

Village of



**Croton-on-Hudson**

Engineering Department  
Stanley H. Kellerhouse Municipal Building  
One Van Wyck Street  
Croton-on-Hudson, NY 10520-2501  
Tel: 914-271-4783  
engineering@crotononhudson-ny.gov

## Zoning Board of Appeals

**RECEIVED Application (ZBA)**

**JAN 16 2024** (Form # Eng-\$230-160)

**Engineers Office**

(Revised 06 2017)

**Application Date:** 01/09/2024

**Application #:** 20240025

**Type of Application:** ☒ Area ☐ Special Permit ☐ Appeal ☐ Interpretation ☐ Use ☐ Fence

**NYS SEQR (§617) Actions:**

- ☐ **Type I -** Submit long EAF and CAF  
☒ **Type II -** Not subject to SEQR (area variances for 1, 2 and 3 family homes and lot line variances and individual setback variances) EAF & CAF not required  
☐ **Unlisted -** Submit short EAF (long EAF may be required) and CAF

**Other Involved Agencies:** ☐ Village Board ☐ Planning Board ☐ Other: \_\_\_\_\_

**Property Information:** Section: 79.13 Block: 4 Lot: 50  
Property Location (street address): 38 Franklin Avenue, Croton on Hudson, NY 10520

Zoning District ☐ RA5 ☒ RA9 ☐ RA25 ☐ RA40 ☐ RB (2 family) ☐ RC Multiple Residence  
Limited Office ☐ O-1 ☐ O-2  
Commercial ☐ C1 Central ☐ C2 General ☐ Gateway overlay  
Other ☐ LI Light Industrial ☐ WC Waterfront ☐ WD Waterfront Development

**Current Use:** ☒ 1 Family ☐ 2 Family ☐ 3 Family ☐ Multi Family ☐ Vacant Lot  
☐ Commercial/Other (description): \_\_\_\_\_

**Applicant Information:** (if other than owner, supply a letter from the property owner authorizing application)

☒ Owner ☐ Tenant ☐ Contractor/Vendor  
☐ Attorney ☐ Engineer ☐ Architect ☐ Other: \_\_\_\_\_

Last Name: Nelson First Name: Jessica and Erik MI: \_\_\_\_\_

Company: \_\_\_\_\_

Address: 38 Franklin Avenue

Address: Croton on Hudson, NY 10520

Phone #: \_\_\_\_\_ Cell #: 914-886-3925 E-mail: jesnelson@gmail.com

**Property Owner:** ☒ Same As Above

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_ Cell #: \_\_\_\_\_ E-mail: \_\_\_\_\_

**General Application requirements:**

1. Forms & fees: This completed application plus seven (7) copies (total of 8) plus eight (8) copies of the supporting documentation shall be submitted by the applicant, accompanied by the applicable fee. Electronic version (pdf, jpeg, other) of all documents must be submitted with the application. Appropriate photographs of the property and surrounding properties should be submitted.
2. Content of submission: Application shall fully set forth the circumstances of the case, accompanied by a proposed plan showing the size and location of the lot, a site plan showing location of all buildings and proposed facilities, including access drives, parking areas, landscaping and streets. Each application shall refer to the specific provision

of the chapter and the interpretation that is claimed, details of the variance that is applied for and the grounds on which it is claimed that the same should be granted, or the use for which the special permit is sought.

3. Drawings, elevation plans, and surveys must reflect what is existing and what is proposed and **must be submitted at the time of application**. Failure to do so may result in your application being deemed incomplete.
4. If a recent sale of the property has taken place, please submit proof of ownership.
5. If you are in contract to purchase, please submit a **notarized letter** from the current owner stating that the applicant has his/her permission to file on his/her behalf and applicant is not the owner.
6. Applications **must** be submitted **21 days** prior to the date of the hearing in order to meet **required** deadline dates for Legal Noticing. ZBA meetings/hearings are usually held on the 2<sup>nd</sup> Wednesday of each month at 8 PM.
7. If the application is approved by the Zoning Board of Appeals and a building permit is needed, a separate application for the building permit will need to be submitted.
8. Appeal: shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination by filing with the administrative official and the ZBA, a notice of appeal specifying the grounds of appeal and relief sought.
10. Stay upon appeal: an appeal shall stay all proceedings in furtherance of the action appealed from, unless it is determined that the stay would cause imminent peril to life or property, in which case, proceedings shall not be appealed other than by a restraining order which may be granted by the ZBA or by a court of record on application.

### **1. Area Variances**

Village Code Section(s): 230-40A(1)(b)

#### **Description of variance requested:**

The pre-existing detached garage is located within the required setback area with regard to both the side and rear property lines. A variance for both setbacks is requested.

(can use separate paper if necessary)

|                             | Required setbacks:          | Proposed Setbacks:          | Variance Requested:         |
|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| Side Yard                   | <u>5'</u>                   | <u>                    </u> | <u>3'</u>                   |
| Total Side Yard             | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| Front Yard                  | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| Rear Yard                   | <u>5'</u>                   | <u>                    </u> | <u>1.6'</u>                 |
| <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |

The ZBA shall take into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such a grant. To be considered:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties;
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
3. Whether the requested area variance is substantial;
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.

Provide additional information for all five factors above:

See attached statement.

