

**VILLAGE OF CORNWALL-ON-HUDSON
PLANNING BOARD
TUESDAY, JUNE 21, 2016 - 7:00 P.M.**

Present Were:

Jeffrey Small, Chairperson
Vishwa Chaudry
Wynn Klosky
Lee Murphy
Maureen Spaulding

Also Present:

John Furst, Attorney
John Stoeckel, Planning Board Engineer
Benjamin Maggio, Code Enforcement Official
Roberta Hastey, Recording Secretary
James & Wendy Valentine, Applicants
Kevin Brennan, Attorney for the Valentines
Kelly and Arya Yarpezeshkan, Applicants
Various members of the public

The meeting was called to order by Jeffrey Small, Chairperson at 7:00 pm.

OLD BUSINESS – Public Hearing

James and Wendy Valentine- 10 Idlewild Park Drive- Applicants are requesting site plan approval to place an accessory apartment within the garage area of the existing single family dwelling.

Kevin Brennan, attorney for the Valentines restated the aims of the family to create an apartment within the garage at the single-family home and that the occupancy of the apartment will be for one person, the Valentine's Mother/Mother-in-Law (M/MIL). Atty Brennan noted that the home meets code requirements in frontage, lot area and minimum core area for this one-bedroom apartment and on review of records on file found that the Village engineer states the proposed apartment meets code requirements. Atty Brennan also stated that Mr. & Mrs. Valentine have obtained compliance certificates showing that the proposed building meets 2010 NY energy conservation construction code requirements and that the Orange County Department of Planning recommends approval as the accessory apartment provides an additional residential unit with minimal impact on the Village's infrastructure and resources and is consistent with the Orange County's recommendation on housing units. Atty Brennan pointed out that this will enable the Valentines to better take care of Mrs. Valentine's mother who has health issues.

Mr. Small: At last month's meeting parking was a major issue. Mr. Valentine responded that he was not in opposition to adding more parking but over the last month they have managed to keep all vehicles in the driveway. Atty Brennan added that the Valentines are mindful of the fire hydrant and will keep it clear.

Before opening up the public hearing Mr. Small read the section of the zoning code pertaining to accessory apartments. Noting that they are permitted in district; a site plan approval is needed

and periodic inspections will be made to confirm compliance with the certificate of occupancy and refusal of inspection can cause the permit to be rescinded.

Mr. Small asked the Board for any questions before opening it up to the public. Mr. Murphy questioned what would happen if Mrs. Valentine's mother no longer was using the apartment. Mrs. Valentine responded that the apartment was only for her mother and they were not looking for additional income. Her mother is not paying rent and that was not a factor in their decision. The intention for the apartment is only to provide a residence for her mother.

Mr. Murphy asked for Atty Furst's opinion on limiting it to only this specific resident. Atty Furst stated it could be limited to only one particular relative if that's what is agreed to.

PUBLIC HEARING

Many neighbors showed up to discuss the application.

- David DeFreest, 11 Idlewild Park Drive, asked that since the code says the home must stay looking like a one-family home, what would happen to the garage doors? Would they be converted to doors and could that not change the appearance of the home.
- Mr. Small replied the code does not say you cannot change the appearance of the house, but does state you cannot have two front doors.

- Alan Sargeant, Idlewild Park Drive, asked why incur the expense of an apartment why not continue the current situation with the M/MIL living within the house or converting it to just a bedroom.
- Mrs. Valentine responded that it's a quality of life consideration. Both her mother and the rest of the family need some autonomy and while her mother suffers from a degenerative condition that will make stairs difficult in the future and has other health issues, she is only 70 and needs her own space.

- Adam DiFrancesco, 20 Idlewild Park Drive, asked what happens after the M/MIL moves on? What happens when the house is sold? He wondered if the apartment could be rented to someone outside the family? He also stated his appreciation for the fact that parking has been addressed.

