

**VILLAGE OF CROTON-ON-HUDSON
DRAFT MINUTES OF THE ZONING BOARD OF APPEALS MEETING
THURSDAY, JUNE 13th, 2024**

1. CALL TO ORDER

Chairperson Wagner called the Zoning Board of Appeals Meeting to order on June 13, 2024 at 8:02pm

2. NEW BUSINESS

a) Alessi, Salvatore, Owner-168 Grand Street- Located in RB 2-Family Residential District and designated on the Tax Maps of the Village of Croton-on-Hudson as Section 79.5 Blk 1 Lot 3. Request for a side yard and total side yard variance from Village Zoning Code Section 230-34 for an existing side deck.

PRESENT: Peter Schuyler, Attorney

Mr. Schuyler introduced himself as the attorney representing the application. Mr. Schuyler stated they were seeking 2 variances, a total side yard variance as well as a side yard variance to legalize an existing side deck. Mr. Schuyler explained that Mr. Alessi's house was located on Maple Street and was adjacent to the houses located at 164, 167, and 170 Maple Street. Mr. Schuyler stated that these were all similar style homes that were all built around the time that all received variances for their decks. Mr. Schuyler explained that Mr. Alessi never received a variance for the side deck but was asking for the same request as his neighbors that all have houses that are located close together and all have side decks. Mr. Schuyler shared with the Board that they provided the photos with their application to show the legalized neighboring decks.

The Board asked if a certificate of occupancy was issued in 1973 for the deck. Mr. Wegner, Assistant Village Engineer stated that the original plans were for a peculiar shaped deck and that is what was approved (issued a CO). Chairperson Wagner asked if they were aware of any objections to the request. Mr. Schuyler stated that they were not aware of any objections. Mr. Schuyler reiterated that many of the houses in that area were built by Mr. Franzoso Sr., that they were all similar styles, all similar decks that have all received the variances and that Mr. Alessi was asking for the same variances.

The Board noted that after driving by the property and seeing a sign out front, that it looked like the owner was preparing to sell the house. Mr. Schuyler stated that he was substituting for his partner and was not aware of a sale.

Chairperson Wagner then opened the public hearing; with no comment the public hearing was closed.

Chairperson Wagner opened the application for thoughts from the Board, there was no opposition from the Board as the deck had been existing and was characteristic of the neighborhood.

The Board reviewed the 5 Factors and determined:

1. No undesirable change in the character of the neighborhood nor detriment to nearby properties will be produced by the granting of the variance.
2. The benefit sought by the applicant cannot be achieved by a method other than the requested variance;
3. The requested variance is substantial; but mitigated by mirroring decks on neighboring properties.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district
5. The difficulty alleged by the applicant was self-created.

MOTION: Mr. Mastronardi made a motion to grant a side yard variance of 3.1'ft and a total side yard variance of 6.3'ft for an existing side yard deck. Seconded by Chairperson Wagner. The motion was carried by a vote of 3-0. All in favor. Roll call: Mr. Mastronardi, yes, Chairperson Wagner, yes, Mr. Olcott, yes (Mr. Tuman, absent, Mr. Weber, absent).

b) Sena, Matthew, Owner-17 Beekman Ave-Located in a RA-5 1-Family Residential District and designated on the Tax Maps of the Village of Croton-on-Hudson as Section 78.8 Blk 8 Lot 58. Request for interpretation of Village Code Section 230-164(f) for the appeal of a Village official's decision regarding an application.

PRESENT: Carrie & Matt Sena, Owners.

