

VILLAGE OF CROTON-ON-HUDSON ZONING BOARD OF APPEALS
SPECIAL MEETING OF SEPTEMBER 27, 2010.

On September 27, 2010, a special meeting was held with James Staudt, Esq., Village Attorney with respect to Village Codes and Definitions.

Members Present: Seth Davis, Chairman
Rhoda Stephens
Roseann Schuyler
Alan Macdonald

Also Present: James Staudt, Esq., Village Attorney
Daniel O'Connor, P.E. (Arrived late)

The meeting came to order at 8:00 P.M.

Davis – Stated that he had gone through the meeting minutes with respect to the joint meeting between the Comprehensive Planning Committee and the Zoning Board of Appeals on March 3, 2010, to discuss revisions to the Village Codes and Definitions.

Stephens – Stated that she had a copy of Ann Gallelli's Memo summarizing a work session that took place on December 14, 2009, prior to the March 3rd meeting, between the Comprehensive Planning Committee and Zoning Board.

Davis – Stated that he would e-mail the ZBA Secretary a copy of the Memo for the record.

Stephens - Stated that she also had additional information to share with the board with respect to a New York Planning Federation Seminar she had attended.

Davis – Stated that some of the main issues at the last meeting related to Walls and Fences and the issue of attached and detached buildings. There were also concerns with respect to "structures" such as walls and fences that do not actually meet the definition of a wall or fence and therefore becomes a building by default.

Staudt – Stated that would not just relate to a "structure". It could also relate to a display with fixtures to the ground.

Stephens – Such as a "spite" fence that was not actually measured from grade because it was actually built on top of a wall which made it a six or eight foot "structure" that now become a "Building" because of the height.

Davis – If you look at the Village Code Definition of a “Building” you will see that it includes the term “Structure”.

Staudt – A lot of Ordinances have a very expansive definition and allow the Engineer to make certain determinations. I think the Engineer should be in on this conference, since it is usually the Engineer or Building Inspector, who need to apply these definitions to Building Permits, etc. Especially, with respect to “Structures” and “Accessory Structures” such as a swimming pool, tool shed, Jacuzzis on a platform. For example; The Village Code says it is a structure by the broad definition of the Code because it is affixed to the ground. Then they also have to go according to the New York State Code. The problem is that the Building Inspector and the Engineer need to be able to make a determination as to when these types of structures trigger a building permit. You will find that for most of these types of structures it will probably require a permit.

Schuyler - So, you are saying we do not have a clear definition for a “Structure” and we are also using New York State Code?

Staudt – Yes. For Building Permits they need to also use New York State Codes. We need to determine if we want to say all “Structures” need to meet a certain setback and if we have had any problems come up because of this broad definition. I don’t think there has been a problem with “structures” but “fences” we have had problems with.

Stephens – Walls have also come up in the past. We had an application where a fence was built on top of a wall.

Staudt – Most Municipalities have a broad definition. I guess this question would really be for the Engineer and how it will affect him when applying it to the issuance of Building Permits. That would also include fences and walls, etc. It is unusual for a Building Code not to have a definition of a “structure”.

Davis – Referred everyone to Chapter 86 of the Village Code related to Building Code Administration.

Staudt – Most municipalities have Broad definitions. But, we really need to have the Village Engineer let us know how these Codes affect him when issuing a building permit. That would also include fences and walls. As I see it, under the Code, it tries to capture everything under edifice or a building. Where in the Code does it say “if you have a “structure “....and so on.

Davis – Maybe, if we think of it as buildings and non-buildings. Such as fences over six feet and more than 25% solid. The basic question is if it is over six feet, it is a building and everything that applies to buildings comes in.

Schuyler – And if it is not more than 25% solid it is not considered a building.

Davis – Correct.

Davis – We have the issue of measurements. That we need to have clarified and also with walls.

Staudt – You are going to capture “wall” under edifice or “building”. However, not if they are retaining walls, that are not over three feet. This takes retaining walls out of the definition of buildings. I think you need to know what is broke on these issues before we start tinkering with the language. We did not speak much about “structure” at the last meeting with respect to definitions.

Stephens – We did discuss where it was in the Code and why we had concerns. We also discussed “structures” that are “attached”.

Davis – Yes.

