

APPROVED: 2/17/09
MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
JANUARY 20, 2009

A regular meeting of the Zoning Board of Appeals was held in the Highland Falls Library, Highland Falls, New York, on Tuesday, January 20, 2009, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

David Weyant, Chairman
Jack Jannarone
Tony Galu – Arrived 7:04 P. M.
James Miller
Tim Donnery

Absent: Tim Doherty and Ray Devereaux

Alyse Terhune, Attorney

ALSO PRESENT:

Mervin R. Livsey, Jr., Deputy Supervisor, Joseph S. McCormick, Village Planning Board, John Hager, Building Inspector, Andrew Hennessy, Peter T. Lam, J. Sharp, Gregg Lawless, Glen Moyer, Chris Moyer, Rose Ott, Anne Hidalgo, Mitch Troyetsky, and Hugo Puscama.

The meeting was called to order by the Chairman, at 7:00 P. M., with the Pledge to the Flag. It was noted that a quorum was present.

MR. WEYANT: I will open the Consolidated Zoning Board of Appeals Meeting for the Town of Highlands for January 20, 2009. I note that a quorum is present. Absent tonight are Mr. Doherty and Mr. Devereaux. I expect Mr. Galu.

The first thing we have to do is reorganize this Board since it is our first meeting of the new year. The first thing we need to do is appoint a Chairman of this Board. Are there any nominations from the members?

A motion was made to nominate David Weyant as Chairman of this Board.

Motion: Mr. Donnery Seconded: Mr. Jannarone Approved

A motion was made to nominate Tim Donnery as Deputy Chairman of this Board.

Motion: Mr. Weyant Seconded: Mr. Miller Approved

A motion was made to set the meeting dates of this Board to be the third Monday of each month, with the exception of January, tonight, January 20, 2009, because of the Martin Luther King, Jr. Holiday, and February, Tuesday, February 17, 2009, because of the President's Day Holiday.

Motion: Mr. Weyant Seconded: Mr. Jannarone Approved

A motion was made to use the News of the Highlands in Highland Falls, and the Times Herald Record in Middletown as the official publications for this Board.

Motion: Mr. Weyant Seconded: Mr. Donnery Approved

A motion was made to use the law firm of Jacobowitz & Gubits, LLP for this Board.

Motion: Mr. Weyant Seconded: Mr. Donnery Approved

A motion was made to appoint Fran DeWitt as Recording Secretary for this Board.

Motion: Mr. Weyant Seconded: Mr. Jannarone Approved

MR. WEYANT: The next matter on the agenda is approval of the Minutes of December 15, 2008, which were sent to all members of the Board, prior to tonight's meeting. There are some changes to be made. Specifically, on **Page 11**, where Mr. Hager is speaking, in the middle of the page: Fourth sentence: "It is the intention of the Applicant to use it as is. He did erect a sign and it did appear to be business activity. We issued a warning letter and, subsequently, we issued a violation notice. We asked him to send an application to the Planning Board to receive some kind of permit. The Planning Board in their initial review has identified that the use in our Table of Permitted Uses mentions parking and storage garages but not storage parking or storage as a permitted use in that zone." The last paragraph, last sentence: "If the interpretation is no, then the application would have to be adjusted to become a variance request." **Page 12:** Second paragraph, first sentence: changing the word "committed" to "permitted". Third paragraph was stated by Mr. Lawless. Sixth paragraph: "Is it north or south of Rockwell's?" Ninth paragraph was stated by Mr. Lawless. **Page 13:** First and third paragraphs were stated by Mr. Lawless.

A motion was made to approve the December 15, 2008 Minutes with the noted changes.

Motion: Mr. Jannarone Seconded: Mr. Donnery Approved

MR. WEYANT: The next matter on this Board's agenda is being held over from our meeting of December 15, 2008 for Mr. Peter Lam, 433 Main Street, Highland Falls, NY, on some variances which at our last meeting unbeknownst to myself, we found that a majority of this Board, meaning four (4) members, must approve

or deny any application before this Board. At last month's meeting the votes on Mr. Lam's variances do not really create a 3-2 vote. I was under the impression, wrongly, that the Board denied his application, it did not. It made it a no vote.

MS. TERHUNE: The vote had no effect.

MR. WEYANT: We are going to re do this again tonight. From the date of our Public Hearing which was in November, we have 62 days in which to act legally on a variance application. Our meeting was held on November 17, so the 62 days have arrived, tonight. Therefore, we need to take a vote and redo this again. I would note that at the last meeting Mr. Donnery was not here. Our minutes reflect various opinions by this Board on Mr. Lam's variances. I know, Tim you had time to read this and think about it. I am not trying to put you on the spot, but I would like your opinion since you were not here as to what you feel about this.

