, the motion passed.

Chairman Davis then made another motion to refer the application to the Waterfront Advisory Committee for a final determination of consistency with the LWRP. Ms. Stephens seconded the motion and the motion passed with a vote of 4 - 0.

Chairman Davis stated that the public hearing on this application would remain open.

### 3. NEW BUSINESS:

- a) **Bertolini, Stephen**, - 107 Olcott Avenue. Located in a RA-5 District and designated on the Tax Maps of the Village as Section 78.08 Block 8 Lot 13. Request for a side yard variance for alterations to an interior staircase.

Mr. Bertolini came forward to present the application along with his brother-in-law, Matt Hall. Mr. Bertolini said that his house was built in 1946 with an interior 13-step steep and narrow (34" wide) staircase. He said that his older relatives will not walk up the staircase and that there is a chance his mother will move into the house and that the staircase would present a problem for her as well. He said the only feasible solution is to spin the staircase to the side which would require the side yard variance being requested. The entire project entails the redesign of one quadrant of the floor plan and roof system which would result in 27 sq. ft. more living space, a new stairway landing, a new roof over the existing basement stairway, and a 12-inch roof overhang at the front of the house. Mr. Bertolini added that he had had a conversation with his neighbor about the project and the neighbor had no objection.

Mr. Hall said the alteration would not actually change the building line.

Chairman Davis wanted it noted that the application documentation package included a letter from the neighbor, John T. Calvert, residing at 69 Maple Street. Although the letter did not mention the variance request, it was clear from the letter that Mr. Calvert understood the scope of the project and had no objection to the addition.

Chairman Davis then opened the hearing to the public and Frances Jimenez, the next door neighbor residing at 109 Olcott Avenue, came forward. She said that she and her family had been negatively impacted by past projects undertaken by the Applicant. She

complained of debris, Mr. Bertolini's dog's excrement, and water drainage issues on her property and submitted about 2 dozen photos depicting the results of these projects on her property. The water issue, she said, had been somewhat ameliorated by her husband installing a drainage pipe on her own property at their own expense. She said she understood why Mr. Bertolini would want the addition/alterations, but she and her family have been unable to enjoy their house and property and she is fearful of the impact of the proposed project.

Mr. Macdonald asked if the drainage issue had been brought to the attention of the Engineering Department. Ms. Jimenez she did receive some assistance from the office.

Mr. Bertolini then acknowledged that there had been issues with Ms. Jimenez and said he would work them out with her, and as far as the proposed project, he said he would do his best to not impact her. Mr. Hall also said he would oversee the project.

Mr. Olcott asked Ms. Jimenez if it was fair to say that she had concern about the construction and was not objecting to the variance itself. Ms. Jimenez said that was correct.

Ms. Stephens then asked if the Village Engineer, Dan O'Connor, and Mr. Sperber could oversee the construction. Mr. Sperber stated that should the variance be granted and the building permit applied for and issued, and a violation arose, such as debris, a stop order could be issued.

Chairman Davis then explained to Ms. Jimenez that it is the Board's responsibility to perform a balancing test regarding the factors of consideration for a variance and whether the benefit sought by the Applicant outweighs the harm to the neighborhood. The Board looks to see if the desired change can be achieved by another means. He continued by saying that the Board understood her concerns, received a constructive responsive from the Applicant and now that the Code Enforcement Officer, Mr. Sperber, is aware, she should call the Engineering Department with any issues regarding the proposed project.

In response to Mr. Macdonald's inquiries, Mr. Hall and Mr. Macdonald then discussed the new design of the roof.

Mr. Macdonald brought up the drainage issue again and said that what Ms. Jimenez' husband had done was not a permanent fix to resolve the problem. Ms. Jimenez agreed that the water should be draining out to the street and not on her property.

Chairman Davis asked for an informal commitment from the Applicant to work with the Village Engineer to rectify the drainage issue, and Mr. Bertolini said he would absolutely look for a permanent fix.

Mr. Olcott then made a motion to grant a 3.43-foot side yard variance for the proposed alteration to the interior staircase which would result in a 4.57-foot side yard setback.

Mr. Macdonald seconded the motion and the motion passed 4 - 0 with all Board members present voting in favor.

**4. APPROVAL OF MINUTES:**

Ms. Stephens made a motion to approve the amended minutes of the April 9, 2014 Zoning Board of Appeals meeting. The motion was seconded by Mr. Macdonald. The motion passed 4 - 0 in favor.

**5. ADJOURNMENT:**

Ms. Stephens wanted it noted that no Village Liaison was present at tonight's meeting. The meeting was adjourned at 10:15P.M.

Respectfully submitted,

Toni Cruz  
Secretary, Zoning Board of Appeals