

Village of Croton-on-Hudson
Zoning Board of Appeals Meeting of
December 8, 2010

PRESENT: Seth Davis, Chairperson
Alan Macdonald
Doug Olcott
Roseann Schuyler
Rhoda Stephens

ALSO PRESENT: Daniel O'Connor, Village Engineer
Joe Sperber, Assistant Building Inspector

1. The Zoning Board of Appeals Meeting of December 8, 2010 was called to order at 8:05 p.m.
2. PUBLIC HEARINGS
 - No public hearings were scheduled for this meeting.
3. DISCUSSION ITEMS
 1. *Discussion of proposed additions to Village's list of Type II actions under SEQRA.*

Chairman Davis presented an overview of the SEQR process to the Zoning Board members. He stated that all proposed governmental actions have to go through a review to evaluate if there will be a significant environmental impact. The Department of Environmental Conservation classifies actions by type: Type I, Type II and Unlisted actions.

Type I actions by definition require a full environmental review that can be both lengthy and costly. Type II actions by definition do not require an environmental review because these actions will have no significant environmental impact. Unlisted actions fall into a "gray area." The outcome for many minor unlisted actions that come before the Village Board is a negative declaration that states that there is no significant environmental impact. However, if someone challenges the action, and no environmental review has been done, the action can be invalidated. It is up to the lead agency to make the determination whether an unlisted action will have an environmental impact.

The Village Engineer had recommended to the Village Board that the Village's Type II SEQR list be expanded, a recommendation consistent with NYS DEC policy.

As Chairman Davis explained, the Village Board has considered adding actions that would clearly be defined as Type II. Such actions would include anything involving residential property, one, two, and three-family dwellings, area variances, and lot

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lines. Use variances are not being considered here and are seldom seen at Zoning Board meetings.

Ms. Schuyler affirmed that the ZBA mostly reviews area variances for one, two, and three family residences.

The recommendation being considered is to put more actions in the Type II category, and therefore, widen the list of exempted actions.

Mr. Olcott asked if there might have been decisions from the Zoning Board that required SEQR?

Chairman Davis explained that the Zoning Board has evaluated actions that were unlisted, and the Zoning Board came to the conclusion that there was no significant environmental impact. A negative declaration would have been issued on these actions. Chairman Davis discussed the possibility of challenges to the Board's determination if the actions were not reviewed properly under SEQR.

The Village Engineer explained that actions that are unlisted have to go to the Waterfront Advisory Committee (WAC) for evaluation. Then the recommendation returns to the Zoning Board, then goes back to the WAC for final approval and finally comes back to the Zoning Board. This can be cumbersome because it creates more bureaucracy for small applications. If these types of actions were to be listed as Type II then they would not be subjected to a SEQRA review. The process would be streamlined for the applicant.

Ms. Stephens commented that in the past "we as the Zoning Board felt we didn't need to have an action require SEQR but the Planning Board may have felt it needed to."

Ms. Schuyler asked if there was an example of an application that might have needed a SEQRA review.

The Village Engineer said that the majority of applications that come before the Zoning Board are Type II. Other Type II actions on the state list cover granting individual setbacks and lot line variances on residential properties and on small commercial properties. The Village Engineer explained that the granting of a parking space variance would be an unlisted action.

Parking variances in a small shopping center could be significant in the number of spaces that are available but these variances probably do not have an environmental impact.

Ms. Schuyler asked at what point do we draw this line and maintained that the Zoning Board has a legal obligation to have consistency in our findings. The Village Engineer responded that the line has to be drawn somewhere.

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Mr. Olcott asked the Village Engineer about the addition of the following four actions to the Village SEQRA Type II Actions List:

- 1) *A decision by the Zoning Board of Appeals on an interpretation of the Zoning Code or on an appeal of an administrative decision.*
- 2) *Granting of a variance to extend the expiration date of an area variance or special permit.*
- 3) *Granting of an area variance(s) for increasing or reducing a zoning requirement less than 15%.*
- 4) *Granting of an area variance for the construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities.*

The Zoning Board agreed that a decision by the Zoning Board on an interpretation of the Zoning Code or on an appeal of an administrative decision would be in a Type II category.

The Zoning Board agreed that granting an extension of an area variance or special permit would be considered a Type II action. Zoning Board members agreed that a year goes by quickly and sometimes if construction work doesn't happen quickly enough, a variance expires. It seemed reasonable that 18-24 months would be a recommended extension of the time frame. The ZBA could still have people pay for another permit. The extension of time is applicable for all variances granted, either commercial or residential. The Zoning Board still retains the authority to issue the time frame.