Mr. Sena introduced himself and his wife, Ms. Sena to the Board stating that they were present for an appeal of an interpretation of code made by Village administration regarding a withdrawn Zoning Board of Appeals application. Mr. Sena stated that on March 14, 2024 they began to research if there was a need for a variance for the installation of a new patio and pergola in their backyard closer to the property line. Mr. Sena stated that his wife, Ms. Sena spoke to Ms. Correale and Mr. Wegner in the Engineering Office and it was determined that a variance was needed. Mr. Sena stated that on March 15, 2024 they submitted an area variance application with the fee of \$375.00. Mr. Sena stated that their intention was to have their application examined by the Board at the scheduled April 11th 2024 meeting however after submitting the application and

fee, and prior to any legal and public noticing they learned there was a preexisting stormwater easement from when the lots were subdivided that would prevent them from constructing the proposed pergola and therefore would no longer need a variance. Mr. Sena further explained that after learning they could not build the proposed project, they provided a written statement requesting their application be withdrawn on March 26, 2024 and on April 26th 2024 they learned the ZBA application fee would not be returned because it had been determined under Village Code section 230-164(f) the fee was nonrefundable. Mr. Sena stated that he spoke with Village Manager, Bryan Healy who confirmed the refund was denied and that Mr. Healy initially stated the decision could not be appealed however in subsequent discussions it was determined that an application to appeal a decision by a Village administrator could be made under Village Code section 230-162(a) and therefore that is why they were present.

Mr. Sena expressed his belief that this section of code does not specifically address an application being withdrawn before any related notices or hearings take place; it instead seemed to cover when an application is processed and reviewed by the Board and a decision of the Board is arrived at. Mr. Sena stated that he felt in their case the application was not noticed, the ZBA never reviewed the application and a final decision was never made therefore, Mr. Sena was requesting a full refund of the \$375.00 ZBA area application fee as well as a full refund of the \$250.00 interpretation application fee.

The Board asked Assistant Village Engineer, Ron Wegner if he had done significant work on the application prior to its withdrawal. Mr. Wegner stated that he reviewed the plans briefly and spoke to the contractor who was made aware he needed to stay away from stormwater drainage easement but it seemed that information was never relayed to the homeowners and the application came in with the fee which was collected but it was picked up on rather quickly so the application was never legal noticed or fully reviewed.

Having heard the applicant, Chairperson Wagner noted this was not a public hearing and opened the application for discussion from the Board. Chairperson Wagner wanted to clarify that there was original language in the code that needed to be interpreted and if the interpretation of the appeal was successful then Section 230-164(f) would then permit the Board to refund the fees. Chairperson Wagner then turned to Mr. Wagner to ask where exactly in the code was the underlying language to be interpreted that stated “regardless of the resolution.” Mr. Wagner stated it was towards the end of the last paragraph in Section 230 164(F). Chairperson Wagner read aloud the section of relevant code “*The Zoning Board of Appeals may, in its discretion, return to the applicant part or all the fee paid by him or her in the event that his or her appeal under § 230-162A, Interpretation, hereof is partially or wholly successful. The fees filed in connection with applications under § 230-162B, Special permits, or § 230-162C and D, Use variances and Area variances, shall not be returnable regardless of disposition of the case by the Zoning Board of Appeals.*” Chairperson Wagner raised the point that language in the code seemed to contemplate that once application fees are paid, they are non-refundable regardless of where the fees go and whether applicants are happy with the outcome however, where it may differ in this case is in the equities of the Sena’s situation. It was discussed that it may marshal in favor to consider an alternative to possibly not granting a full refund given the minimal work that was done by the office and given the turnaround time was approximately 10 days before any more substantial work was done. Chairperson Wagner stated that that was her take on the language but turned the meeting to the other Board members for their interpretations of the language and discussion. Mr. Olcott stated that the Board had the discretion to return the fees and noted there was minimal work and processing done on the application. Mr. Mastronardi stated that he could see

Chairperson Wagner's point to the plain language of the code but in his view a disposition suggests a ruling and ruling on the application did not take place and felt it would be equitable to consider the Sena's situation. The Board then discussed the consideration of a percentage of refund vs a full refund. It was again noted that minimal work was done and with less than 50% of work on the application being done, refunding less than 50% did not make sense. With input from the other Board members, it was discussed and agreed a percentage would be hard to be determined and believed a full refund of all fees would be reasonable.