(can use separate paper if necessary)

Have any previous area variance applications been made? ☐ yes ☒ no If so, give date: \_\_\_\_\_  
Description of previous variance:

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**2. Special Permit** Village Code Section(s): \_\_\_\_\_

Special Permit Description: \_\_\_\_\_

Explanation:

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(can use separate paper if necessary)

Have any previous special permit applications been made? ☐ yes ☐ no If so, give date: \_\_\_\_\_

Description of previous special permit:

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**3. Appeal** Village Code Section(s): \_\_\_\_\_

Description of administrative decision or order (include copy):

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(can use separate paper if necessary)

Date of decision or order: \_\_\_\_\_

Explanation of reason for appeal:

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(can use separate paper if necessary)

**4. Interpretation** Village Code Section(s): \_\_\_\_\_

Description of proposed project or improvement:

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Explanation/describe request::

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**5. Use Variances**

Village Code Section(s): \_\_\_\_\_

Existing Use of Property: \_\_\_\_\_

Proposed Use of Property: \_\_\_\_\_

No use variance shall be granted by the ZBA without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. **These four criteria must be satisfied:**

1. Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
2. Alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.
3. Requested use variance, if granted, will not alter the essential character of the neighborhood.
4. Alleged hardship has not been self-created.

Provide additional Information for all four factors above:

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(can use separate paper if necessary)

Have any previous use variance applications been made? ☐ yes ☐ no If so, give date: \_\_\_\_\_

Description of previous use variance:

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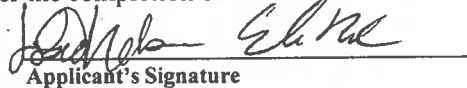
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**Answer Questions (1-5):**

- |                                                                |                                                                     |
|----------------------------------------------------------------|---------------------------------------------------------------------|
| 1. I have submitted required number of copies + documentation. | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Drawings, elevation plans & surveys have been submitted     | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3. All required application information has been provided      | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Proof of ownership, if applicable, has been provided        | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 5. Digital files of all documentation have been submitted      | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

I certify that the above information is accurate, and I am the property owner or authorized by the owner to file this application on their behalf and that I will indemnify and hold the Village harmless against any damage or injury that may be caused by or arise out of any entry onto the property in connection with the processing of the application, during construction or performance of the work or within one year after the completion of the work.

Jessica and Erik Nelson  
Applicant's Name (please print)  
Applicant's Signature1/10/2024  
Date

**Note: According to Section 230-164(E), "Unless work is commenced and diligently prosecuted within one (1) year of the date of the granting of a variance or special permit, such variance or special permit shall become null and void."**

**For larger projects, a request can be made for a variance from §230-164(E) for up to a two year period.**

I request a 2 year variance:

☐ YES ☐ NO**FOR VILLAGE USE ONLY:**Is lot an existing small lot? ☐ yes ☐ no

Note: If yes, lot area, lot depth and lot width exceptions are granted under Village Zoning Code 230-40G

Decision Type: \_\_\_\_\_

Decision Type: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

☐ Approved☐ Approved☐ Denied☐ DeniedFee: \$ 375.<sup>00</sup> Date paid: 1/10/24 Rec'd by: JC

**1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties:**

The garage has been in existence in its current location (except for the legally permitted rear extension) for almost 65 years. Granting a variance to legalize it will result in no change or effect to either the character of the neighborhood or to nearby properties. In fact, the property next door has a pre-existing, nonconforming garage structure that is located within the setback on that property as well. Behind the garage is a ravine with steep slopes. The houses in the rear (on Piney Point Avenue) are located approximately fifty feet above the ground level of the subject property. The adjacent neighbors and the neighborhood at large will be unaffected by the granting of the variance.

**2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance:**

The applicants are in the process of selling their home. They've come to the Zoning Board of Appeals because during the sale process, they learned for the first time, from their buyers' title company, that the garage that pre-existed their ownership of the property is not fully legal. The only way for the applicants to fully legalize the garage and sell their home would be to obtain the requested variance. If the variance was not granted, the garage structure would have to be at least partially, and more likely, fully demolished, resulting in significant damage to the applicants.

**3. Whether the requested area variance is substantial:**

The garage sits within the five foot setback with regard to the northerly and rear property lines. It requires a variance of 1.6 feet on the rear line and 3 feet on the side property line.

**4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district:**

As noted above, the garage in question has been in existence for almost 65 years. Granting the variance will have no adverse effect or impact on the physical or environmental conditions in the neighborhood.

**5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the variance:**

The circumstances of this variance application involve a pre-existing structure that was not built by either the applicants or the prior owners of their house. The applicants bought the house in 2014 with the garage in existence, and as part of their purchase, received a title report that included multiple pieces of correspondence from the village, none of which indicated that any zoning issue existed with regard to the garage. Had any such issue been raised, the applicants would have required the prior owners to legalize the structure prior to their purchase.

Because it is so old, it is likely that the garage was already in place when every contiguous property owner purchased their property. Legalizing the structure would have no effect on any neighbor or the neighborhood generally. Denial of a variance would, however, result in a significant penalty to the applicants. They would lose their current sale, incur the cost of demolition and clean up of the existing structure, and be forced to market their house at a reduced price due to the lack of the garage. We respectfully request that the board grant the variances as indicated in the application.