Staudt – These issues need to be discussed with the Village Engineer to see if he has a problem with the word “structure” and does he think it needs fixing.

Davis – I think potentially, it opens up a huge can of worms, because of the way the Codes are keyed into the definitions and not just with the Zoning Codes, but Building Codes as well. I feel that at the end, our definition tends to have the definition of a “structure” and it all works.

Staudt – I think if the Village Engineer does not have a problem with this and he thinks they are being built safely, I think we may be creating a problem rather than solving one. We would then need to read the Code from cover to cover, if it is changed. It is a much bigger endeavor.

Davis – Our original problem was with “walls” and “fences” and whether you measure from grade and what if the grade is uneven. There is also the issue of walls and if someone builds a fence on top of the wall.

Staudt – That is a common problem. The town of Mamaroneck has a Code that states that the height of the wall will be measured including anything placed on top of it. It also refers to “retaining walls” specifically (Mr. Staudt had copies of the Codes he was referring to but they were not made part of the record).

Staudt – The City of Haverstraw, their Code states it should be measured from ground level except retaining walls should be measured from each side and any fence

Mr. Staudt also referred to Codes from the City of Rye, with respect to walls and fences. They also included structures such as cupolas, etc. The City of Haverstraw that states it should be measured from ground level except with retaining walls. They should be measured from each side of any fence or wall on an uphill grade.....

Staudt – My suggestion is that the problem stems from birming and sticking fences on top of berms or walls. Those can be dealt with by saying how they are to be measured.

Discussion followed over how the Code should be worded with respect to measurement, etc.

Staudt – The Town of Larchmont measures three and one half feet from outside of the fence and any birm or structure from which it is placed shall also be included in the height of the fence.

Stephens – Do any of those Codes also state which side of the fence should face the neighbor?

Staudt – Almost all of them do, with the good side out. If there is a problem they usually put two good sides.

Davis – We do request that as a condition but, it is not specifically required.

Staudt – Most are not coming for a Site Plan Approval. But, most fences will just get built without a permit, if you don't have a statutory requirement. So, you want to say, if you berm up a wall it will be measured from grade.

Stephens – With respect to the definition of a building, if you go to the Section of the Code relating to signs it will say any structure and part thereof. So, a sign is a structure/Building.

Staudt – That is what I am referring to. Normally, most Ordinances would consider a sign a structure.

Stephens – Didn't we have someone before the ZBA for a sign variance?

Davis – Yes, with respect to measurements on both sides.

Stephens – We also need to address adjacent and attached structure. We don't have anything with respect to that.

Staudt – At the last meeting we came up with a definition describing it as “Two structures which share a common wall or are connected by a common enclosed space.

Stephens – Can you apply that to a sign too?

Staudt – You also have cases where a house gets built and then a separate garage gets built and then they become connected with a breezeway and it then becomes one big mass. What usually happens when that is done is it now becomes non-conforming. Because, when the house was built ,that needed a different setback than an “accessory building (garage)” which needs a lesser setback than a house. So, when they join the two together it can create a non-conformity. That is a common issue. Also, when does a breezeway become part of the building? Some say when it becomes heated. I think Dan had

issues with this. I think if we could get his input on this we would not have a problem. Also, garages could then have an addition with respect to office space, so we need something pertaining to “adjacent” or “attached”.

Schuyler – Or it could be an enclosed porch.

Staudt – Yes. I would call that a common enclosed space.

Davis - But, if it is not heated it would not.

Staudt – But the heat issue is a little too wide too.

Stephens – Some say it will just be used as an enclosed porch (not living space). But, then I question as to why they enclose it with glass? Then later on it becomes completely enclosed with lighting, etc., and is used all year round.

Staudt – Do you want me to run this by the Village Engineer? I have notes from our last meeting with the Conservation Advisory Committee. If I remember the Village Engineer stated that he was having a problem with getting jurisdiction over retaining walls.

The Board agreed to discussing this with the Village Engineer.

Staudt – Do you want to address lot mergers?

Davis – Our problem is mostly with walls and fences and whether to put the good side on your neighbor side or not. We would also like to see things being equal with respect to attached and not attached, Versus not attached and the building issue if the Village Engineer feels we need to capture that.