MR. DONNERY: On this Board, we take case by case. In this community there are a lot of non-conforming lots, just the way the property lines are laid out. I was up there once over the weekend. Looking around at the property, we have on back side of the Knights of Columbus on the one side, and an old beat up garage that is falling down on the other side and the adjoining bus garage. In all fairness, it would improve the area, by cleaning up the lot a little bit, and putting up the house. It definitely would not affect any other part of the surrounding area to my knowledge. I would definitely be in favor of this. It would be an asset to the community. It still goes back to the Planning Board for final acceptance.

MR. WEYANT: For the members of the Audience, this has been a referral from the Village Planning Board to this Board.

MR. DONNERY: He has some parking in there that is needed in the north end of the town. One thing that has nothing to do with this Board, but I believe there used to be a right-of-way going through there.

MR. HENNESSEY: Through the property?

MR. DONNERY: It used to be a right of way, through all the years it grew up. As long as it is not going to hurt the community or the surrounding area, I don't see that in any way, shape or form.

MR. WEYANT: I think we need to re-vote each of the variances. It does go back to the Planning Board and the Planning Board at such time will hold hearings, and eventually will make a decision one way or another. We need to go through each variance.

MS. TERHUNE: You need to go through each variance and give the Board another opportunity to discuss.

MR. WEYANT: Let's start with the first one. Is there any further discussion from any of the Board Members?

MR. GALU: He is putting another building back approximately where it was before. I have no problem with that.

MR. MILLER: I have no problem.

MR. WEYANT: Our December 15 minutes do show each of our opinions on this matter. We do have a missing member tonight.

MR. WEYANT: I thought a lot about this since at our last meeting and the fact that this will be going back to the Planning Board and we are down to a deadline with this Board. A lot of work has been put into this not only by the Applicant but by this Board, too.

A motion was made to approve a 10,215 square footage per dwelling variance.

Motion: Mr. Donnery Seconded: Mr. Miller

The Chairman called for a vote and the response was:

ROLL CALL VOTE:	Mr. Galu	Aye	
	Mr. Miller	Aye	
	Mr. Donnery	Aye	
	Mr. Jannarone	Nay	
	Mr. Weyant	Aye	Approved

A motion was made to approve the side yard variance which requires a variance of nine feet.

Motion: Mr. Donnery Seconded: Mr. Miller

The Chairman called for a vote and the response was:

ROLL CALL VOTE:	Mr. Galu	Aye	
	Mr. Miller	Aye	
	Mr. Donnery	Aye	
	Mr. Jannarone	Aye	
	Mr. Weyant	Aye	Approved

A motion was made to approve a rear yard variance of 17 feet.

Motion: Mr. Donnery Seconded: Mr. Galu

ROLL CALL VOTE:	Mr. Galu	Aye	
	Mr. Miller	Aye	
	Mr. Donnery	Aye	
	Mr. Jannarone	Aye	
	Mr. Weyant	Aye	Approved

A motion was made to grant a variance to expand the size of the building from 464 square feet to 1,282 square feet.

Motion: Mr. Donnery Seconded: Mr. Galu

ROLL CALL VOTE:	Mr. Galu	Aye	
	Mr. Miller	Aye	
	Mr. Donnery	Aye	
	Mr. Jannarone	Aye	
	Mr. Weyant	Aye	Approved

MR. WEYANT: You withdrew the motion to approve to allow the replacement of the building exceeding 50% of its value.

MR. HENNESSEY: Yes.

MR. WEYANT: We are not going to act on that.

MS. TERHUNE: The applicant will have to reapply and resubmit for as a use variance.

MR. HENNESSEY: We withdrew that on a vote that actually did not happen.

MS. TERHUNE: It is up to the Board to decide.

MR. WEYANT: If this Board does not act on this now, it will come back to this Board.

MS. TERHUNE: Yes. It will come back to this Board because the Applicant needed five (5) area variances. The Applicant also needs a use variance because as you recall from other discussions, there are two (2) uses on one parcel which is not allowed under your Code.

MR WEYANT: Those two uses are?

MS. TERHUNE: Restaurant and residential. In addition to area variances, the Applicant will need a variance from Section 240-56B which states that any building or structure used by a non-conforming use shall not be reconstructed, structurally altered, restored or repaired to an extent exceeding 50% of the replacement cost of such building or structure, exclusive of foundations, unless the use of such building or structure is changed to a conforming use.

