

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
September 10, 2014

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

ALSO PRESENT: Joe Sperber, Assistant Building Inspector

ABSENT: Village Board Liaison

1. CALL TO ORDER:

The Zoning Board of Appeals Meeting of September 10, 2014 was called to order at 8:00 P.M.

2. OLD BUSINESS:

- a) **Boulos, John - 32 Piney Point Avenue.** Located in a RA-9 District and designated on the Tax Maps of the Village as Section 79.13 Block 4 Lot 44. Request for variance to erect retaining wall greater than 6.5 feet in height (accessory structure) for off-street parking, nearer to street on which the principal building (proposed new single-family house) fronts than such principal building and a height variance for the same retaining wall.
(Continued from June 16, 2014 meeting.)
- b) **Franzoso, Mark - 34 Piney Point Avenue.** Located in a RA-9 District and designated on the Tax Maps of the Village as Section 79.13 Block 4 Lot 45. Request for variance to erect retaining wall greater than 6.5 feet in height (accessory structure) for off-street parking, nearer to street on which the principal building (proposed new single-family house) fronts than such principal building and a height variance for the same retaining wall.
(Continued from June 16, 2014 meeting.)

Since both applications are linked and are similar projects, both Mr. Boulos and Mr. Franzoso were once again being represented by their Architect, Ed Gemmola. Mr. Gemmola was accompanied tonight by Mr. Hussein Elzoghey, a structural engineer who works with Mr. Gemmola. Chairman Davis reminded all that the hearing had been continued from June 16th with the consent of both parties and that the public hearing was still open. He also asked for a recap of the proposed projects for Mr. Macdonald's benefit, who had not been present at the last meeting.

Mr. Gemmola explained that each applicant is seeking a height variance to erect a retaining wall greater than 6.5 feet (an accessory structure), and whose location would be nearer to the street on which the principal building (a proposed new single-family house) fronts than such principal building. In each case the retaining wall is for a parking apron for off-street parking.

Due to the fact that at the last meeting with the Zoning Board, the Board had ruled that the two-tier retaining wall system on lot 45 was considered one wall, the design for that parking apron and retaining wall has been altered. The new height for the now 1-tier retaining wall is 18.25 feet. The height of the wall on lot 44 remains at 15.6 feet. Mr. Gemmola clarified that the height measurements were taken from the finished grade at the base of the retaining walls to the tops of the retaining walls.

Mr. Gemmola pointed out that in their letter of August 22, 2014 to the Zoning Board, Carlin-Simpson & Associates reaffirm that the design and construction of the houses on the two lots is feasible and that they will be providing anchor designs and will review the building foundation designs along with the retaining wall designs.

Mr. Gemmola stated that he would like to have a joint meeting of the Planning Board and Zoning Board along with the Village Board liaison to save on the sizeable cost of having professional experts appear more than once to answer structural and soil evaluation questions and any other remaining concerns of the public.

Chairman Davis explained that it was beyond the Board's power and improper to have such a meeting. He said the focus of this Board was a narrow issue (the variance for the retaining walls) and that is what the Board would be addressing.

Mr. Gemmola then addressed concerns brought up by the public at the last meeting with the Board. The replies are detailed in a letter to the Board, dated August 25, 2014, and submitted with tonight's application material.

Mr. Gemmola then distributed photos taken on July 14, 2014 of the Village water main project taking place along Piney Point Avenue and said that the proposed project would affect less of Piney Point Avenue than what is being affected now with that project. He said that they could have someone on Piney Point Avenue attending to safety issues during the Applicants' project.

With the use of the submitted drawing depicting the boring tests for both lots, Mr. Elzoghey gave an explanation of the structural framework of the houses and retaining walls. He said that the design was based on the subsurface evaluation made by Carlin-Simpson & Associates. He concluded that it was neither unusual nor unreasonable to build on the sloped lots, and would classify this type of construction as light.

