

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
July 13, 2016

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

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

ABSENT: Doug Olcott

1. CALL TO ORDER:

The Zoning Board of Appeals Meeting of July 13, 2016 was called to order at 8:05 P.M.

Chairman Stephens started the meeting by noting that Village Board Liaison, Trustee Gallelli, was present tonight, as well as Trustee Anderson.

2. OLD BUSINESS:

- a) **McCluskey, Patricia, Trustee for Bell Family Trust – 175 Old Post Road North.** Located in a RA-60 District and designated on the Tax Maps of the Village as Section 67.15 Block 1 Lots 8 and 8.1. Request for interpretation of Village Code Section 230-170B and for frontage variance from that same Code Section for lot no. 3 of a proposed 3-lot subdivision if so interpreted. (*Continued from June 8, 3016 Meeting.*)

Mr. Lavery recused himself from the application as he had done at the previous meeting citing his home's close proximity to the property and his past involvement with the Bell Family and the Mooreheads.

Chairman Stephens started off my asking if there was any input from the Village Attorney and Mr. Sperber said that the Village Engineer, Mr. O'Connor, would be better able to answer her question.

Mr. Ronald Wegner, Project Engineer, was in attendance again tonight to speak on the application and to answer any questions. He distributed copies of the materials which had been submitted to the Planning Board, to this Board tonight. The materials contained a letter dated July 8, 2016 addressed to the Planning Board and Sheets S-1.0, S-1.1, and EC-2.1 of the proposed subdivision drawings. He began tonight by saying that he left last month's meeting with the understanding that the Board had concerns over the utility easement. He said the concern was addressed in a letter to the Board, dated July 1, 2016, and distributed to the Board tonight. The letter was written by Mr. Andrew D. Brodnick,

Attorney at Law, representing the Bell Family Trust. In his letter Mr. Brodnick concluded that the utility easement does not affect the Trust's application for a variance and its right to develop the property; nor will the easement interfere with the right of the beneficiary to fully utilize the easement. Using drawings on view, Mr. Wegner said that the proposed plans should satisfy three safety concerns: 1. the width of the pull off areas have been increased 2. a plan was created for sight distance; the driveway meanders a little but there are cleared shoulders of adequate width and 3. the driveway grade - the average grade is less than 16%, with a range of 13% to 19%.

When Mr. Macdonald interjected that 19% is steep, Mr. Wegner agreed that 19% is steep but said that the Village as a whole is steep and said that Prospect Place averages 18% while High Street and Lower N. Highland Place average 16% for 500 feet.

The Board then discussed the rights of the owner of the easement which is currently Hudson National Golf Club (HNGC). Mr. O'Connor said it is a utility easement whose main purpose was to install a sewer. He said the easement runs with the land and that no rights or location of the easement can change without HNGC's permission. He added that the Planning Board is aware of the issue and would not allow a house to be built over the easement.

Chairman Stephens asked if HNGC had shown any objection to the application and Mr. Wegner replied that the Club had not. Mr. O'Connor added that he had spoken with Attorney Joanna Feldman of the Village Attorney's office and she said the easement should not be made part of a condition because it is a private matter between the landowner and easement owner.

Mr. Macdonald asked to see the Easement Agreement and Ms. Wagner provided him with a copy.

Ms. Wagner made note of Attorney Brodnick's July 13, 2016 letter to the Board which was distributed to the Board at tonight's meeting by the Applicant. Mr. Brodnick, who was present at tonight's meeting, said that he felt the letter answered the Board's concerns. His letter concluded that the Board should confirm "that the three lots of the proposed subdivision may share ingress and egress over a common driveway" and that the Applicant is "entitled to a variance as to the 'paper' frontage on lot 3 which is only one inch less than that required under the Code".

Attorney Clifford Davis spoke next. He was representing Michael Eisenkraft and Kimberly Ragazzo who reside at 30 Finney Farm Road. Their property is adjacent to the subject property. He distributed a letter addressed to the Board and dated July 12, 2016, at tonight's meeting which specified his clients' objections to the application and he reiterated the objections before the Board, concluding that safety is at issue, that a 100% variance is what actually is needed, and that an unfavorable precedent would be set.

Mr. Davis then asked Mr. Elliott Senor, an engineer, to speak on behalf of his clients. Mr. Senor addressed the slope percentage of the driveway which he said is a real safety

concern. He said 16% is the average over a long distance but that there were parts that have 18% or 19% and that most towns allow only 14%. He also said that typically a utility easement for a sewer is 20 feet maximum in width and with this one being 50 feet in width something else was probably anticipated. He said that, unless written otherwise, liability for whatever goes in there belongs to the easement holder. He also said that there is a potential drainage problem; that 2 areas don't have the proper soils.