- Mr. DeFreest asked about a driveway to the left of the driveway
- Mr. Small stated that it was just an idea put forth and not a definite part of the plan.
- Mr. DeFreest asked if driveways were subject to setbacks? Mr. Small: they aren't.
- Mr. Valentine pointed out that the parking doesn't change whether the apartment is approved or not. They would need the same number of spaces either way.

- Jon Goodson, 6 Idlewild Park Drive, welcomed the Valentines, and as he had never heard of an accessory apartment before, he researched it and found there was no difference between a regular apartment and an accessory apartment.
- Mr. Small responded that the definition they would be using is the one read earlier into the record.

- Maureen Terwilliger, 7 Idlewild Park Drive, while she agrees there have been

improvements in parking, there was a car parked by the fire hydrant today and this is a safety issue.

- Mrs. Valentine responded that it was her son just running into the house for a forgotten item.
- Mr. Small said while parking might be an issue and this might be an opportunity to increase the amount of parking, the parking load is what it is and parking by fire hydrant is an enforcement issue but is not germane to the accessory apartment.
- Arya Yarpezhkan, Riverside Drive, asked if he was correct in hearing that applicants had met all the code requirements.
- Mr. Small answered it was a question of enforceability, the next person might not meet those requirements.
- Ben Maggio, Village Building Inspector, stated that approval is on a case by case basis, and it is enforceable. If the apartment was no longer occupied by a family member, the Building Department would need to be notified and the apartment would need to have the kitchen removed. Other amenities could stay as is, bathroom, etc. but the stove would need to be removed as that particular feature is what sets the space as an accessory apartment.
- Periodic checks are part of the conditions.
- Ms. Spaulding asked if it could be a conditional permit.
- Atty Furst: this is a special use permit/conditional use permit and it would require inspection and compliance of conditions.
- John Smith, 13 Idlewild Park Drive: What if the M/MIL moves out, could the apartment be used for a married child and just not be rented to someone outside the family?
- Mr. Small stated that the code limited the accessory apartment permit to three people within the apartment. Atty Furst added that the code states for the elderly and the young as the intention is to help with affordable housing.
- Mr. DiFrancesco, asked if the permit terminates on transfer of type? The concern would be if the house is sold as a mother-daughter and the new owners use it as a rental apartment.
- Mr. Small responded they would need to renew the permit, meeting the required conditions.
- Mr. Murphy felt that it has been agreed that it is only going to be for the Valentine's M/MIL.
- Mr. Small added if a new family were to buy the home, they would either need to fit the requirements of the special permit or remove the accessory apartment.
- Mr. Brennan: any purchaser would be notified that the special permit would need to be renewed.
- Mr. Maggio: they would inspect and let future buyers know that presently there is an apartment but that would not be valid upon the sale (unless similar conditions existed).
- Mr. Murphy wants to be sure it will not be an accessory apartment in perpetuity and that they agree that it will be limited to the M/MIL.
- Mr. Valentine is not looking to rent it and that the only purpose is for his mother in law.

- Ruth Smith, 13 Idlewild Park, doesn't understand why they bought the home since it is not currently a mother-daughter.
- Mr. Valentine went to the building department to make sure that creating an accessory apartment was a possibility before they bought the home. This was always the intention and the main point of moving to the area although the schools and neighbors also confirm their decision.

Motion to Close the Hearing

Mr. Murphy motioned to close the public hearing, Ms. Klosky seconded, all in favor.

A discussion regarding the frequency of the inspections ensued. Ms. Klosky and Ms. Spaulding felt bi-annually was a reasonable timeframe, Mr. Murphy felt it should be yearly. Mr. Maggio was agreeable to either as it was, at most, a 20-minute visit.

Mr. Chaudry wished to go on record that he disapproved of the proposal and feels it would hurt Cornwall-on-Hudson if mother-daughter apartments starting appearing all over the Village and that it would be difficult to enforce.