Because the restaurant is there to add back the third house it would make the use more non-conforming rather than less non-conforming. Therefore, the Applicant applied for both area variances and use variances. At the last meeting when the Board got to the question of the use variance, it was discussed that a denial of that would essentially be a threshold issue. Denying that would cause the area variance to have no value. Based on that, the Applicant withdrew so it did not reach the merits of that variance. The Applicant withdrew based on that.

That vote, as we discussed tonight, was not binding. For the Applicant to proceed, this Board has two options. It can allow the Applicant to essentially reinstate that since it was part of the original request, or the applicant can come

back and go through that process again. The granting of the use variance has a higher standard than the area variance because the general purpose of Zoning Code is to bring use into conformity with the Code, and to do away with non-conforming use. There was a withdrawal.

MR. WEYANT: But that was not binding, because the vote was not binding.

MS. TERHUNE: I am not sure about that. A withdrawal by the Applicant is a withdrawal.

MR. WEYANT: Did the original application request this?

MS. TERHUNE: Yes, it did.

MR. WEYANT: So now the question is, do we act on this now? If we ask him to come back are we still within the law for the 62 days?

MS. TERHUNE: Yes, because he withdrew and therefore that was off the table. You might not want to take action on the use variance and certainly waive the requirement for the fee.

MR. DONNERY: There was a set of questions that we discussed.

MR. HENNESSEY: This was part of the Public Hearing.

MR. WEYANT: Yes, we are not going to have another Public Hearing.

MS. TERHUNE: If the Board does not act now, and the Applicant resubmits again, the process would have to start over.

MR. WEYANT: I think we are still under discussion.

MR. DONNERY: The set of guidelines to follow, and the four questions were considered.

MR. WEYANT: Would you like to address these questions?

MR. HENNESSEY: This is a bit of a unique situation. The home was always there. My client, Mr. Lam, was misinformed by his contractor. The contractor did not receive the proper permits before taking the building down. That did not happen. Had Mr. Lam known that we would end up in a ZBA situation or a Planning Board situation, he would have left the old building there. The fact that this particular contractor misled him and ripped him off, makes him a victim here. It is mitigating circumstance. We are not adding any additional residential units; there has always been the same number there that we are proposing now. We are putting back one that was unfortunately taken down, and we all wish it wasn't.

MR. DONNERY: I understand all that.

MR. WEYANT: What are your other items?

MR. DONNERY: Alleged hardship was not created?

MR. HENNESSEY: I think we could make a case of what went on there.

MR. DONNERY: Alter the character of the neighborhood? I agree that has not happened.

MR. DONNERY: We have only done this once or twice. I know there is a legal format that we went through. We go through it line by line.

MS. TERHUNE: Typically, you will go through each point and have the Applicant address it with competent evidence. I honestly am somewhat concerned about addressing this tonight because going back to the minutes, and having read what was actually said. Having granted the area variances, I would not want to see a challenge to that that could not be defended. When I look at the record, I think it is fairly clear that what happened was, when it looked like the Board was going to deny the area variances, your Client was given the opportunity to withdraw the use variance.

The thought was that if your Client went back and reconsidered, perhaps putting the building back on the same spot, it may not even have to come before the ZBA at all for any variances because he would simply be rebuilding essentially the same thing. The only variance that he would need at that point, if he decided to do that, would be the Section 240-56B variance because of the 50% overage. Rather than reach the merits of that decision that night, given the way the Board was leaning, your Client did withdraw.

At this point, it looks like the area variances are granted but you have withdrawn the other request, and you did that on the record. I would not like to see the area variances that have been granted by this Board jeopardized by not giving due consideration to the use variance. It would be my opinion that the best way to proceed here is to grant the area variances that the Board has done. We have a majority of the entire Board and to ask you to come back at the next meeting and we will address the use variance. You would need to bring some competent evidence. What I will do in the meantime is confer with my colleagues as to whether you will have to actually do notice except in publishing in the paper, and I am not sure you have to do that. I will let you know.

MR. HENNESSEY: I understand your point but it does not sit quite right with me. We were basing our decision on a vote that as it turns out is non-existent. Now that is coming back.

MR. WEYANT: I would like to have time to review it.

MR. DONNERY: The difference in an area and use variance is we take case by case on the area variance. On a use variance if the person next to you wants to build a house, we would have to grant it. If we granted you, we would have to grant the next one.

MR. HENNESSEY: Except they would have to have an existing building that they are expanding and tore down and have all the same issues. The chances of that happening are remote.

MR. WEYANT: I am going to feel a lot more comfortable by reviewing this at our next meeting.

MR. DONNERY: I want our Attorney to review that. There was a case in Fort Montgomery of putting an apartment over a garage.

MR. GALU: He already had a building there.

MR. WEYANT: It pre-existed. If he was going to replace it with the exact same footage, there would be no argument.

