

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
February 10, 2016

PRESENT: Rhoda Stephens, Chair
Peter Lavery
Alan Macdonald
Doug Olcott
Christine Wagner

ALSO PRESENT: Joe Sperber, Assistant Building Inspector
Trustee Ann Gallelli, Village Board Liaison

1. CALL TO ORDER:

The Zoning Board of Appeals Meeting of February 10, 2016 was called to order at 8:00 P.M.

2. NEW BUSINESS:

- a) **Breen, James – 31 Park Trail.** Located in a RA-25 District and designated on the Tax Maps of the Village as Section 68.13 Block 3 Lot 12. Request for front yard and side yard variances for a small one-story addition and for an existing deck at the southwest side of the house.

Mr. Breen presented the application explaining that he wanted to add a small addition to the left side of his house which would allow for a closet in the master bedroom. He said it would improve the look of the house on the outside by getting rid of the unsightly gap at the location of the proposed addition. He further explained that there had been a structure at the location years ago but he had taken it down and now there is a problem with moisture and a smell of mold that enters the bedroom. The addition requires front and side yard variances as does an existing deck on the southwest side of the house.

Chairman Stephens asked how long Mr. Breen has owned the house and he replied that he has owned it since 1976. He also said that with regard to the deck which had been built after the house, he had filed for a building permit but had never applied for a variance for it.

Chairman Stephens then asked for confirmation that Mr. Breen is seeking a 12.92-foot side yard variance for the existing deck and addition and a 15-foot front yard variance for the proposed addition (which would also cover the deck). It was confirmed by Mr. Breen and then Mr. Sperber added that due to the scaling on the drawings the requested variances were being rounded up to err on the side of caution.

Ms. Wagner asked what was on the southwest side of the property and Mr. Breen replied that it is about an acre of woods which included a wedge of unowned property. He said

he has seen a survey in the past that has shown it as his property. He said he has been told that he could possibly quitclaim the property.

Ms. Wagner followed up with a question as to whether there would be an external door as part of the proposed addition. Mr. Breen said there would not. The addition will extend the existing house lines. There had been an ugly shed at the location which as mentioned had been taken down and which now produces mold in that area due to the lack of a roof line.

Mr. Macdonald asked if there will be a foundation under the proposed addition and Mr. Breen said there would be either a foundation or posts.

Mr. Breen closed his presentation by saying that the addition will improve the look of the house, will cure the mold problem, and will add the much needed additional closet space.

Chairman Stephens noted that there were neighbor letters supporting the variances from neighbors residing at 25, 26, 30, 33, 34, 36, 40, 44, and 48 Park Trail.

The hearing was then opened to the public and with no one stepping forward to speak Chairman Stephens closed the hearing.

Mr. Olcott made a motion to grant a 12.92-foot side yard variance and a 7-foot front yard variance for an existing deck at the southwest side of the house and to grant a 4-foot side yard variance and a 15-foot front yard variance for a proposed 65 sq. ft. 1-story addition. Ms. Wagner seconded the motion and the motion passed with all 5 members voting in favor.

- b) **Schuyler, Peter, Agent for John Palladino (owner) and Rescue Auto Repair, Inc. (tenant) – 365 South Riverside Avenue.** Located in a C-2 General Commercial District and a Gateway Overlay District and designated on the Tax Maps of the Village as Section 79.13 Block 1 Lots 66, 68, and 69. Request for interpretation of Village Code Section 230-17B(1)(l) as to whether that Code Section allows for both used car sales and rental of vehicles.

Mr. Lavery recused himself from the application explaining that he and Mr. Schuyler, Attorney for the Applicant, are currently on the opposing sides of a different legal matter.

Attorney Peter Schuyler stepped forward to say he was presenting the application on behalf of the property owner, John Palladino, and Rescue Auto Repair, the tenant business at the location owned by Jim Anfiteatro (former owner of Dom's Friendly Service). He said Mr. Anfiteatro moved the business to this new location about a year and a half ago and that it is the same business he had before the move. A special permit application had been submitted to the Village Board to operate a motor vehicle station at the new location and the Applicant requested that as part of that special permit, he be allowed to both sell used cars and rent vehicles. The Applicant is requesting an interpretation by the Zoning Board of the applicable Village Code Section 230-17B(1)(l)

which reads “Subject to the issuance of a special permit by the Board of Trustees and site plan approval by the Planning Board, the sale of used cars or rental of vehicles shall be allowed if the service station is in compliance with the conditions set forth in Subsection B(1)(b) through (i) above and the additional conditions set forth below.” Mr. Schuyler stated that the Village Engineer, Dan O’Connor, had interpreted that Code Section to mean that the Applicant can either engage in the sale of used cars or the rental of vehicles but not both. The Applicant feels that the intended meaning of the word “or” in that Code Section is really “and/or”, allowing for either activity or both.