A discussion ensued regarding slope erosion and both Mr. Gemmola and Mr. Elzoghey said that, as has been done in the past, geotextiles and structural membranes would be used along with ground cover, and that a lot more testing and analyzing would be done.

Mr. Macdonald then noted that the boring tests were not made on the property itself where the structures would be located. Mr. Gemmola said there is rock outcrop if not rock itself and reiterated that more testing and analyzing would take place.

Chairman Davis pointed out that much of what was being discussed is part of the Planning Board's site plan review. He then reopened the hearing to the public.

First to speak was Clifford Davis of 202 Mamaroneck Avenue representing Mr. Stephen Kaplan who resides at 29 Piney Point Avenue. For the record, Chairman Davis wanted it known that Mr. Davis and he were not related; that he had worked with Mr. Davis in the past on different matters but had not spoken to him in at least three years. Mr. Davis said that he was opposed to both projects and that the focus needed to change to address the balancing test of what would be the impact to the applicant if the variance is denied and what would be the impact to the neighborhood if the variance is granted. He then quoted from the 2011 Geotechnical Reports on both lots, concluding from them that the projects were below the acceptable factor of safety. Chairman Davis wanted to clarify that the reports point out the dangers but also point out the need for very special well-conceived construction design. Mr. Davis said that the five factors of the balancing test needed to be addressed. He said that failing one is not reason for denial but that they should be taken in totality. He said the variance request is substantial, that the projects presented danger to the neighborhood, and that the Applicants purchased the properties with knowledge of the potential problems. He suggested that the Board should not make any decision until all necessary tests are made and that those tests should be mandatory. He further said that it would be more prudent for the Board to let the Planning Board do a steep slope analysis and establish the safety factor first and then come back to the Zoning Board.

Mr. Elzoghey asked to respond. He said that Mr. Davis had made completely erroneous statements with regard to the geotechnical reports. He countered that the reports address the existing conditions of the existing slopes and call for the need for special measures in order to construct on the slopes.

Chairman Davis then said we can all agree that the report says there is a problem but what the Board needs is a qualified person to say that the plans presented to the Board solve the problem.

Mr. Elzoghey then referred to the August 22, 2014 letter to the Board from Robert Simpson of Carlin-Simpson & Associates wherein Mr. Simpson said "the design and construction of the proposed residential building is feasible on the two lots". Chairman Davis stated that he was not comfortable with the word "feasible".

Mr. Eliot Senior, Engineer with Gabriel E. Senior, P.C., stepped forward to speak next. He submitted an analysis report tonight, dated September 3, 2014, to the Board and then went on to paraphrase from it to point out the highlights. He pointed to the lack of storm water and erosion control plans. He spoke about the Redi-Rock blocks to be used for the

retaining walls and said that one wall alone will require 400 blocks. With only 4 blocks at a time being able to be transported by truck, and nowhere to store the blocks, he questioned how the task of building the walls would be accomplished. He spoke of the sloughing and slumping and how that could present a dangerous situation to the homes downhill of the project. He said that the disturbance area will not only be the footprint of the house but potentially the entire site and that the stability can change rapidly. He concluded that boring tests should be made on the actual place where the buildings are planned and due to the fact that the soil conditions can change drastically as the work moves through the site, complete site testing should be done.

Next to speak was Stephen Kaplan of 29 Piney Point Avenue. He first said that the photos which had been submitted to Board earlier tonight by Mr. Gemmola were taken from the bottom of Piney Point Avenue and not at the top where the Boulos and Franzoso lots are located. He then submitted photos of Piney Point Avenue, taken on 9/7/14, to the Board. They showed cracks along Piney Point Avenue and Mr. Kaplan claims that the land has started to subside. He said from the time he took the first measurement on June 16th to the date of the photos, September 7th, the street has dropped one inch. He said that the heavy equipment required for the construction of the projects will cause the street to collapse.