MR. HENNESSEY: It is not a use variance that we are adding a third use. It is a use that was already there.

MR. DONNERY: I understand all that you are saying. I would like advice from Counsel.

MS. TERHUNE: There are two things. One is that even use variances can be and are granted on case by case basis. The standard is higher because in general the purpose of the Zoning Code is to over time eliminate non-conforming uses. So each use is just like an area variance in terms of it is very specific to the property for which it is granted.

The other factor is the reason the applicant even needs the use variance has nothing to do with the size of the structure or the size of the lot, but rather the value of the structure that is being replaced. The Code allows the continuation of non-conforming uses, but if it is replaced for more than 50% of the value, which is what the Applicant has now decided that it would be, then a use variance is required very specifically. That standard is one of the factors is an economic factor.

MR. WEYANT: I would like to hold this over and do it the right way, and get more information.

MR. HENNESSEY: You would like to see some financial data on this?

MR. WEYANT: We will take this up at our February meeting. The area variances are approved.

MR. McCORMICK: Will there be a Public Hearing?

MR. WEYANT: I will wait to hear from Counsel. If it is necessary, we will go through the usual procedures.

MR. HAGER: Is a new application needed?

MS. TERHUNE: You will want a new application.

MR. WEYANT: We can waive the fee.

MR. DONNERY: If there is a Public Hearing, can it be at the next meeting?

MR. WEYANT: If necessary, we will have it at the next meeting.

MR. WEYANT: Next we have Mr. Healy. Gentlemen, as you recall, back in November we discussed with Mr. Healy his request for a variance for a one family to a two family home on Schneider Avenue in Highland Falls. We set up a Public Hearing for our December 2008 meeting. I received a letter from stating that you did not get the letters out in time as required by law. You were held over to tonight's meeting. I note that the affidavit of application for the Public Hearing. We have an affidavit of mailing certified mail to all surrounding and the posting of signs as required by law. Everything is in order.

At 7:48 P. M., the Public Hearing was opened.

MR. WEYANT: Mr. Healy, please hold up your right hand. Do you solemnly swear that the information provided herein to be accurate and true to the best of your ability?

MR. HEALY: Yes.

MR. WEYANT: Please review with us, since it has been a while, what you would like to do.

MR. HEALY: Basically, I am taking the house which was built as a two family and I am trying to make it back into a two family. I am going to need an area variance. This variance was for Section 240-37 for just an area variance.

MR. WEYANT: Right now it is a one family home?

MR. HEALY: Yes. It is a one family home.

MR. WEYANT: It was originally a two family home.

MR. HEALY: Yes. We are trying to get it back to a two family. Mostly because of the layout of the house, it has two separate entrances, and separate stairs off the back. The layout is not really set up for anything except a two family. It is almost a square house with five rooms on each floor.

MR. WEYANT: Is there anyone here in the audience that would like to discuss this variance we are taking for Mr. Healy?

MS. JEAN SHARP, 11 Homestead Avenue, Highland Falls. I am not here to give you a hard time, but I went through this process 10 years ago with my house and in reading the notice, I have questions. I am here to ask questions not attack you. Please understand that. You just answered one of the questions which was the variance amount. You said the Code is now 1,250 square feet. When was that changed, because when I had my house it was 900 square feet per apartment?

MR. WEYANT: When was the Code changed? I do not know that. I will get back to you. Go ahead with your questions.

MS. SHARP: Do you know the total square footage of the house?

MR. HEALY: 1,600 square feet.

MS. SHARP: Is there a fire escape for both apartments, or is there going to be one for the upstairs apartment, assuming there will be an upstairs and downstairs apartments?

MR. HEALY: Yes, up and down. We need to wait to get the variance.

MS. SHARP: Is it allowed to have a fire escape added to an apartment?

MR. WEYANT: Let's go back to your question as to when the Code was changed. It was 1987.

MS. SHARP: In 1987 the square footage for an apartment was 1250.

MR. WEYANT: As far as fire escapes go, I would have to defer to our Building Inspector.

MR. HAGER: A fire escape is not required for two floors or less, but for a 3rd floor or higher.

MS. SHARP: Thank you. I just drove up there tonight and had no idea how steep it was. Is there going to be off street parking? I think that is a current requirement.

MR. HEALY: Yes. There are four spots. The Planning Board already planned out the spots.

MR. GALU: What is the parking up there?

MR. HEALY: I have a garage in one spot; the front of the garage is one spot, and the driveway with two spots.

MS. SHARP: What is the current zoning on that spot? Is it zoned for multi-family?

MR. HEALY: Yes

MS. SHARP: The property is for sale. Are you the owner or the perspective owner?