Mr. Murphy also questioned whether it is enforceable.

Atty Furst: it is enforceable. It might be difficult to enforce the exact who, since it's the use not the user. Whether it's the mother-in-law or the son, there is no site plan impact.

Mr. Small addressed Mr. & Mrs. Valentine regarding the parking although not required it might make sense to add more parking but not necessarily more pavement.

Ms. Spaulding if they are able to manage the parking, she would be adverse to put parking into the agreement.

Mr. Small: although not something that they could force the applicants to do, adding parking might address one of the main reasons for opposition to the application.

Ms. Klosky: the applicants might want additional extra parking considering safety year round and access to the hydrant.

Mrs. Valentine: We will have one less car shortly as we are donating one to the fire department.

Mr. Small polled the board for any other issues.

Mr. Murphy responded that the apartment is for mother-in-law alone and that the Village be notified of the passing of the mother-in-law. And this is an opportunity for the Village Attorney to craft a document stating those specifications.

Atty Furst said he would work with the Valentine's attorney to draft an agreement.

Atty Brennan wanted to confirm that the annual/bi-annual review would not require another appearance before the board/application unless violations were found on inspection. Atty Furst agreed that it was in the code to be renewed.

Atty Furst we need to address SEQRA and declare that this is a Type 2 Action. But they would need to draft the resolution and vote on it at next meeting.

Mr. Small suggested it be a 2-year term unless life events occur before the end of the term.

Parking is an issue and a real effort would need to be made to make sure the cars were contained on the property.

Mr. Murphy felt the goal has been stated and this is not a negotiation.

Atty Furst stated there are conditions that need to be agreed to by both parties. He also brought up Atty Brennan mentioned that the 239M referral came in from the county that stated there was

no evidence of significant inter-municipal or county-wide impact from this approval, with minimal impact on the Village's infrastructure and resources.

Motion to Declare a Type 2 action

*Mr. Murphy motioned to declare a Type 2 action, Ms. Spaulding seconded,
Mr. Chaudry, against, all else in favor.*

Attorneys to work on exact specifications and Atty Furst will bring back to the Board for a possible decision at July's meeting.

Technically there are 62 days to make a determination. If members of the public were interested, the matter will be brought up at the next meeting.

OLD BUSINESS – Public Hearing

Kelly A. Yarpezeshkan – 8 Riverside Drive – Applicant is requesting board review of an application to place a yoga studio into existing space previously used as a doctor's office.

Kelly Yarpezeshkan presented the details on her planned yoga studio. The studio will be in the downstairs of her primary residence. The room is accessible from inside the house as well as an exterior door. There are no plans on any interior or exterior structural changes to the space. The room they intend to use as a yoga studio was formally used as a doctor's office. The room is 600 sq. ft. of a total of 4,870 sq. ft. The studio would be 12% of the total house. There are no exterior changes required or planned. The use of the space for four students at a time doesn't change the principal character or façade of the home. According to Ms. Yarpezeshkan, the intended use is clearly incidental. Ms. Yarpezeshkan stated she will be the only employee and will provide instruction a maximum of two times a day on the weekdays and once on Saturdays. The use can be monitored on her website. No impact on sewer or water. The use will not generate excessive noise or activity. Traffic will not be generated beyond that to be expected in a residential neighborhood. No changes to existing driveways are required. There is ample parking along the driveway and will not require parking on their side yard. Additional cars will be during off-peak times and will not be more than is usual and customary in a residential neighborhood, the impact from the cars is likely to be less than when it was a doctor's office. Images were shown of front of house and driveway on Grandview. The Grandview driveway showed five cars parked to illustrate that all could leave at any given time if anyone needed to leave early.

Mr. Chaudry asked about access by fire engines in case of emergency if all cars were parked. Arya Yarpezeshkan noted there was access over the yard if cars were in the driveway.

Ms. Yarpezeshkan continued with the benefits of yoga and what she hoped to share with the community.

