

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
May 19, 2014

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

ALSO PRESENT: Joe Sperber, Assistant Building Inspector

ABSENT: Village Board Liaison

1. CALL TO ORDER:

The Special Meeting of the Zoning Board of Appeals of May 19, 2014 was called to order at 6:35 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).

Mr. Fallacaro and his Attorney, Robert Hilpert, were both present. The application had been adjourned at the May 14, 2014 meeting, and with the Applicant's consent a final vote had been delayed until tonight so that the full Board could vote on the application. (Ms. Wagner had been absent from the May 14th meeting.) Chairman Davis said he had spoken with Ms. Wagner over the telephone after the May 14th meeting and she had issues that needed resolution and discussion.

Chairman Davis said that the Board would vote on three separate variances and then he proceeded to summarize the two different positions that were being held by the Board at present.

Those in favor of granting the variances felt that Mr. Fallacaro was proceeding to remedy the situation. They felt that he had recognized the drainage problem and believed that what was built as the solution was appropriate to the problem he faced. Given the fact that there had been no involvement by the developer of the subdivision or any government entity to help rectify the drainage problem, the actions that were taken and the structure completed by the Applicant was adequate and necessary and for the benefit of the community. For those reasons the variances should be granted.

Those against the granting of the variances felt that the structures were erected without obtaining building permits, without approval of any local authorities, and without any variances. There had been no opportunity for negotiations regarding the location, size, or

design of the wall by this or any Board. This Board has the task of putting itself in the position as if it were hearing the application as a proposal for new construction and the Board would have required changes.

Chairman Davis added that unfortunately there was no chance for compromise so the Board needed to vote for or against the variances and that all the arguments had been heard by now. He then asked the Board members for their thoughts.

Mr. Olcott said that he stated his position at the last meeting and that this would be the toughest vote he has ever had to make. Although he did not agree with how the Applicant went about things, he thought it would be better to move the application along to the next stage which would be with the Planning Board. This Board could approve the variances but should add some sort of condition that the structure needs Planning Board approval.

Ms. Stephens said she also had stated her position at the last meeting. She said she felt the law needed to be upheld and was worried about setting precedent for future cases.

Ms. Wagner agreed that there were concerns and that she also did not agree with how the Applicant went about things. The safety of the wall was her biggest concern. She added that she felt that the wall was not out of place with regard to the neighborhood. Should the variances be granted (with conditions), the safety of the wall would need to be addressed in some shape or form.

Mr. Macdonald felt that everyone would be a big loser, including the Village should the variances be denied. He said that he could see a scenario where if the variances were denied, an appeal would be made. It could lead to action needing to be taken against the Applicant. The Applicant could possibly give in and take down the wall, and maybe just throw some grass seed down in its place, and the drainage problem would resurface. Potentially, the neighbors would start complaining again and the Applicant could turn around and say there had been no problem for the fourteen years the wall existed, until the Village made him take it down, and it could end up in some sort of litigation. Mr. Macdonald suggested that possibly Mr. Fallacaro's lot should never have been a buildable lot; that his property was the last property down the water runoff line including below the golf course. He questioned the fact that there had been no storm water plan put in place or even a plan approved by the Planning Board at the time of development. He stressed again that he thought everyone would be a big loser if the variances were denied.

Chairman Davis said he thought Mr. Macdonald had some valid concerns. He also wanted to address Ms. Wagner's opinion that the wall was not out of place with the rest of the community and asked how the rest of the Board felt about it. Mr. Olcott replied that Croton was on a bluff and was a community of retaining walls. Chairman Davis then asked Ms. Wagner if she agreed that, under the statute, the wall itself did not create an undesirable change in the character of the neighborhood nor detriment to nearby properties and she replied in the positive. The question of the safety of the wall could be deferred to the Planning Board.

Mr. Macdonald suggested that the Board could add a condition that, should something like 30% to 40% of the wall fail (it could be the Village Engineer's call regarding the percentage), the wall would need to be taken down.

Chairman Davis said he thought the wall was not out of place and asked Mr. Sperber whether the other retaining walls in the development needed variances. Mr. Sperber said he did not know for sure about all the walls and thought some were probably constructed as-of-right; it would have to be researched.

Ms. Wagner said that there was the undisputed statement by the one neighbor downhill of Mr. Fallacaro that the wall helped with the drainage problem and in turn was an improvement to the environmental impact. Adversely, the other neighbor whose house is located on the property adjoining the wall feels there is a strong undesirable visual impact. Ms. Wagner added that she wondered what would happen if the wall were to be taken down.

Mr. Olcott added that it was his understanding from reading the previous month's minutes that should the variances be granted, the safety of the wall would need to be addressed and confirmed to the satisfaction of the Planning Board.

The Board then discussed what and how to word any conditions, should the variances be granted. Chairman Davis asked the Board if any member would vote differently on any one of the three variances and each member replied that he or she would not.

A motion was made by Mr. Olcott to grant a 4-foot variance for the setback of the stone retaining wall from the property line, a variance for the stone retaining wall to project nearer to the street on which the principal building fronts than such principal building, and a 14.6-foot variance for the height of the stone retaining wall subject to two conditions: 1. that the safety of the wall be demonstrated to the satisfaction of the Planning Board and 2. that upon any determination of the Village Engineer, based upon periodic inspections upon prior notice to the owner of the property, that more than 30% of the stone retaining wall has failed, the Applicant shall bring the wall into compliance with all provisions of the Zoning Code in effect at the time of the failure, and the above variances shall be null and void.

The motion was seconded by Mr. Macdonald. The motion passed with a vote of 4 to 1; Chairman Davis, Mr. Macdonald, Mr. Olcott, and Ms. Wagner voted in favor while Ms. Stephens was opposed to the motion.

3. ADJOURNMENT:

The meeting was adjourned at 7:45P.M.

Respectfully submitted,

Toni Cruz
Secretary, Zoning Board of Appeals