MR. HEALY: Yes

MS. SHARP: You are working on it to sell it?

MR. WEYANT: That has no bearing.

MS. SHARP: Under your proposed zoning are they one bedroom, or two bedrooms?

MR. HEALY: Two bedrooms.

MR. WEYANT: Is there anyone else in the audience that would like to discuss this application?

Hearing none, at 7:56 P. M., a motion was made to close the Public hearing.

Motion: Mr. Jannarone Seconded: Mr. Miller Approved

MR. WEYANT: Any further discussion or questions, gentlemen? Are there any questions from the Applicant?

MR. GALU: It is a two car garage?

MR. HEALY: The garage is a shared wall with two doors. It is more than three quarters.

MR. GALU: Park a car in front of the garage and in the garage?

MR. HEALY: Yes there is enough room.

MS. TERHUNE: The Applicant appeared before the Planning Board and they made a site visit.

MR. WEYANT: Whatever we do it will still go back to the Planning Board. Are there any more questions?

A motion was made to grant an area variance of 350 square feet for the first floor and 450 square feet for the second floor. Section 240-37, of the minimum required being 1,200 per family, per floor.

Motion: Mr. Weyant Seconded: Mr. Miller

ROLL CALL VOTE:	Mr. Galu	Nay	
	Mr. Miller	Aye	
	Mr. Donnery	Aye	
	Mr. Jannarone	Aye	
	Mr. Weyant	Aye	Approved

MR. WEYANT: Next is Mr. Lawless. He is requesting an Interpretation of the Zoning Code to allow the use of a parking area without buildings in a Business Zone, on 1027 Route 9W, Fort Montgomery, NY. I have an affidavit of publication in the News of the Highlands, an affidavit of mailing, and an affidavit of posting and signage. Everything seems to be complete.

At 8:00 P. M., the Public Hearing was opened.

MR. WEYANT: Mr. Lawless, please hold up your right hand. Do you solemnly swear that the information provided herein to be accurate and true to the best of your ability?

MR. LAWLESS: I do.

MR. WEYANT: I am going to ask Ms. Terhune to review with us as to why we have this before us. What the interpretation is all about.

MS. TERHUNE: Mr. Lawless has a vacant lot that he wants to store and park vehicles on that lot. He is in the Business District and in the Business District he is allowed to have a parking garage but not a parking area. But a parking garage under your Code is a building with vehicles in it. Mr. Lawless wants a variance or interpretation as to whether a parking area is the same as a parking garage so he does not have to get a use variance. Or if this Board determines that it is not allowed in the zone because it does not have a building associated with it, then he would request a use variance. There is a definition specific for parking garages and a parking area.

MR. DONNERY: This has been used for parking for as long as I can remember.

MR. LAWLESS: I agree whole heartily.

MS. TERHUNE: Any use that is not specifically allowed is prohibited. Therefore, under the Code, Mr. Lawless was required to come to this Board for an interpretation.

MR. WEYANT: The Town Planning Board did refer him to this Board. It still needs to go back to them once he is done here. Ladies and Gentlemen, would anyone like to comment or talk about Mr. Lawless' application before this Board?

MR. MERVIN LIVSEY: Highland Falls. Is it suitable as a Town Councilman to make a comment?

MS. TERHUNE: Are you making a comment as a Town Councilman or a resident?

MR. LIVSEY: Both.

MR. WEYANT: You are putting us in a bad position. You, as a resident of Highland Falls, have a perfect right to discuss this matter. Anything concerning the Town Board, we do not want to hear about.

MR. LIVSEY: As a lifelong resident of the Town of Highlands, I know that the Town of Highlands is working on the beautification in the Hamlet of Fort Montgomery. There is an ordinance on abandoned vehicles in the Town of Fort Montgomery, and there have been abandoned vehicles on this lot. There have been notifications, speaking for the Town. Speaking as a resident, this is a tough decision for the Zoning Board. The Town of Highlands in Fort Montgomery is looking into the comprehensive plan for beautification in Fort Montgomery. I understand that you want to put storage in there. What I don't recognize as a resident, is what kind of storage you plan to put in there. Are they going to be registered vehicles, trailers?

MR. LAWLESS: To be perfectly honest with you, I am going to take what your Town does not allow people to have on their own residence and putting them in my commercially zoned for unregistered vehicles for that purpose. You are not giving people or the residents of the Town of Highlands the option to leave their car in their driveway for months at a time so they can be in my lot without having any issues.

MR. LIVSEY: I am trying to stay out of the Town. The Planning Board will get this back.