The Zoning Board did not agree that the recommendation for granting an area variance for increasing or reducing a zoning requirement less than 15 percent should be a Type II action. The Village Engineer and the Assistant Building Inspector stated that the percentage number was based on what they thought was a reasonable amount.

Mr. Olcott asked if other municipalities had used percentages.

Ms. Schuyler responded that she thought the use of percentages was a "dissatisfying" option. This would eliminate a possibility that a variance of 15% in regard to building height may have an impact. Mr. Davis agreed with Ms. Schuyler on the 15% issue. He also agreed that Ms. Schuyler made a good point about height variances. Fifteen percent might make a big difference in height and visual impact and therefore have an environmental impact.

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The Village Engineer reiterated that any unlisted action has to be reviewed under SEQRA. For example, use variances are automatically evaluated under SEQRA.

The Zoning Board did not agree to the addition of the recommendation for granting an area variance for the construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area to the Type II category. The Village Engineer cited that this action was listed as a Type II action in the state list of Type II actions [§617.5 (7)]. The purpose was to look at smaller variances that are not covered by Type II lists and those actions that would not in great likelihood have an environmental impact. If we could have a grasp of these particular actions and place them in the Type II list, then right from the start they are not subject to SEQRA.

The Zoning Board discussed when the last time the Zoning Board would have faced an issue as described by above-mentioned recommendation. Ms. Schuyler said it would have been a number of years and wondered if it were such a rare and minor occurrence, why not issue the negative declaration. Ms. Schuyler pondered the wisdom of closing out all possibility of review when it was not a hardship to go through such a review.

Chairman Davis stated that the Zoning Board is trying to eliminate extra steps and prevent applicants from being shuttled between different Boards. Adding to the Type II category list of actions would help streamline the process. However, he wants to make sure that the valid actions of the Zoning Board are protected. The Board wants to eliminate situations where they may be judicial second-guessing to what is really a tangential issue. He would like to save the Board those situations that are tangential, but not if there is a real environmental issue.

Chairman Davis raised the issue about designation of the lead agency. The lead agency could be the Village Board, Planning Board, or the Zoning Board depending on who wants this designation. The Waterfront Advisory Committee is an advisory body, they aren't vying to be the lead agency, but they make a preliminary and final recommendation to the lead agency.

Ms. Schuyler asked if the Zoning Board of Appeals were issuing a variance as an unlisted action, would their findings have to be consistent with SEQR? It was explained that the lead agency makes the finding; it is the lead agency that issues a negative declaration that then ends the SEQR process. If the action requires an Environmental Impact Statement, each agency has to look at the record and make a finding statement. But once a negative declaration is made, then the process is complete and no consistency findings are needed.

Chairman Davis stated that in his experience acting as lead agency under SEQR is not significantly burdensome and he would be surprised if the Zoning Board

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had one such matter every four or five years. Most likely, even that one case would probably have a negative declaration. And most likely, other boards would be involved if there were a SEQR issue.

The discussion then focused on the SEQR process with an unlisted action. The Village Engineer explained that the applicant would be going to the Waterfront Advisory Committee twice. The village would have to ask for an Environmental Assessment Form (EAF). Mr. Davis then said if this were a Type II action there would be no consistency review required, thus removing a speed bump for the applicant.

The Village Engineer added that the “speed bumps” are only removed for those actions without any environmental impact.

Ms. Schuyler said that because this occurrence is so rare, it cuts both ways. It is different with the percentage recommendation. Mr. Davis agreed that the increase or reduction of a zoning requirement by a percentage of 15% presents a problem. Fifteen percent can have a big impact and he was not comfortable with this number. Mr. Sperber said for site specific variances, the 15% seemed reasonable in a lot of instances. For parking, even though fifteen percent of parking spaces would be a lot, the Zoning Board would use the five factors to determine whether to grant the variance.

Ms. Stephens asked if at present there were any possibilities of these things coming up. The Village Engineer said that with minor actions he could evaluate footings on deck, a wetland permit, smaller steep slopes.

Mr. Davis commented how these issues are routinely going to the Waterfront Advisory Committee for consistency review. The Village Engineer said that the feedback from the Waterfront Advisory Committee is that they don't want to see these types of applications and in fact, don't need to review them. The state might have to approve of a change in the Waterfront Advisory law, but that would take time. Certain actions shouldn't have to go through the SEQR process.