Mr. Russell Davies, residing at 27 Nordica Drive, stepped forward to speak next. He said that he is a NYS Professional Engineer with 22 years of experience. He lives on Nordica Drive directly below one of the lots, and as a resident and a professional, he said he is petrified about the proposed project.

No one else from the public stepped forward. Chairman Davis then said that procedurally the Board was in a difficult position. He said that he was not prepared to vote for the application. Issues were raised that had not been answered. Coupled with the statements made and the unresolved issues regarding what the actual construction will be, he proposed that the hearing remain open and that he communicate with the Planning Board.

Ms. Wagner said that the safety issues need to be addressed and a lot of the significant issues brought up are Planning Board issues.

Chairman Davis said that after the Planning Board addresses its concerns and takes final action, the Zoning Board could once again address the height variance for the retaining walls.

Chairman Davis wanted it noted that the Village Liaison had hoped to attend tonight's meeting but had a crisis at work and could not make it in time. He had also tried unsuccessfully to get another Liaison to attend.

- c) **Barnes, Jonathan, Contract Vendee - 170 Grand Street.** Located in a RB District and designated on the Tax Maps of the Village as Section 68.17 Block

4 Lot 45. Request for side yard variance and total side yard variance for a proposed new one-family house. (Continued from July 9, 2014 meeting.)

Chairman Davis said that at the end of the last meeting the Board still had questions about site issues and aspects of the design with regard to the application, and for the benefit of Mr. Olcott who had not been present at the July 9th meeting when the application was first presented, he summarized it. The property is a lot where the house burned down. The house had predated zoning code and had been situated practically flush with the sidewalk. Mr. Barnes is under contract to purchase the property and would like to build a new single-family house 30 feet back from the original location to provide for off-street parking. He said the variances being sought, side yard and total side yard, are the same variances that would have been needed for the original construction, but Mr. Barnes interjected that the side yard variance he is requesting is actually smaller than the previous one. Chairman Davis continued, saying that the principal objection to the project is from the neighbor at 172 Grand Street who feels that the new house location would intrude on their side porch and would in turn adversely affect him and his family. That neighbor, Mr. Nick Scutari, had agreed to a site visit by the Board members to his property, which took place last Saturday. Mr. Olcott had visited the location earlier today.

Mr. Barnes added that he thought the new location for the house would be more pleasing to the eye and have more street appeal. He believes that trees between the houses provide a good amount of screening for the neighbor.

Mr. Olcott asked if Mr. Barnes thought he would be able to build the new house without affecting the neighbor's landscaping whose trees provide most of the screening. Mr. Barnes replied in the affirmative. Chairman Davis added that he had concerns, that with construction so close, the roots of the screening trees could be undercut. Mr. Olcott then added that as a result of his site visit, he was struck by the thought that there would be less screening if the house were to be built back on the old location.

Mr. Olcott then questioned why there would be no requirement for off-street parking if the house were to be rebuilt on the existing location and Mr. Sperber said that because the house had predated code and more than 50% of the house had been destroyed, the house could be rebuilt on its previous footprint.

Ms. Wagner asked if Mr. Barnes had contemplated rebuilding with the driveway on the other side of the property and Mr. Barnes replied that it would be more complicated and more costly and that there were basement windows in the house at 168 Grand Street. Mr. Barnes added that the only acceptable plan for him is to build the size house proposed and to build it 30 feet back from the old house location.

Chairman Davis wanted it noted that on September 9, the Board received a letter, dated September 6, 2014, from Mr. Jonathan Scutari, another resident of 172 Grand Street. The letter related the events experienced during the fire, and thus brought forth fire and safety protection issues which concerned Chairman Davis and he said that although the

Applicant has an as of right to build on the footprint of the old house, he would be reluctant to grant any side yard variance.

In response to the Board's inquiries, Dan O'Connor, Village Engineer, reported that a licensed abatement contractor had dealt with the asbestos issue at the site and it had been closed out properly according to NYS Department of Labor standards.