MR. WEYANT: Yes. I understand your point as a resident not wanting abandoned vehicles on the lot. Would anyone else like to speak?

Hearing none, at 8:07 P. M., a motion was made to close the Public Hearing.

Motion: Mr. Jannarone Seconded: Mr. Donnery Approved

MR. WEYANT: Let's discuss further what kind of vehicles will be on the lot.

MR. LAWLESS: Motor vehicles, some people put their boats there for the winter, just your standard every day what you park in your driveway kind of vehicles. I am not putting earth moving equipment. It is a commercial zoned area next to a used car lot. I am just trying to address one of the needs of this Town. I have spoken to a lot of the residents who say that they cannot park their own cars on their property. I am in a commercial zone and looking for the business of providing this. I do not have the means or the wherewithal to put up a building. I have cleaned up and improved the lot.

MR. WEYANT: Something was just mentioned about a structure on the lot.

MR. LAWLESS: No, that is not my plan.

MR. JANNARONE: He could.

MR. WEYANT: Yes, he has the right to. If he had a parking garage, we would not be here.

MR. DONNERY: I understood you were going to use it for your business.

MR. LAWLESS: I have my own business.

MR. WEYANT: What business is that?

MR. LAWLESS: I own an electrical contracting business.

MR. JANNARONE: You went before the Planning Board?

MR. WEYANT: The Town feels there are abandoned vehicles on that lot. It would not matter whether it is a commercial lot or residential lot.

MR. DONNERY: Are there abandoned vehicles?

MR. LAWLESS: No sir, I am not putting abandoned vehicles on the lot. People come to me to park their car for a certain amount of time and arrange a fee to do so and that is it. They have an RV or a trailer. Nothing is years long. Typically, I am looking to pay the taxes on a piece of land.

MR. WEYANT: John, as Building Inspector, does the Town allow abandoned vehicles anywhere?

MR. HAGER: The current code does not allow any unregistered vehicles.

MR. WEYANT: The key word being unregistered.

MR. LAWLESS: There are plenty of servicemen that get sent off to Iraq for a year and need to put their cars somewhere.

MR. HAGER: I will say that Mr. Lawless has cooperated. We wrote a violation and he immediately complied with the Department.

MR. DONNERY: Why is this in front of us?

MR. GALU: For zoning.

MR. WEYANT: It was referred to us by the Planning Board.

MS. TERHUNE: The Code does not allow an open air parking area in that zone. It only allows parking provided. It is here for the Zoning Board of Appeals to interpret whether.....

MR. DONNERY: Not to cut you off, but how can you say that, you have the Chevrolet dealership right next door, the used car dealership.

MS. TERHUNE: That is why it is in front of the Zoning Board of Appeals to interpret as to all the specific definitions, and to look at the business district and what is allowed. Sometimes codes are not as clear.

MR. DONNERY: That's right. Personally, I don't see it. If we touch this with him, we will have to close down the Chevy dealership next door, and put one giant building up, same thing with Rockwell.

MR. HAGER: It is pre-existing.

MR. DONNERY: Can't park cars outside. I think someone is making something that is not here.

MR. JANNARONE: We have to vote on this.

MR. WEYANT: I will get to that. We had to notify Orange County Planning because of the fact that you are next to a State Road, Route 9W. They requested further information from us, your initial response, which necessitated us having to give them more information. This means that we can't, without their opinion, act on your application tonight. One way or the other, this has to come back.

MR. LAWLESS: With another Public Hearing?

MR. WEYANT: No, there is no Public Hearing. It is over, we closed it. Orange County Planning under New York State Law has the right to give us their views. We can't make a decision tonight without their input. We have a 30-day time limit from the time we gave them the new information which was January 14.

MR. LAWLESS: My question to you would be: they are requesting information for what?

MR. WEYANT: Further information from your application.

MR. LAWLESS: That would happen from your decision here.

MR. WEYANT: That would not allow us to make a decision by New York State Law. We have to wait to see how they feel about this. We will have you back here Tuesday, February 17, in Town Hall.

MR. LAWLESS: Thank you for your time.

MR. DONNERY: How do you distinguish the two lots, the used car lot and his lot, legally?

MS. TERHUNE: I would have to have information. One example, the car dealership may have been pre-existing. One distinction would be that a used car dealership has a building.

MR. DONNERY: On the other side of the street.