Ms. Schuyler stated that going on a case-by-case basis seemed reasonable. Chairman Davis stated that if the Zoning Board goes case-by-case, it means it is an unlisted action. Ms. Schuyler stated that it would be an unlisted action unless there was an exception.

The Village Engineer responded that the state has blanket exceptions and the ZBA could grant some lot line variances so that the application process would be conducted in a reasonable time frame. This would help applicants who came in with minor requests.

Chairman Davis summarized the Zoning Board's discussion about the recommendations on Type II actions:

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The ZBA agreed that *a decision by the Zoning Board of Appeals on an interpretation of the Zoning Code or on an appeal of an administrative decision* is a Type II action.

The ZBA agreed that *granting of a variance to extend the expiration date of an area variance or special permit* is a Type II action.

The Zoning Board was not in favor of the *granting of an area variance(s) for increasing or reducing a zoning requirement less than 15%* as a Type II action.

The Zoning Board was not in favor of *granting of an area variance for the construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities* as a Type II action.

Chairman Davis asked the Village Engineer to get a sense from the Village Board about their reaction to the Zoning Board of Appeal's recommendations. The Zoning Board would be happy to discuss these recommendations further with the Village Board. Mr. Davis suggested that the Village Board take a look at the routing and procedural issues of going through the Waterfront Advisory Committee. The Zoning Board wants to streamline the application process for citizens but is reluctant to agree that all variance applications involving the listed categories would have no environmental review.

1. Discussion of fences, retaining walls.

Chairman Davis referred to the previous meeting's informal discussion about fences and stated he would like to draft a memo to the Village Board regarding this issue. The bottom line is that there is a difference of opinion between the board members regarding whether or not it should be in the Village Code that the "good" side of the fence be required to face the side neighbor's yard. Currently the village has no provision in the code about a "good side" or a "bad side" of a fence and therefore, a fence can face either way to its neighbors. The issue is whether the village should have a provision in the code that states the good side of the fence should go one way or another. Even if this is in the code, the Zoning Board can still address each issue on a case-by case basis.

Ms. Schuyler, having been absent from last month's meeting, asked if the Zoning Board had discussed and had come to an agreement about the good side of the fence facing the front of the street.

Mr. Davis responded that the board had discussed it but had not come to a conclusion about it.

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Ms. Schuyler stated that there was a difference between constructing a fence on the side and back of a property and a fence in the front facing the street. The front is distinct—it presents to the entire community. She would not have a problem with the good side facing out. She does have a problem with the side and back because it forces an issue between neighbors. If the Board limits its recommendation to just the front fence she would agree. However, enforcement of the orientation of the side and back fences is a problem.

Mr. Macdonald stated that fences now come with two “good” sides.

Mr. Sperber mentioned that then the fences become a maintenance problem.

Ms. Schuyler stated that if a resident builds a fence on his property, he gets to decide; it is a right. The front of the fence is different; it faces the community.

Mr. Macdonald maintained that it was more “neighborly” if the good side of the fence faces one’s neighbors.

Mr. Olcott agreed with Mr. Macdonald but then said that if the Board couldn’t come to a consensus perhaps the Board should just limit the recommendation to the street side.

Mr. Sperber said that many communities do have regulations requiring the good side of the fence to neighbor.

Ms. Schuyler maintained that people shouldn’t be compelled to place the good side of the fence to one’s neighbors, but they should put the good side of the fence to the neighbor because it was neighborly.

Mr. Macdonald stated that if people assume they need to do this anyway, why not make this recommendation part of the code. However, since the Zoning Board does not have a consensus on this issue, the Village Board should decide. Ms. Stephens concurred and said that the Zoning Board has one positive consensus about the good side of the fence facing street side, but there is division about the side-by-side placing of the fence, and the Village Board can discuss this.

Ms. Schuyler said that the letter should say the Zoning Board considered the issues and although there are differences of opinions, the Village Board should address it. Chairman Davis will draft a letter and will send it to all Zoning Board members. Everyone should get back to him with comments.

2. APPROVAL OF MINUTES

The minutes of the November 10, 2010, Zoning Board of Appeals meeting, as amended, were approved on a motion by Chairman Davis and seconded by Ms. Stephens.

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The meeting was adjourned at 9:53 p.m.

Respectfully submitted,

Ronnie Rose
Acting Zoning Board Secretary