After thorough discussion, a motion was made on the application.

MOTION: A motion was made by Chairperson Wagner to grant a full refund for the area variance application fee of \$375.00 and a full refund for the ZBA Interpretation Application fee of \$250.00 under Village code *Section 230-164(f)* for a total refunded amount of \$625.00. Seconded by Mr. Olcott. The motion was carried by a vote of 3-0. All in favor. Roll call: Mr. Mastronardi, yes, Chairperson Wagner, yes, Mr. Olcott, yes (Mr. Tuman, absent, Mr. Weber, absent).

(Final Resolution attached).

c) Vara, Michael, Owner-34 Cleveland Drive-Located in RA-9 1-Family Residential District and designated on the Tax Maps of the Village of Croton-on-Hudson as Section 79.13 Block 4 Lot 10. Request for or a side yard variance and height variance from Village Zoning Code Section 230-40A(1) for an existing detached garage.

PRESENT: Michael Vara, Owner

Mr. Vara introduced himself to the Board as the owner of the property. Mr. Vara stated he purchased his home located at 34 Cleveland Drive in 2001 and that in 2002 he submitted a building permit to construct a detached garage. Mr. Vara explained that the permit was issued and the garage was finished in 2004 when he received the certificate of occupancy. Mr. Vara stated that at the time the Village Engineer and Building Inspector missed that the height of the garage exceeded Zoning regulations and he should have required a variance to allow for the height when originally constructed. Mr. Vara shared it was unfortunately missed therefore; he was now seeking a variance to legalize the height of the existing detached garage. Mr. Vara shared that the space above the garage is currently used for storage but he would eventually like to use it as a home office.

Mr. Vara added that he was seeking the variance in preparing for future work. Chairperson Wagner wanted to clarify that whatever variances were to be granted would limit him to those allowances; that Mr. Vara would be limited to the parameters of the existing garage.

The Board then asked about the side yard variance request. Mr. Vara stated that he was more concerned and focused on the variance to allow for the height of the garage and was less concerned about the 2" side yard variance. Mr. Vara explained that he was surprised when he found out he needed a side yard variance and stated that the stone façade on the side of the garage that went all the way down the ground is the reason why he needed the side variance. Mr. Vara then stated he would be willing to remove the stone façade to eliminate the need for a side yard variance especially because he had plans to remove the façade anyways.

Mr. Wegner asked the applicant if he was sure he wanted to remove the stone siding. Mr. Vara replied that in the grand scheme of things it was going to come off anyway. Mr. Wegner asked if the stone was down the foundation near the ground. Mr. Vara stated it was cultured stone by foundation and it was falling off. Mr. Vara added that if at the time of construction, had he known that there was a need for variances, they could have designed the garage differently but again, at the time he was not aware of the height issue.

The Board noted, after viewing the property from the street, that due to the topography of Mr. Vara's lot it was hard to see the detached garage from the street level. Mr. Vara added that when looking at the site pictures provided to the Board with the application, it can be seen how it is a tiered topography and many houses have fences in the area also making the garage less visible.

The Board then asked the applicant if he planned on doing additional work to the garage in the future. Mr. Vara stated that he was considering adding a dormer on back as well as some interior work. The Board wanted to make sure that another variance would not be needed. The applicant asked Mr. Wegner's input asking him what his thoughts were.

The Board explained to Mr. Vara that if he were to increase the non-conformity of the structure such as adding a rear dormer, he would need another variance because it would be increasing the non-conformity. The applicant then shared that he did have drawings from his architect with a proposed additional dormer in the rear of the garage but did not have the plans with him. The Board at that point suggested to Mr. Vara that they table the application as the variance would be tied to the current, existing garage and request and that Mr. Vara return to the Board with an amended application and revised plans to include the new dormer.

The public hearing was not opened and the application was noted to be held to the next scheduled Zoning Board of Appeals meeting.