Ms. Wagner asked if Mr. Barnes had priced out any other options and Mr. Barnes replied that the proposed plan before the Board was the only option he had.

Chairman Davis then reopened the public hearing and Mr. Nick Scutari stepped forward to say that the trees being talked about would not protect his privacy. The proposed house would be about 15 feet from his living room and bedroom. He will need to close his shades at night. He added that there is the safety issue also. He said he is not against a house being built but is against losing his rights to privacy.

Mr. Jonathan Scutari, spoke next to express his objection to the project. He said he also had concerns about safety and that the proposed house would impact his family's way of living.

With no one else stepping forward, the public hearing was closed.

Chairman Davis said he felt he could not vote for the variance because of the safety issue. From visiting the site, he concluded that the Scutari side porch was indeed used extensively for leisure and agreed that the proposed house would have an adverse effect on the Scutari family.

Mr. Olcott disagreed with Chairman Davis and said he would vote for the variance. He said he was looking at the neighborhood as a whole and did not think the project would create an increased dangerous situation. He felt there was sufficient screening and that the Applicant has a right to build.

Mr. Macdonald stated that he felt the variances were too substantial and would result in hardly any setbacks. He also expressed concern about how the construction would take place with such a plan.

Both Ms. Stephens and Ms. Wagner felt that the proposed project did not pass the balancing test for the five factors.

Ms. Stephens then made a motion to grant a 6.79-foot side yard variance and a 15.43-foot total side yard variance to construct a new one-family house. Mr. Olcott seconded the motion. The motion was denied; Mr. Olcott voted in favor while Chairman Davis, Mr. Macdonald, Ms. Stephens, and Ms. Wagner voted against the variances.

3. NEW BUSINESS:

- a) **Anson, Michael - 45 Morningside Drive.** Located in a RA-9 District and designated on the Tax Maps of the Village as Section 79.09 Block 7 Lot 10. Request for a side yard variance and a total side yard variance for a proposed chimney for a gas fireplace.

Jessica and Michael Anson were present to explain the application. They said that as part of a main floor remodel they were adding a fireplace to the living room. The chimney for the fireplace will project out about 2 feet and will impact the side yard setback and in turn the total side yard setback. They said that they could not put the fireplace on the other side of the house because that was where the bedrooms are located. Photos of the front and side of the house were included in the application package. The requested side yard variance is 2.4 feet and the requested total side yard variance is 2.3 feet.

Mr. Macdonald asked if they had thought about having the chimney go straight up through the house and exit out of the roof. The Ansons replied that their Contractor, Adam West, proposed the chimney design and that it would be the less expensive design. The chimney siding will match the rest of the house.

Ms. Stephens asked if construction of the chimney would still allow for plenty of walking room for access to the back of the property. The Ansons said it would.

The hearing was then opened to the public. No one stepped forward so the hearing was closed.

Ms. Stephens made a motion to grant a 2.4-foot side yard variance and a 2.3-foot total side yard variance for the construction of a chimney for a gas fireplace. The motion was seconded by Ms. Wagner. The motion passed with a vote of 5 to 0; all members voting in favor.

- b) **Ross, John & Deborah - 2 Georgia Lane.** Located in a RA-40 District and designated on the Tax Maps of the Village as Section 68.13 Block 2 Lot 2. Request for height variance for a fabric building (accessory structure) over a concrete sports pad.

Ms. Wagner started off by saying that she lives at 7 Georgia Lane but does not know Mr. and Mrs. Ross.

Mr. & Mrs. Ross explained that their application was very unique. They were hoping to construct a fabric building, an accessory structure, over a residential outdoor ice rink. The structure would be located in the back yard and require only one variance, a 5-foot, 9⁷/₈-inch height variance. It would be open on the sides and would not be visible from Mount Airy Road or Georgia Lane. They said that skating was integral to their family. The application package included a letter of support from Inge Cseh, residing at 29 Mountain Trail, and whose home is directly behind the Ross residence.