Staudt - We should also include any wall or system of wall of four feet or more and include 230-40 to work its way in here. This was in my notes from the last meeting. I think the Village Engineer wanted to simplify things here and make it so a retaining wall that is more than four feet of earth would be considered a building and less than that would not be a building. That was my understanding there. There were retaining walls that were not considered to be a building, so they did not require a permit. Therefore the Village Engineer cannot see if they are being built correctly or safely, because they do not require permits. The ZBA was going to have a subsequent meeting and I do not know if you already talked that through. I will check the other ordinances with respect to this. Do you want me to check with the Village Engineer to see if he still wants that retaining wall definition?

The Board agreed to have the Village Engineer address the Code with respect to retaining walls.

Davis – Referred to the Local Code with respect to fences and walls, stating that the code refers to setback regulations for corner lots.

Staudt – I think the Village Board is going to pull some Ordinances.

Stephens – I don't know who if anyone received any of it.

Staudt – I will check with “Buckhurst & Fish” to see if they are doing anything with changing the Codes of interest.

The ZBA Members agreed.

Davis – We also agree to discuss it with Ted Brumleve, Chairman of the Conservation Advisory Committee to see if other changes had already been made. I also would like to talk about lot mergers and moving lot lines without going through a sub-division process.

Staudt - I am not sure what the issues or experiences are with respect to lot mergers. I thought some of the issues had to do with moving the lot lines. In the purest sense the way a lot line is moved is that the owner comes to the Tax Assessor and tells him they have a property that is shown as two lots and they want to move the common lot line. They then have a new plot plan drawn by a surveyor. They then should go back to the Assessor and ask him if they have created any non-conformities by the creation of these lot lines. Then the Assessor would advise them further.

Mr. Staudt – Explained that as time goes on Municipalities have tightened their definition of Sub-division. The Village of Croton defines a sub-division as “any act that creates a lot line where none existed before or removes a lot one where one existed before. Also, that it not affect more than two lots. We could also argue that it did not increase the number of lots, but somehow, affected the number of lots and finally, that it did not create any non-conformity of any of the lots. So, if they passed all the tests, my guess, is they would get a sign-off from the Engineering Dept.

O'Connor - I usually make sure they meet all the criteria and tell them I want a survey showing the new lot lines and request a written description of the property and then have them file the deeds with the County.

Staudt – So, what is the issue here?

O'Connor – You may have two lots that are legally non-conforming to begin with then changing it gets to be tricky.

Stephens – Especially, if a property was purchased with a non-conformity or it predates zoning.

Staudt – Or they have a house that has two building lots and then they want to construct an addition and in doing so they have created a side yard problem. The question is, if letting them do this is creating a nonconformity.

O'Connor – If they meet the definition of an “Existing Small Lot” they do not require as much of a lot depth and may not need a variance. Existing small lots have some automatic waivers.

Staudt – So, you could say that you cannot increase the degree of an existing non-conformity.

O'Connor – Yes. I agree.

Stephens – What happens when you have a case like the one on Jacoby Street.

O'Connor – They merged the lots and then had to apply for an area variance and it was denied.

Staudt – Dan also suggested a merger clause. When there is single and separate ownership and they merge, they then become one. If you do not purchase it in separate entity.

O'Connor – Some people get good advice from their attorney's, etc., and others don't.

Staudt – Yes and that somehow just seems unfair.

Jim – yes and then it just seems unfair.

Stephens – Yes, and there are some that do not know they can ask for a variance to use the sub-standard lot.

Schuyler - My only question with not increasing any non-conformity is that we would be talking about highly technical lines. So, any movement would create a non-conformity. So, in essence we would not allow them to do that.

O'Connor – Well, generally it would not apply to every case, but for lots that are already no-conforming such as in lot area.

Staudt – You could just say that you cannot increase the degree of non-conformity. I remember a case where someone had a six lot sub-division and wanted to move a lot line between two of those lots. Someone made argument to how it would affect the other lots.

Discussion followed over Lot lines being changed and how it could affect other Lots.

Schuyler– If a lot line change changes the ownership of a lot line created by a lot line change, that could be a problem

O’Connor – On Mount Airy Road there are a lot of remnant streets that were connected to their lots and built on. Sometimes that seems reasonable and a case like that it should be simple to do a new deed and others would say it would need a sub-division to do it.

Staudt – One Section of the Code says you should not increase or decrease. Most villages don’t care if you decrease the number of lots. They only care if you add one.