3. DISCUSSION

a) Adopting Zoning Board of Appeals Rules and Procedures

Chairperson Wagner stated that they were provided materials of the BOT Rules and Procedures to see if the ZBA wanted to adopt similar procedures. The Board discussed the allowance of time for the public to speak. It was proposed to allow for 15 minutes with a warning at 10 minutes. It was noted that the Planning Board had also discussed the adoption of rules and procedures and they decided on a 5 minute allowance but at discretion of chair to extend the time limit on public speaking. Chairperson Wagner stated that she would look more closely at the rules and come back with suggestions at the next meeting.

4. APPROVAL OF MINUTES

The approval of meeting minutes from April 11th, 2024 and minutes of May 9th 2024 were postponed to next month's meeting, scheduled to be held on Thursday, July 11, 2024.

5. ADJOURNMENT

There being no further business to come before the Board, the meeting was duly adjourned at 8:42 p.m.

Respectfully Submitted By,

Stefanie Correale
Secretary to the Zoning Board of Appeals

RESOLUTION

Mr. Matthew & Carrie Sena, Owners, have applied to the Zoning Board of Appeals of the Village of Croton-on-Hudson for the interpretation of Village Code Section 230-164(f) for the appeal of a Village official's decision regarding the refund of application fees.

WHEREAS, the property at 17 Beekman Ave is located in a RA-5 1-Family Residential District and designated on the Tax Maps of the Village of Croton-on-Hudson as Section 78.8 Blk 8 Lot 58.

WHEREAS, on March 15, 2024, the applicant, Matthew Sena and Carrie Sena (referred to hereafter as the "Applicant") submitted a Zoning Board of Appeals application for an area variance (application #20240124) for a proposed patio and pergola and paid the application fee of \$375.00.

WHEREAS, on March 26, 2024, the applicant withdrew the Zoning Board of Appeals area variance application requesting a full refund of the \$375.00 fee (Check #1875, Batch 42613, Receipt #24854, Posted Date 3/20/24) after learning of a stormwater easement through their property at the location of the proposed pergola which would prohibit the installation of the pergola in the requested location.

WHEREAS, the request for the refund was denied by Village officials pursuant to Village code Section 230-164(f) "*Application requirements, forms, and fees. All appeals and applications made to the Zoning Board of Appeals shall be in writing and on forms prescribed by the Board and approved by the Planning Board. Ten copies of the application and supporting documentation shall be submitted by the applicant, accompanied by a fee in an amount set from time to time by resolution of the Board of Trustees.*"¹ *The Zoning Board of Appeals may, in its discretion, return to the applicant part or all the fee paid by him or her in the event that his or her appeal under § 230-162A, Interpretation, hereof is partially or wholly successful. The fees filed in connection with applications under § 230-162B, Special permits, or § 230-162C and D, Use variances and Area variances, shall not be returnable regardless of disposition of the case by the Zoning Board of Appeals.*"

WHEREAS, the applicant submitted an application to the Zoning Board of Appeals for an appeal of the interpretation of Village Code Section 230-164(f) in relation to the area variance application fee refund denial by Village officials.

WHEREAS, the ZBA has reviewed the application and heard testimony from the applicant that the area variance application submitted on March 15, 2024 was never legal noticed and/or was not heard by the Zoning Board of Appeals.

NOW THEREFORE, BE IT RESOLVED, that the applicant is hereby **GRANTED** as follows:

MOTION: A motion was made by Chairperson Wagner to grant a full refund for the area variance application fee of \$375.00 and a full refund for the ZBA Interpretation Application fee of \$250.00 under Village code *Section 230-164(f)* for a total refunded amount of \$625.00.

Second: Mr. Olcott seconded the motion.

Vote 3 to 0; Chairperson Wagner, Mr. Olcott, Mr. Mastronardi, all voting in Favor. (Mr. Weber, absent, Mr. Tuman, absent)