

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
FEBRUARY 17, 2009**

A regular meeting of the Zoning Board of Appeals was held in the Court Room, Town Hall, Highland Falls, New York, on Tuesday, February 17, 2009, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

David Weyant, Chairman
Tim Doherty
Jack Jannarone
Tony Galu
Tim Donnery

Absent: Ray Devereaux and James Miller

Ben Gailey, Attorney

ALSO PRESENT:

John Hager, Building Inspector, Andrew Hennessy, Peter T. Lam, Steven Lam, Gregg Lawless, Glen Moyer, Chris Moyer, Rose Ott, Anne Hidalgo, Mitch Troyetsky, Lyn Bashoor, Kyle Lamitie, Hugo Puscama, Pablo Martinez, and Bob Bryant.

The meeting was called to order by the Chairman, at 7:16 P. M., with the Pledge to the Flag. It was noted that a quorum was present.

MR. WEYANT: I will open the February 17, 2009 meeting of the Consolidated Zoning Board of Appeals for the Town of Highlands, and note that all members are present with the exception of Mr. Devereaux and Mr. Miller. The first matter on our agenda is approval of the Minutes of January 20, 2009. One change, on Page 7, at the bottom, the last sentence should read. "If we granted you, we would have to grant the next one."

A motion was made to approve the January 20, 2009 Minutes as amended.

Motion: Mr. Donnery Seconded: Mr. Jannarone Approved

MR. WEYANT: At this point, Ladies and Gentlemen, before we begin our first item on our agenda, this Board is going to go into Executive Session with its Counsel. I would ask that you please leave the room until such time we are done and then we will ask you to come back.

At 7:18 P. M., a motion was made to enter Executive Session to receive advice of counsel.

Motion: Mr. Weyant Seconded: Mr. Donnery Approved

At 7:43 P. M., a motion was made to come out of Executive Session.

Motion: Mr. Jannarone Seconded: Mr. Donnery Approved

MR. GAILEY: The Board sought legal advice from Counsel and no action was taken.

MR. WEYANT: The first matter on the agenda tonight is for Peter Lam, 433 Main Street, Highland Falls, NY, for a use variance. At our last meeting, we discussed and granted various area variances that Mr. Lam needed. We have one to go and that is the use variance. Counsel, at last meeting, asked that Mr. Lam reapply for this use variance. He has done so. Mr. Hennessey has a letter requesting an application for variance for Section 240—56B which is what we discussed. They are reinstating their request for that.

MR. DONNERY: Do we need another Public Hearing?

MR. WEYANT: The Public Hearing is over. He needs a use variance for Section 240-56B, which prohibits the reconstruction of a structure used by a non-conforming use to an extent exceeding 50% of the replacement value of the structure, unless it is changed to a conforming use. As we know, with use variances, the criteria are a little stiffer than it is for the area variances. I am going to ask our Counsel to review those criteria.

MR. GAILEY: As you know for area variances, it is basically a balancing test to weigh the detriment to the neighborhood and the community against the benefit to the applicant. For use variances, as the Chairman said, it is a little stiffer. The applicant has to demonstrate that the application of the zoning requirements would cause unnecessary hardship to the applicant. To do that, it is a four part test. That the applicant cannot realize a reasonable return demonstrated by competent financial evidence; that the unnecessary hardship that the applicant suffers is unique to the property and does not apply to a large portion of the neighborhood; that the use variance would not alter the essential character of the neighbor; and that the hardship has not been self-created. Those are the four factors.

MR. WEYANT: Thank you, Ben. Let's discuss this a little further.

MR. GALU: I don't think it would affect the neighborhood. He is just trying to replace it.

MR. HENNESSY: I would like to review and emphasize a few points. What we are talking about tonight is the monetary value of the building, and the fact that it is going to exceed 50% of what the original building's value was.

MR. GAILEY: 50% of the replacement costs.

MR. HENNESSY: Yes, the replacement costs. If you remember what started all this, Mr. Lam hired a not so reputable contractor who told him he was going to take care of the permits for the building. Mr. Lam gave him a decent sum of money and the building was torn down. The permits were not in place. We found ourselves with the problem. Mr. Lam was misled, scammed, and ripped off of quite a bit of money, as we testified at a previous meeting. From that, an application was made to the Planning Board at which time, it was established that the use was not abandoned. The building was torn down less than 12 months prior to the application to the Planning Board. Under the abandonment part of the code, 24-59, the use was not abandoned. The use was always there, and the right to it has not been given up.