Mr. Small asked for questions from the Board

- Mr. Murphy if there will only be four clients at a time, why show ten cars parked?
- Ms. Yarpezeshkan replied it was to show that there was ample space.
- Mr. Yarpezeshkan provided a survey of the area.

- Mr. Small questioned Mr. Maggio about the history of the Grandview driveway.
- Mr. Maggio did not have any firsthand knowledge but thought it might have been put in for the apartment.

- Mr. Small stated the Board could not control what street the customer/clients would use as it would probably be whatever was more convenient.
- Mr. Murphy felt that clients would follow the suggestion of the Yarpezeshkans so why not use Riverside Drive since it can hold ten cars.
- Mr. Small: Eight cars per day is not typical of an average house and other incidental businesses might have no traffic.
- Mr. Yarpezeshkan must have been more than eight cars when it was a doctor's office

Public Hearing

- Albert Metz, 4 Grandview, opposes the plan and is concerned this is a commercial enterprise not incidental use. Concerned about mission creep. Skye River Yoga website lists many activities. Skye Yoga, Hot Yoga, Paddle Yoga, Hiking Yoga and meditation. Where would the base of the class be for paddle yoga? Where will they assemble? Same for hiking yoga, where would they assemble? Is the meditation class in addition to the two classes a day? The apartment & house can be found on AirBnB. Is residence incidental to the business or business incidental to the residence? There will be a 100 sq ft changing room is that in addition to the 600 feet? Will the pool and surrounding deck space be incorporated into the business? Thirty residents who signed the petition are concerned that the business will change the face of the residential neighborhood more than a doctor's office.
Ms. Yarpezeshkan seems to be a passionate professional with many years of experience and one would expect that she would want to expand her business.
- Mr. Yarpezeshkan invited the neighbors to visit the space. Classes mentioned are part of the 11 classes and not in addition to. Not all classes will be at the studio, some might be at a private lake (where they will assemble) or on a hiking trail. There will be no use of their pool.
- Mr. Murphy asked if the students of these classes are in addition to or are part of the maximum of four students?
- Ms. Yarpezeshkan replied the classes and students are part of the four/clients two classes per day and usage can be monitored on line

- Dr. Rosa Metz, 4 Grandview Avenue, issue with traffic is not about where they will park but the additional traffic on a very narrow street. All times of the day people from all over town are walking in street as there are no sidewalks. Drivers view turning from Wilson to Grandview is limited. There are two studios in the area. She is not opposed to business but why not use commercial space available on Hudson. Additionally are neighbors to be forced to monitor use?

- Susan Ostrander, 13 Grandview, gave brief history of Grandview driveway on property, In 1988, it was all lawn. Gravel driveway was added for previous owner's parents to access apartment. Concerned that the yoga classes will start to expand to the rest of the property and possibly include the new deck.