Mr. Macdonald was concerned about drainage issues but Mr. Ross said that the proposed project would actually improve drainage. There will be 6 inches of drain rock underneath, along with piping, and that the property size is an acre.

Mr. Macdonald followed up with another question as to whether the Applicants had thought about something that could be put up and taken down each year. Mr. Ross said that a bubble would have been very expensive and other ideas were not durable enough.

Ms. Stephens asked about lights on the structure and Mr. Ross said that the lights would be located inside the structure. He added that his neighbor, Ms. Cseh likes the lights because they make her feel safer.

Mr. Ross said that with the current system, it takes them two weeks to set up and 1 week to take down.

In response to a question posed by Ms. Wagner, Mr. Ross said the rink is only for personal use.

Ms. Stephens asked for the size of the structures. The Applicants said that the rink will be 32 feet by 60 feet, the concrete slab will be 34 feet by 63 feet, and the roof structure will be 41 feet by 68 feet.

Mrs. Ross added that with the proposed new setup, the roof would keep the ice at a certain temperature. This would mean they would run the chiller less which in turn would reduce the amount of electricity used.

Mr. Macdonald asked if the concrete structure once installed could be removed easily if, for example, the Rosses were to move. Mr. Ross replied that it could be disassembled easily and would not object to the removal at moving time as a condition to the granting of the variance.

Chairman Davis then opened the hearing to the public and with no one stepping forward he then closed it.

Ms. Wagner made a motion to grant a 5-foot, 9⁷/₈-inch height variance for a fabric building (accessory structure) over a concrete sports pad without any conditions. Mr. Macdonald seconded the motion. The motion passed with a vote of 5 to 0; all members voting in favor.

- c) **Drake, Anne - 35 Farrington Road.** Located in a RA-5 District and designated on the Tax Maps of the Village as Section 78.08 Block 3 Lot 31. Request for variance to rebuild an existing legally non-conforming garage (accessory structure) slightly larger than the existing garage and whose location is less than 5 feet from the front property line, and projects nearer to street on which the principal building fronts than such principal building.

Ms. Drake presented her application and said that her garage is legally non-conforming and needs to rebuild it because it is falling apart. She would like to make it a little larger because she now scrapes her car doors getting in and out of the car.

Mr. Olcott stated that he lives up the hill from Ms. Drake but only knows her as a neighbor and did not feel it was necessary to recuse himself. If anyone thought he should recuse himself, he said he would.

Chairman Davis asked for and received confirmation from Mr. Sperber that the variances were needed because the degree of non-conformity would be increased.

Mr. Macdonald asked if Ms. Drake would be installing a garage door. She replied that she was allowing for the door in the design (for any potential future owner) but was not going to install one now.

Ms. Stephens asked whether fire hydrant requirements would be affected. Mr. Sperber said he would check and Ms. Drake said she believed the garage would be about 35 feet from the hydrant.

Mr. Macdonald then asked if there would be electricity in the garage and Ms. Drake said there would be carriage lights and provision for an electrical garage door for future owner(s).

Mr. Macdonald also asked if Ms. Drake planned to have the concrete roof again and Ms. Drake said she liked the concrete roof and was going to go that route again.

The hearing was opened to the public and no one stepped forward. Chairman Davis then closed the hearing.

A motion was then made by Ms. Wagner to grant a 5-foot front yard variance to rebuild the existing legally non-conforming garage (accessory structure) slightly larger than the existing garage and whose location is less than 5 feet from the front property line, and projects nearer to the street on which the principal building fronts than such principal building. The motion was seconded by Ms. Stephens and passed with a vote of 5 to 0.

- d) **Schupack, Deborah and Dias, Patrick - 16 King Street.** Located in a RA-25 District and designated on the Tax Maps of the Village as Section 68.17 Block 1 Lot 67. Request for side yard variance and total side yard variance for a two-story addition and expansion of the existing deck.