Mr. Brodnick addressed the Board again. He said that the Applicant is not in front of the Board for subdivision approval or a wetland permit; that site approval will be addressed later on. He said the only thing the Board should be addressing is the interpretation of Village Code Sections 230-170B and 230-4 and there is nothing in the Code saying that frontage cannot be on someone else's property or that one lot cannot use another lot for frontage. He said that this Board approved a similar variance by granting the Kimelman application (53 Old Post Road North) and gave case examples of zoning boards siding in favor of the applicants when there was any ambiguity.

In response to the Board's inquiries, Mr. Wegner then spoke about seeking the variance rather than widening the driveways of proposed lots 1 and 2. He said the goal was to minimize or reduce any disturbance and that the frontage area is within 10 to 15 feet of the wetland. The proposal is a widening of a small area which was seen and approved by the Water Control Commission. He also said that the Village allows over 14% sloping and that any work in the easement area would need to be restored.

Mr. Macdonald and Mr. O'Connor then discussed the water main line along Finney Farm Road and Mr. Wegner confirmed that the Bell property would tap into that water main and that the Bell property has access to Finney Farm Road.

With no one else coming forward to speak, Chairman Stephens closed the public hearing.

The Board Members then discussed the application among themselves. Ms. Wagner suggested that the Board needs to look at the frontage language in the Village Code; that there needs to be 20 feet in width and that there be suitable ingress and egress. Mr. Macdonald said that too much information had been submitted tonight. Chairman Stephens, along with Ms. Wagner, agreed that the majority of the concerns expressed tonight pertained to the Planning Board's review.

The Board Members then interpreted the Village Code with regard to frontage to mean the need for 20 feet in width along with suitable ingress and egress. They agreed that the difficulty alleged by the Applicant was self-created and would be worse if a bigger change were to be proposed.

The Board then agreed that the Applicant just needed .08 feet for a suitable 20-foot frontage width and that ingress and egress could be through neighbors.

Ms. Wagner followed with a motion to grant a .08-foot variance from the frontage requirement of the Village Code provided that ingress and egress is obtained through an

alternative such as the proposed easement. Chairman Stephens seconded the motion. The motion passed with a vote of 3 to 0. Chairman Stephens, Mr. Macdonald, and Ms. Wagner all voted in favor; Mr. Lavery abstained from the vote having recused himself from the application.

3. NEW BUSINESS:

- a) **Albright, Timothy – 20 Cleveland Drive.** Located in a RA-9 District and designated on the Tax Maps of the Village as Section 79.13 Block 4 Lot 15. Request for variance for an existing detached 2-car garage (accessory structure) 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.

Mr. Albright presented the application. He said he and his wife were applying for variances for an existing detached garage located in the property's front yard and less than 5 feet from the property line. He stated that the building permit for the garage dates back to 1936 and that the property has changed hands many times since then without the Village mentioning the violation. The violation was uncovered recently as a result of a box of building department documents being discovered a few years back. He said the garage was constructed 80 years ago and to remove it would make the property look worse because the garage is built into the hill.

Mr. Macdonald asked if there were utilities in the garage and Mr. Albright replied in the affirmative.

Chairman Stephens then opened the hearing to the public.

Ms. Melissa Frey of 26 Cleveland Avenue stepped forward to speak. She is the neighbor closest to the property. She said she would not like to see the garage taken down; that she has lived at her present address for fifteen years and the garage has never bothered her. She continued to say that she would not like to see the hole left behind should the garage need to come down.

With no one else stepping forward, Chairman Stephens closed the hearing to the public.

Ms. Wagner then made a motion to grant a 5-foot variance from Village Code Section 230-40A(1)(b) permitting the existing accessory structure (detached 2-car garage) to be located less than 5 feet from the front property line and a variance from Section 230-40B allowing that same accessory structure to project nearer to the street on which the principal building fronts than such principal building. Mr. Lavery seconded the motion and the motion passed with all four of the Board members voting in favor.

- b) **Tazi, Zoila – 39 Palmer Avenue.** Located in a RA-5 District and designated on the Tax Maps of the Village as Section 78.08 Block 4 Lot 19. Request for front yard variance and rear yard variance for the existing garage which became a part of the primary structure as a result of the enclosure of the connection between the

house and garage and for a rear yard variance for an existing deck at the back of the garage.

Ms. Tazi was present tonight with her attorney, Dan Pancotti, of Modica-Snow & Pancotti. He said his client was seeking 3 area variances for 2 structures – for the enclosure of a breezeway between the house and the garage which then made the garage part of the house and for a deck off the back of the house flush with the ground. He said that Ms. Tazi's neighbors supported her application. [Secretary's Note: The application package included letters stating no objections, from Ken Pojman, residing at 4 Hunter Place, Merri Pearsall, residing at 70 Farrington Road, Lon Westphal, residing at 37 Palmer Avenue, and Cora Sowa, residing at 21 Palmer Avenue.]