O’Connor – From an economic standpoint it would be simplified for a majority of cases where the lot lines would be eliminated. They would not need to go before the boards or all the SEQRA stuff.

Staudt – Referred to the Village Code with respect to the Village Board of Trustees having discretion in waving certain conditions and requirements.

O’Connor – We could put something like that in there.

Staudt – But, that would not give the Board the authority to waive the sub-division requirement for removing a lot line.

O’Connor - But, it is allowed for cases where you are just straightening out multiple lot lines, it cleans up the tax maps.

Davis – Is this a problem for us?

O’Connor – I would not say it is a problem, but it might be for a few property owners who have to do that. The fact that it could be waived could help.

Staudt – It would give the Village Board the ability to waive the requirement to have a sub-division approval just to erase a lot line.

Davis – Or could we just have the word “sub-division” and just say “if you are decreasing the number of lots.

O’Connor – A waiver step we could provide a little provision there.

Staudt – Then we would need to go back into the Building Code to see if people have two houses on one lot and we have nothing to stop it.

O'Connor – The only reasonable thing to do is to go to the Village Board for a resolution. That would be the first step in the process.

Davis - Would it require SEQRA?

Staudt – It might, depending on the size of the lots and so forth. But, they would probably submit a short form and go to Dan for recommendation.

O'Connor – Then I would give the history as to why the area has multiple lots.

Staudt - Sometimes you could do it as a case by case basis.

O'Connor – Over the years some people just didn't do it.

Discussion followed:

O'Connor – For example: Someone had a commercial site plan with commercial lots. He then alters the lot line so a portion of the commercial site plan is now located in a different zone such as RA-5 Residential. The Planning Board had a problem with that and said it should have gone before them again because it originally was a Planning Board site plan approval and the public was not aware of the changes. Maybe, that could have been merged by creating a lot line alteration for a single family lot, without having to go before the Planning Board.

Davis – At our last meeting Rhoda Stephens also had concerns about lot lines being moved to accommodate new additions just so they would not need a variance.

Staudt – But, we would not let them create a lot by moving a lot line to create or increase a non-conformity that is already there.

O'Connor - I have told people that if you do that and you create a non-conforming lot and I tag it as such you will never get approvals on that lot.

Stephens – But I think when he merged them, it was a building lot in 1930.

Staudt– I think the assessor should not create a new lot without a memo from you. It used to be automatic, but, it should not be done until the Building Dept. says it is ok and it is not in nonconformance. Because if they go to sell and the lawyer for the buyer says you have to get these tax lots changed because they are on a part of our line, then you have a problem. It does happen sometimes, because sometimes assessors just do it.

O'Connor – Someone was told his lot was sub-standard and he was given a price that was very inviting. After he purchased it he found that he was not able to build on it.

The Board agreed to leave that section of the code alone, because it works.

O'Connor - Section 230-53/Nonconforming Uses. I need clarification of that section for myself. They talk about a specified expiration period of November 10, 1960, with respect to an amortization that was done. Are we saying that specifically, there is a limit on non-use of nonconforming areas? In other words, if you have ceased the nonconforming use for a period of time?

Staudt – This is an amortization of a non-conforming act. If you say that anything there that is nonconforming can stay. In some cases they will go on to say that they will not allow it to be grandfathered, but you can keep it there for awhile, just so you can advertise your investment. It has also been upheld with signs. When trying to get rid of old ugly signs. It says if you have one of those things in this district then you have to let it go.

Schuyler – Confirmed the section of the Code that they were referring to was Section 230-53 of the Village Code.

Staudt- In theory those things that were in 1960 should be taken out.

O'Connor – Basically, it should be that if the use is discontinued for one year, it is lost.

Stephens – Then does it revert back to what it was before?

O'Connor – It reverts back to what is allowed in that zone.

Staudt – Then that portion of the code would need to be left in.

O'Connor – I think that if it is in there we are able to find it when we need it. If it is not in there, it creates a lot of work. There have been a lot of Special Permit Uses now. Some of the uses were grandfathered and then when they stopped the use for one year they lost the vested non-conforming right.

Staudt – Then there were issues with litigation over the discontinuance of use.

O'Connor - The Croton Community Nursery School is a non-conforming use. So, if the Code says it shall not be enlarged or reconstructed and they want to put an addition, do we prevent them from using their property?