- Jen Shapiro, Highland Mills, if Kelly decided to have ten girlfriends over daily, it would be her right to enjoy the space she has, maintains and pays taxes on.
- Jacqueline Versace, 11 Broadway: Majority of clients will be walking. Not as dire a situation as made out to be and this is not a for-profit business but one whose aims are a way of life/health. Yoga is a quiet practice and would not be a disruption but an asset to the community.
- Victoria Vesely Cornwall, the studio will generate as much traffic as an elderly resident with home health care workers and lawn care workers.
- Suzanne Voge, 2 Grandview – 25 years in area. If apartment is included, you are then talking 26% of space being monetized. While the applicants were taking pictures of 10 cars, it has to be realized that those cars were directed and not the normal type of use.
- Ms. Spaulding asked if the apartment is a legal apartment, and if so, okay to rent out
- Mr. Maggio responded it met code and is legal to rent.
- Mr. Yarpezeskan Driveway is 150 feet with plenty of room if one of the four students needed to leave.
- Jeanne Hopkins, 9 Grandview, the space was originally for a one-on-one licensed medical professional. Grandview is very narrow and people drive down it quickly.
- Rachel Zolner, 11 Grandview, no issue with business but does object to increased traffic on Grandview.
- Mikey Jackson, Duncan, also owns a business in town, extra parking could be found on Riverside. If this is the biggest issue, why not use the parking on Riverside for the clients?
- Todd Silverman of Riverside Apartments produced the original survey of the area showing Riverside Drive is a private driveway not for commercial use. According to Mr. Silverman when the home was built for a family member in 1953, there was no issue with use of the private road. When the home was sold to Dr. Mandel, a driveway was installed emanating from Grandview up to Riverside Drive that has since been abandoned. The Silvermans allowed Dr. Mandel and his patients to use Riverside Drive but that was over 15 years ago and according to code 7250 that Mr. Silverman read “*nonconforming use would be deemed to be discontinued when the activity [...] nonconforming use has ceased for 12 months over a 13 month period.*”
- Mr. Silverman also stated that there is not a maintenance agreement but Riverside Apartment management plows and maintains the road. Mr. Silverman states the road should only be used for private use not for commercial use.
- Ms. Yarpezechan says management only maintains the road just past the driveway at which point the Yarpezechans maintain their area.
- Atty Furst asked if the Yarpezechans have the right to use it for ingress and egress?
- Mr. Silverman felt that was a matter of debate. The drive is for residents but not for commercial use.
- Atty Furst: Happy to take a copy of the written easement if there is one. Unless the deed clearly states that 8 Riverside Drive cannot use Riverside Drive, if there is any question, it is

not for the Planning Board to decide about easement. The fact that it was previously used to access the doctor's office that is an issue for the two parties and the courts.

- Tammy Scriber, prior resident of Cornwall, remembers more than one patient at a time in Dr. Mandel's office.
- Stephen Wilkinson, 5 Grandview, lived in Village for over 45 years and noted that those worried about loss of roadway on Grandview are also the same people with landscaping trucks blocking half the street. He is directly affected and he welcomes the studio.
- Julie Ann Festa, lives approximately .25 miles away. Looking to do hot yoga for a while and glad to find nearby, will be walking or biking to attend classes
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- Lisa Anotone, 6 Grandview, since 1985, is concerned with increased traffic especially with the lack of sidewalks and number of children biking in the area.
- Caroline Berkowitz, New Windsor, the total classes would be for 3 hours a day, less than a doctor with back to back patients.
- Lauren Solner, 152 Hudson Street, feels it would be to the betterment of the community and she will be walking to any classes she attends. Ms. Solner also took issue with the petition that had been circulated as she felt that there were many errors on it.
- Phil Adams of 8 Wilson Road, and are backdoor neighbors of Kelly and Arya who have kept the Adams apprised of developments and have been good neighbors. They've been conscientious about noise and appearances and while there is concern with extra traffic going down Wilson, hopefully they can resolve that by using Riverside Drive.
- Dr. Metz feels main issue is whether this is a commercial enterprise or a residential occupation and in her view it is commercial and does not fit in context with a residence.
- Mr. Silverman stated he has not been kept apprised after the initial contact.
- Ms, Yarpezhshkan: there were numerous attempts but they were ignored after the first contact.
- Mr. Silverman brought up that a wrought iron fence was put on his property by the applicants.
- Mr. Chaudry mentioned after last meeting, he checked out the space and permits and found permits for everything.
- Mr. Maggio spoke at Mr. Small's behest regarding the permits. He stated there wasn't a lot done. 1) a window that didn't need a permit and 2) the deck. But then it was noted that a fence was taken down and a new fence installed. This is something that most people don't realize needs a permit. Unfortunately, the previous fence was on the Silverman's property and now so is the new fence. To correct, it would need to be put on an angle and this won't change Mr. Silverman's view and he would need to install another fence to block the view.