Ms. Wagner asked when the breezeway had been enclosed and Ms. Tazi said it was done in 2013.

Mr. Sperber told the Board that before the enclosure, the breezeway just had a roof and was opened on the sides and the house and garage were considered separate buildings. The Applicant then enclosed the breezeway and was unaware that she needed a permit and variances.

Ms. Wagner followed up with another question, asking if the garage had been changed at all. Mr. Pancotti said "No".

Mr. Macdonald asked if the roof had been raised and Mr. Pancotti said it was the same roof as that prior to the enclosure.

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

Chairman Stephens then made a motion to grant a 7-foot front yard variance and a 12.7-foot rear yard variance for the garage as currently built and a 25-foot rear yard variance for the deck as currently built. Mr. Lavery seconded the motion. The motion passed with a vote of 4 to 0. All members present voted in favor.

- c) **Kennedy, Nancy, Agent for Adam & Valerie Concepcion – 124 Olcott Avenue.** Located in a RA-5 District and designated on the Tax Maps of the Village as Section 78.08 Block 8 Lot 10. Request for side yard variance and total side yard variance for an existing attached shed.

Ms. Colleen Coxen of Houlihan Lawrence, 124 Maple Street, was representing the Applicants at tonight's meeting. She said the Applicants are seeking a side yard variance and a total side yard variance for an existing shed that is about twenty years old. The roof line of the shed attaches to part of the house and becomes part of the house. She added that the application package includes a letter of support from the adjacent neighbor (Barbara Wellsea, 27 Wells Avenue) on the side of the property with the shed.

Mr. Macdonald asked where the door for the shed was located and Ms. Coxen said it was at the back of the house.

Mr. Lavery asked if the property was a corner lot and Ms. Coxen replied that it was not a corner lot but rather a curved lot. Mr. Lavery then asked if the shed was along the frontage of the property and Ms. Coxen said it was not.

Mr. Macdonald asked what was kept in the shed and Ms. Coxen said she did not know but Mr. Sperber said he had seen lawn equipment in it.

Next, Chairman Stephens opened the hearing to the public. No one stepped forward to speak so the public hearing was closed.

Mr. Lavery then made a motion to grant a 2.4-foot side yard variance and a 1.4-foot total side yard variance for the existing shed. Chairman Stephens seconded the motion. All four members present voted in favor.

- d) **Power, John – 24 Van Wyck Street.** Located in a RA-5 District and designated on the Tax Maps of the Village as Section 78.08 Block 6 Lot 11. Request for side yard variance and total side yard variance for two proposed separate second floor additions; one addition includes a first floor alteration.

Mr. Power was attending tonight's meeting to present the application. He said his house was built in 1929 and the plan is for 2 phases of construction for 2 independent additions under the one zoning application. The first phase will increase the total floor area creating a breakfast room and requiring a 4.5-foot side yard variance and a 1.2-foot total side yard variance. This addition will follow the existing side line of the house and will fill in the last 9 feet of the side line, squaring off the existing footprint. Phase 2, the second addition, will extend the master bedroom over the existing front porch. He said he is trying to maintain the Dutch colonial style of the house. He is also the architect for the project and feels that the proposed work will be an improvement to the dwelling with the planned extension of the roof line, the breakfast room, and the new, more efficient windows.

Mr. Macdonald asked if the new portion of roof line will match. Mr. Power said it would and would extend in a southeasterly direction optimizing the potential for a possible future solar system.

Mr. Power added that one of the additions will allow for another full bath and closet in the master bedroom.

Chairman Stephens then made note of a 2011 letter in the application packet from the Village Engineer that indicated that the original improvements predated Village building and zoning regulations (July 28, 1931) and that any non-conformities of the original improvements with respect to current regulations are to be considered legally non-conforming.

Mr. Power said he had discussed his proposed project with his adjoining neighbor, Mr. William Brown, of 26 Van Wyck Street, and he had no objection.

Chairman Stephens then opened the meeting to the public. No one stepped forward to speak, so the Chairman closed the public hearing.

Mr. Macdonald followed with a motion to grant a 4.5-foot side yard variance and a 1.2-foot total side yard variance for the proposed two additions as shown in the application drawings. The motion was seconded by Mr. Lavery. The motion passed with a vote of 4 to 0 with all members present voting in favor.

4. APPROVAL OF MINUTES:

Chairman Stephens made a motion to approve the amended minutes and resolution of the June 8, 2016 Zoning Board of Appeals meeting. The motion was seconded by Mr. Lavery. The motion passed 4 – 0 in favor.

5. ADJOURNMENT:

The meeting was adjourned at 10:47 P.M.

Respectfully submitted,

Toni Cruz
Secretary, Zoning Board of Appeals