Staudt – There are also court cases originally intended as part of the overall use. This section of the Code creates more court cases than any other part of the law.

Stephens – One other thing is Section 230-25 (?)of the Code that has to do with lighting and illumination and dark sky business, I would like to see it more definitive, misdirected lighting, light pollution, etc.

Davis – And you don't feel that our Code covers that with "spilling over to adjoining lots?"

Stephens – Does the word "sky" cover that?

Staudt – Usually, when you have a site plan approval by the Planning Board it will require that the glare of the light not spill over or sometimes they will say the source of the light will not spill over. It is also kind of sight specific, because on some sites it might not work. Such as low level ground security. You can have some general rules but it usually goes by the site plan. It may not always apply. The Planning Board usually deals with the issues of light spilling over, source of light, security and low lighting.

Stephens – What if you have a private property where three doors down the light is coming onto your property?

Staudt – In residential cases you need to be careful.

O'Connor – This section usually applies to the gateway districts.

Staudt – You can go into your general parking standards. But, in residential you need to be careful because it is tough. You do not usually see "spill over" in tight residential sections.

O'Connor - I think it is in the Zoning Code with respect to "glare". We have had cases of neighbors complaining of lights on patios, etc., and we address it with the section of the code that refers to "glare".

Discussion followed over the Codes.

Schuyler – Referred to Section 230-47, with respect to performance standards and supplementary regulations.

Davis – There you go! Section 230-47(c)(4). It refers to "glare".

Stephens – So that is covered.

Davis – What are the specific measurements?

Stephens– It only says that it should not apply to signs.

O'Connor – All signs should be approved by the Visual Environment Board and should be taken into consideration during their review process.

Stephens - Not always. Suppose they show big lights on their commercial sign and others want to sit on their deck. They are not able to. But, if they had in the Code night time pollution.

Staudt – But, the Planning Board usually picks that issue up or addresses this issue during the site plan process.

Stephens – This is one reason why I suggested the light not go beyond the perimeter of the adjacent property.

O’Connor – I recall someone felt they had a glare on their property. We went over to the property over a course of two years, during the night, dusk and darkness and we ended up adjusting it by a couple of degrees light by light over a period of time.

Staudt – Referred to Section 230-69(g) of the Village Code that pertains to Planning Board approval and lighting. The Planning Board can specify that this is the only lighting they can have and no other. But, it has to be a current site plan approval.

Davis – We were also looking at the Code with respect to Fences and Walls and the definitions. It was puzzling that “structure” was included in the definition of “building.”

O’Connor – Yes. The definition of building is very broad, but some things are accepted.

Davis – (to O’Connor) Do you see any problems or any types of situations that you are not able to capture in the building process because of definition problems?

O’Connor – This is on my list for the Village Board. Under State Code it is, I think, 120 sq. ft. Anything under that would not require a permit. So, I was going to bring that up to see what the Village Board wants to do with that. Fences usually meet the standards.

Davis – We are looking to tighten up the measurements

O’Connor – Fences over 6 ft. would be considered a building. If a standard fence is not over 6ft. then that can put it up without a permit.

Stephens – We have had them putting it up two feet above that because of the grad level or because they put it on top of a wall, etc.

O’Connor – I know it is even difficult for the Zoning Board to make a decision. Maybe some could be softened some.

Staudt– So, if anything we are talking about relaxing some codes?

O’Connor– Sheds, yes. Don’t know if the village wants to remove that provision entirely. Maybe, just to allow small accessory structures not more than 120 sq. ft. for example. But, it is up to the Village Board to remove that.

O'Connor – Fences, walls, they are out there and there is always an exception to the rule. Someone built a jungle Gym. A neighbor built a skate board ramp. Suddenly, all the neighbors complain about the noise, etc. Then we need to make a determination if they need a building permit for that. Also do they put the good side of the fence facing their neighbors?

Staudt – Also, do we count birms in four foot wall measurements? We will also contact the attorneys.

Davis – Do you know if the Village Lawyers that are involved with this have made any changes to the Codes already?

No one was certain.

Davis – We will try to clarify this with Ted Brumleve/Comprehensive Planning Committee Chairman.

Special meeting closed.

Respectfully submitted,

Janice Fuentes
ZBA Secretary