- Mr. Small stated we need to be careful to not approve things that aren't allowed and asked Atty Furst to address.
- Atty Furst will carve out the fence from the site plan.
- Mr. Small: this is a separate issue that we don't want to take a stance on, including giving what looks like an approval, so the fence will be separated from the plan.
- Kerri Coburn, Cornwall, apartment keeps being brought up but it is a legal and a non-issue.
- Ms. Shapiro also went to Dr. Mandel and there was more than one person there at a time
- Ms. Voge asked what would happen if the business went over the approved numbers.
- Mr. Small replied if there is an approval, the Studio would need to follow the limits set in the agreement and if not, it would be an enforcement issue.
- Atty Furst added there could be provisions to renew yearly. They would need to adhere to the general hours of operation which currently are approximately from 10:30am to 5:00pm. Ms. Yarpezhskan asked if they were locked into those times?
- Mr. Small general hours needed not exact times.
- Mr. DiFrancesco asked for clarification on 600 sq ft is that for studio and an apartment or just studio. – Answered: just studio.
- Dr. Metz asked how adequate will monitoring be?
- Mr. Small website could be used for monitoring.
- Mr. Maggio works only 20 hours a week and won't personally be policing/monitoring use.
- If business expands, the Yarpezhskans should come back to Planning Board. But if cars are parked on street or there is excessive noise, then police can be called out.
- Dr. Metz reiterated that it seems more like a commercial business and not an incidental usage. Since this is an actual business it would be expected to grow.
- Ms. Spaulding asked Atty Furst to clarify incidental versus commercial business within a home. The fact that it would only involve eight students seems to put it as an incidental use.
- Atty Furst: One factor is the square footage of the house versus space to be used. In this case it will be 3600 total versus 600 sq. ft. for the studio.
- Mr. Silverman will write in with more issues.

A petition was produced. 2 letters against, 7 in favor all on file. Petition will be added to file. Additional letters can be put into the record.

Motion to Close the Hearing

Mr. Murphy motioned to close the public hearing, Ms. Klosky seconded, all in favor.

Atty Furst asked that all members receive copies of the petition.

Mr. Murphy although size is a factor, his sense is that the public feels that the number of people involved is a major factor.

Atty Furst: number of clients could be a consideration along with space. You would need to compare it to other home occupations. Square footage versus home and number of clients are two of the factors to be considered. Income is not a site plan referral issue. Most seem to be in agreement that it is a home occupation.

Mr. Chaudry asked if there were parking space requirements for an incidental business. John Stoekel, Planning Board Engineer, stated that for recreation centers (the closest type to the yoga studio) the requirement is 1 space per 3 patrons or 1 per 40 sq ft
Mr. Small noted that parking usually references on street parking. This case involves off street parking.

Mr. Small: In the use of Riverside Drive, the easement issue needs to be considered.
Atty Furst: As long as it is not clearly definitive that 8 Riverside cannot use the road, it is not the Board's decision. If there is a question to determination of the easement, it is not for the Board to decide, the extent of the right will need to be determined between the two parties. Renewal provision could address some items that could change if the courts determine the easement differently in the future.

Mr. Murphy asked Atty Furst for a draft and whatever info he has to offer on this application.

Atty Furst: The Board can go through the factors, see if the use will generate more traffic than normal in a residential area and the Board may impose some conditions as mitigation measures. Renewal might be a good idea and hammering down number of clients and hours of operation. If there is a need to increase the hours, the applicants will need to come back before the Board. Conditions could also include tying times into traffic from West Point and School.

MINUTES

May 17, 2016

Mr. Murphy motioned to approve the May minutes, Mr. Chaudry seconded, all in favor.

Meeting was adjourned at 9:35pm

Ms. Klosky motioned to adjourn the meeting, Mr. Murphy seconded, all in favor.

Respectfully submitted,
Roberta Hastey
Recording Secretary