MS. TERHUNE: Typically, you have a principle use of a lot and you have an accessory use. For example, most car dealerships have their principle use is a showroom for selling cars and an accessory use would be parking additional vehicles on the lot. In the use table, they list the principle and accessory use. This lot's principal use would be the parking of cars or vehicles. That is allowed with a garage specifically under the Code. Because this is not housing those cars inside, it is not specifically allowed. That is one interpretation. Another interpretation is that parking is parking. That is why the Planning Board referred

it to the ZBA to make that determination. An interpretation does have a global effect. It is not like a use variance or an area variance which is a case by case variance. When you say this is how we are interpreting the Code, then that is how it is interpreted from that point forward. The only way that can change is if the legislative body, either the Town or Village Board comes in and makes the law more specific.

MR. WEYANT: Thank you. We will discuss this further at another time.

MR. WEYANT: Next on the agenda is Hugo Puscama, 80 Rose Drive, Unit 45, West Point Mobile Home Court. You should have tonight an application from Mr. Puscama. Mr. Puscama lives in the West Point Mobile Home Trailer Court in Highland Falls. He has a mobile home. He wants to add on to his mobile home and he needs a variance.

MR. HAGER: I received a complaint in my office that construction had commenced at the property and I went to check it out and found they had started. I asked them to apply for a building permit. Upon checking into what they had begun to construct, I found they would require a 25 foot variance. The applicant then resubmitted an alternative design which provides 20 feet of separation and only needs a 10 foot variance. Many of the other mobile homes in that park are 10 feet apart or less.

MR. WEYANT: How many feet are we talking about?

MR. HAGER: The zoning code for special exception would be a 30 feet separation between mobile homes.

MR. WEYANT: We are talking 10 feet.

MR. HAGER: Yes.

MR. WEYANT: In your estimation, many of the mobile homes there are that close now?

MR. HAGER: Yes. Again, all the units in that park are basically the same.

MR. WEYANT: So when this mobile park was put up it pre-existed the code?

MR. HAGER: Right.

MR. HAGER: The actual home has been there for years and the project requires a variance in the front along the private roadway, as well as another variance on the opposite side which is the back of the lot which has frontage on the Old State Road. The property is one parcel the park itself is the landowner. The actual housing units are owned by the residents who rent lots from the park.

MR. WEYANT: Do we have to get into the other areas even though they pre-existed?

MS. TERHUNE: Yes, we do. They are adding on. They are increasing the amount of non-conformity. The minute they touch it, they have to come before us.

MR. GALU: Does he own the land?

MR. HAGER: He owns the mobile home. He has agreement with the owner to add on to the existing home.

MR. PUSCAMA: I have a letter from the land owner.

MR. WEYANT: Mr. William Huffer is the manager?

MR. PUSCAMA: I believe so.

MR. WEYANT: SEA Partnership is the owner. We would need a notarized letter from the president or someone in the corporation giving authorization to build or modify the trailer.

MR. PUSCAMA: Okay.

MR. WEYANT: Please bring it to our next meeting. What areas are we talking about regarding mailing notices of public hearing?

MS. TERHUNE: Within 500 feet I believe.

MR. GALU: 30 feet from the center line both ways.

MR. HAGER: This is within the Village which only requires the adjoining property owners and the one directly across the street to be notified by mail. I am unsure as to whether it should be the “property owners” or the “home owners” as in this case the homeowners only rent the land.

MR. WEYANT: As we did with Mr. Lawless, we need to notify Orange County Planning. We have a 30 day requirement. They will notify us if they have any objections. Today is the January 20, and we will meet on February 17. We hope to have their letter in time to hold a Public Hearing on February 17. You have some things you are required to do. This is in the Village of Highland Falls?

MS. TERHUNE: I need to do some research on the lot and mobile park owners. It would have to be published and posted. You may not have to do it.

MR. WEYANT: I will await a decision from Ms. Terhune and will advise Mr. Hager. You would have to do these mailings prior to February 10.

MR. PUSCAMA: I will need a letter from the corporation.

MR. WEYANT: A letter that they have no objection. We will notify Orange County Planning. Talk with Mr. Hager about posting the sign and mailings if necessary.

MR. PUSCAMA: There was a letter stating different amounts of variances.

MR. WEYANT: We need to determine how many variances are needed.

MS. TERHUNE: Mr. Chairman, in viewing your Village Code it does not look like he needs to do this. However, he would need the certificate of mailing to the owners of all property owners. I will look at some of the case law.

MR. JANNARONE: The property is a trailer in a mobile park. Please research.

MS. TERHUNE: I will look at case law.

MR. WEYANT: Mr. Hager will help you with the sign part. We need to get the number of variances needed.

MR. PUSCAMA: I will bring back a letter.

MR. WEYANT: Each of you got an extensive packet of paperwork tonight regarding Anne Hidalgo and Rosanne Ott dealing with an appeal of Certificate of Occupancy dated November 10, 2008. What I would like to do with this tonight this for the first time. I received it a little bit earlier. Obviously, we need to know a lot more about this and I don't want to get into that tonight. I appreciate you being here. We do understand there is a timeframe. I assume that it meets your requirement. I need to know a lot more about this and am sure you can explain.