Only Mr. Dias was present tonight. The Applicants had come before the Board in July for variances to build a first floor addition but after pricing the cost, they decided to go with a more compressed design with a two-story addition instead, along with the expansion of the existing deck. The variances had been granted in July.

Mr. Dias distributed a letter of support for the project from Mr. Barry Donaldson who resides at 14 King Street.

Chairman Davis opened the hearing to the public and no one stepped forward, so Chairman Davis closed the hearing. He then made a motion to grant an 11-foot side yard variance and a 13-foot total side yard variance for a two-story addition and expansion of the existing deck. Mr. Macdonald seconded the motion. The motion passed with a vote of 5 to 0 in favor.

- e) **Mo, Roy - 21 Wayne Street.** Located in a RB District and designated on the Tax Maps of the Village as Section 79.13 Block 2 Lot 1. Request for side yard variance for existing house and front yard variance for Benedict Boulevard frontage for a proposed new single-family house on an adjacent vacant lot.

Mr. and Mrs. Mo were both present tonight. Mr. Mo distributed photos of layout comparisons of the proposed new house and a letter dated December 12, 1994 from the former Village Manager, Richard F. Herbek. The letter talked about the curb cut and parking lot area on Benedict Boulevard, adjacent to the Mo property.

There is an existing house at the location. Mr. Sperber explained that the variances being sought are modifications to variances that were granted to Mr. and Mrs. Mo back in 1985. The proposed plan for a new single-family house on the property, as opposed to building without the need for variances, would rotate the layout of the house as illustrated in the application documentation. The front of the new home would be on Wayne Street and not on Benedict Boulevard. The benefit of the new layout would be the elimination of any easement requirements and access to the home would not need to be through the municipal parking lot. It would also conform more to the neighborhood. This new layout would require a 6.3-foot side yard variance for the existing house and a 12-foot front yard house for the new house. At the same time, the Applicants are filing with the County to redraw the lot line. The new house fronting on Wayne Street would end up with two front yards and would eliminate the need for a rear yard variance. The old variances were granted back in 1985 before the existence of the municipal parking lot.

Chairman Davis opened the hearing to the public and no one stepped forward. The hearing was then closed.

Mr. Macdonald said he would like to see the new lot made narrower and suggested a 45-foot width. Mr. O'Connor said that maintenance of the house should be considered and that Mr. Macdonald's suggestion would probably mean the need for a temporary maintenance easement. Mr. Macdonald said he was suggesting a narrower lot width for the sake of the owners of the existing house and to make maintenance easier on them. Mr. Sperber then suggested that the easement could be made a condition of the variance. Chairman Davis said he did not like the idea of an easement.

A discussion amongst the Board members then followed regarding easements and the lot widths.

Chairman Davis explained to the Applicants that the Board would like to see a narrower lot if they wanted to stay with the format with the frontage on Wayne Street but that would mean they would have to come back with revised dimensions and revised variance requests. As confirmed by Mr. O'Connor, the other choice would be to build the house with the frontage on Benedict Boulevard and they would have the right to do that with the existing variances. They would just need to file for the lot line change with the County. Mr. Mo said that he agreed that the plan with the house fronting on Wayne Street would cause maintenance issues and would like to proceed with the house layout fronting on Benedict Boulevard and make use of the existing variances.

With Mr. and Mrs. Mo's agreement, Chairman Davis stated that the Board would adjourn the application with no action taken. In so doing, if the Applicants run into any problems taking the agreed upon route, they could still come back before this Board.

4. APPROVAL OF MINUTES:

Ms. Stephens made a motion to approve the amended minutes and the resolutions of the July 9, 2014 Zoning Board of Appeals meeting. The motion was seconded by Mr. Olcott. The motion passed 4 - 0 in favor; Mr. Macdonald abstained, having not been present at the meeting.

5. ADJOURNMENT:

The meeting was adjourned at 11:28 P.M.

Respectfully submitted,

Toni Cruz
Secretary, Zoning Board of Appeals