Mr. Schuyler said he felt that Mr. O’Connor is reading in a restriction into the Code that doesn’t exist. He provided examples in the Village Code where the use of the word “or” clearly is intended to mean “and/or” and that if the Code were meant to be mutually exclusive, the Code would have included “but not both”. These examples were presented in the application documentation as well as presented before the Board. One such example was the definition of the term “restaurant” in Code Section 230-4, which reads “Restaurant: A business establishment engaged in preparing and serving food and beverages for consumption on the premises, which offers a full food menu and which provides table *or* counter service for patrons.” His conclusion with this example was that it is not the intention of the Code for the restaurant to have to choose between providing either table service or counter service but that it can do both.

Ms. Wagner asked if the issue was boiling down to an “and/or” argument and whether Mr. Schuyler thought the use of “or” was intentional or the result of “sloppy” drafting. Mr. Schuyler replied that essentially it was an “and/or” argument; that the Village Code is the result of different authors over different periods of time which can make it difficult to correlate different parts of the Code. He added that there are places in the Code that use a string (of words) to illustrate specifics.

Mr. Schuyler added that the Special Permit was granted (as quoted from the Code again:) “Subject to the issuance of a special permit by the Board of Trustees and site plan approval by the Planning Board, the sale of used cars or rental of vehicles shall be allowed.....”; that the site plan had been approved which looked at the entire plan and which encompassed the sales and rental activities in the review process. He added that now, should he get a favorable interpretation from the Board, he would need to go before the Village Board again to specify that the owner had the right to sales and rental of vehicles as well as servicing vehicles.

Mr. Olcott asked if the issue at hand had come up at the Village Board meeting and Mr. Schuyler replied that they were not told they would need a special permit for the renting of vehicles and added that Mr. Anfiteatro had been doing so when he was at the old location.

Mr. Macdonald said that if the intent of the Code were to limit the activities allowed, the Code should have specified “either/or”.

Chairman Stephens said that if needed, the Board could seek advice from the Village Counsel.

Chairman Stephens asked for confirmation from Mr. Schuyler that he was aware of other auto businesses in the Village that engage in both sales and rentals. Mr. Schuyler replied that Croton Auto Park has no special permit and it is located in the same District.

Mr. Olcott then asked Mr. Sperber if he knew why the other business(es) was/were being allowed to do both activities. Mr. Sperber said that without doing some research he could not say.

Ms. Wagner then asked Chairman Stephens if she remembered if this kind of issue ever came up before. Chairman Stephens said she did not.

Mr. Macdonald said the Code should have said “either/or” and Mr. Olcott agreed with him. Mr. Macdonald then added that there is the business just down the road from this location that does all three activities.

A discussion followed as to whether a second special permit would be needed should the Zoning Board give a favorable interpretation. Mr. Schuyler felt he should not need another special permit if the Code is interpreted to mean “A” or “B” or “Both”.

Ms. Wagner said she had no issue with the “or”; that she is interpreting it to mean “and/or” but did have a problem with the Special Permit language. She felt that the Special Permit needs to be modified if all three activities are to be allowed in order to match the language in the Code.

Mr. Olcott and Mr. Macdonald both said they agreed with Ms. Wagner.

Mr. Sperber warned about setting a precedent and suggested that the Board look at similar issues on a case by case basis.

Mr. Olcott added that for this particular application, the Board was opining on the intent of the section of the Code.

Mr. Schuyler then asked that if the Board interprets the Code to mean “and/or”, the Board specify whether a second or even third special permit would be needed.

The Board agreed that only one special permit is needed but that the allowable uses need to be specified.

Mr. Macdonald added that the Special Permit has a 2-year term so the issue would be looked at again in 2 years from issuance.

When Village Liaison, Trustee Gallelli, was asked for her opinion, she said she felt it is a matter of interpretation of the Village Code which should be made by the Zoning Board.

Speaking for the Board, Chairman Stephens stated that the Board had unanimously concluded that 1. the intent of the word “or” in Village Code Section 230-17B(1)(1) is to mean “and/or” and therefore allows both the sale of used cars and the rental of vehicles 2. the Special Permit issued by the Board of Trustees as a result of this Code Section must still specify each allowable activity and 3. any conditions and provisions specified in the Special Permit issued by the Board of Trustees remain in effect.

3. APPROVAL OF MINUTES:

Mr. Olcott made a motion to approve the amended minutes and resolution of the January 13, 2016 Zoning Board of Appeals meeting. The motion was seconded by Mr. Lavery. The motion passed 5 – 0 in favor.

4. ADJOURNMENT:

The meeting was adjourned at 9:35 P.M.

Respectfully submitted,

Toni Cruz
Secretary, Zoning Board of Appeals