MR. TROYETSKY: What steps do you propose to be ready to discuss this at the next meeting?

MR. WEYANT: For these gentlemen to read this thoroughly and to be ready for you to discuss this and what are the reasons you are here.

MR. DONNERY: Can they do a quick rundown tonight? I would like to see it

MR. WEYANT: Briefly, please summarize.

MR. MITCHELL TROYETSKY, Attorney for Mrs. Anne Hidalgo and Mrs. Roseanne Ott.: We are here because there was a Certificate of Occupancy issued for a riverfront residence without Planning Board approval as required by the Town.

MR. WEYANT: Site plan approval. It was newly constructed?

MR. TROYETSKY: Yes, it was. The Planning Board stated that it shall not be issued until site plan approval. This item was actually before the Planning Board. They were reviewing it and had some issues which they indicated they wanted Zoning Board of Appeals to review and give an opinion on. I attended two meetings before the Planning Board in April and May of last year. There were Stop Orders issued by the Building Department for the property. They were never enforced. The recommendations by the Planning Board at the meeting that certain issues involved screening and environmental issues matters that affect my clients were basically ignored as far as we see it. After the second and third

meetings, the Building Department issued a new building permit taking out requirements that were in the initial building permit and the matter disappeared. Subsequently, there was a Certificate of Occupancy issued. We are here because it should not have been issued without that site plan approval. There are specific things that affect my clients, who have the property right next to it actually below it. There is a cliff and a big rock retaining wall. With rain, rocks come down on my client's patio. I am not sure what is going on with the building permit. The problem as we see it is that we need the Planning Board to give its recommendation to approve the site and screening and environmental issues. None of that has been done.

MR. WEYANT: Why does this become a Zoning Board of Appeals matter?

MS. TERHUNE: The crux of the issue is whether or not a particular footnote on the dimensional requirements Schedule 2 of the Town's Dimensional Regulations applies or does not apply. This is an interpretation. This is the crux of the issue. What you will be looking at, if we get to the demerits is whether or not a footnote on the dimensional table in the R-1-R Table Schedule II of the Town of Highlands dimensional regulations. At issue is whether this Footnote #5: may or may not be interpreted as requiring site plan approval prior to the issuance of either a Building Permit or Certificate of Occupancy.

This Applicant that is before you now, challenged the Building Permit that was issued by filing with the Supreme Court to have the building permit revoked. The Court dismissed the action because they did not exhaust their administrative remedies, which means essentially, if they were going to question whether or not the site plan should have been gotten before a building permit, they should have come here for this interpretation.

MR. WEYANT: Of a footnote?

MS. TERHUNE: Of a footnote.

MR. TROYETSKY: The footnote says an amendment to the Town Code. That is one issue. The other issue that we are here for is there is a question as to what is the front of the property, and therefore what are the setback requirements? You say a footnote as if a footnote does not matter. The footnote says it amends the Town Code. The Town Code was amended 7/9/91 to include riverfront property on the site plan approval. However you want to do it you amend the code.

MS. TERHUNE: I would disagree that that is necessarily the absolute way to interpret that. Clearly the Planning Board for whatever reason extended their review of site plan. The issue here is one of interpretation to consider this foot note as well as other regulations. That is why you are here. As Mr. Troyetsky mentioned, they also have other interpretive requests as well. For example, whether they need the front yard setback depending on what you consider the front yard.

MR. TROYETSKY: Which side of the house is closest to the road is to determine the front of the house.

MR. WEYANT: We need to take this up at our next meeting.

MS. TERHUNE: Is this within 500 feet of Route 9W?

MR. TROYETSKY: There is nothing at all as to why the Planning Board as to why it was taken from them. I have spoken to the former Chairman of the Planning Board. There was a jurisdiction issue. I think that the Planning Board felt the Building Department did not have authority.

MS. TERHUNE: That has been addressed.

MR. TROYETSKY: Yes, that I should have come here. Yes, the Court said I should have come here.

MR. HAGER: The Applicant withdrew the application.

MR. DONNERY: Why? Is it possible to get some color photographs and where exactly is this located.

MR. TROYETSKY: Yes, photos can be provided at the next meeting, February 17th.

MR. WEYANT: Yes. I have nothing else for tonight.

At 8:50 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Donnery Seconded: Mr. Jannarone Approved

Respectfully submitted,

Fran DeWitt
Recording Secretary

**The next Zoning Board of Appeals meeting is
Tuesday, February 17, 2009**