As you know, at the January meeting, there were votes on four (4) variances, and tonight is just a continuation of that. Two of the variances were rear yard and side yard. The first variance approved was lot area per unit, the requirement of 2,500 square foot per unit. With the seven (7) units that we proposed, we needed a variance of 10,217, which was approved. Seven units were always there and are still there based on the lot area. Then we had the two rear and side yard variances. The fourth variance that was issued was Section 24-57 which was an extension. That says that a non-conforming use shall not be enlarged or extended except as provided in Article 11. That variance was also passed 5-0, allowing for the building to be expanded from the original 400 and change for 1,200 and change. What we are asking for tonight is to be allowed to spend the money to actually build a house. This section of the code says we can't spend more than 50% of the replacement costs to rebuild a non-conforming use. That is what we are asking for in a variance tonight. It is just in line with the other four that have been granted.

Before all this happened, Mr. Lam was collecting rent on his property and he does have receipts. Obviously, now he is not receiving anything from that portion of the property, and he would like to put back the residence that was always there. This is the last step of the process at least from the ZBA's point of view. We will have to go back to the Planning Board for site plan approval which will involve another Public Hearing and they will review all the other matters that concern the site plan. The last thing we need here is basically to be allowed to spend more than 50% of that original replacement cost. I don't understand that this has been categorized as a use variance. It is really not a use variance in the traditional sense of the word. The way I would think of a use variance is that I have this piece of land zoned residential and want to put a commercial building on it. That is a use variance in its most simple form. As something that is not zoned for that spot and you want to put it there and come for a use variance. This is not really a use variance in that way. I am not sure why it is categorized as a use variance. All we are talking about here is the cost of the rebuild in relation to what the original replacement cost was. That is really all this section is talking about. It has already been approved for expanded use beyond the original size with the variance to Section 240-57, and essentially for the number of units on the site based on the square footage per unit variance that we received. You can have seven (7) dwelling units. In my opinion it is not a use variance.

MR. WEYANT: I am not sure I agree with you. We are taking it as a use variance. I did not mean to interrupt. I would like to listen to the other Board Members. I don't think we have a problem with it after the others.

MR. JANNARONE: Clearly, it is a use variance.

MR. DONNERY: It is the proper wording, and we are doing it legally.

MR. GAILEY: Has there been any type of financial information submitted to the Board?

MR. HENNESSY: Not to date. What I have here today is receipts for the rent that was collected on the building that was torn down.

MR. JANNARONE: How much are those?

MR. HENNESSY: \$600 a piece, per month, marked with the blue lines.

MR. GAILEY: You are saying, at a minimum, you are losing that monthly income, and likely more with a larger house, if the Board approved the variances.

MR. HENNESSY: I would assume the rent would be higher with a whole new building. Also, it would provide a decent place to live. The original house was tiny, to say the least.

MR. DONNERY: It would drop the overall property value down, right Ben?

MR. GALEY: Yes it would, of course.

MR. DONNERY: That would be essential hardship, the overall property value of the property.

MR. WEYANT: Any other comments, gentlemen?

MR. JANNARONE: Looking at a reasonable return – substantial with competent financial evidence - so to get a little bit of rent, you will be spending a lot of money to put up a building. I am not sure you will make any return at all.

MR. DONNERY: That is what I was saying, the overall property value on six (6) units would be \$200,000, and on seven (7) units it would be \$300,000. That is the big number there.

MR. HENNESSY: I am sure his taxes would be a factor.

MR. GAILEY: Ideally, what applicants can do sometimes is to show their finance costs would be and also what the monthly rents are and expenses. That would be helpful.

MR. JANNARONE: I am not sure we have met that threshold.

MR. GAILEY: Certainly what they are doing by not having this residence is there is a loss of income to the property. It shows that much. It also shows a loss of value, as well.

MR. DONNERY: My concern is that we put it in the proper wording in the minutes for future references.

MR. GAILEY: That is fine. I can have the proper language in the minutes if someone wants to make the resolution.

A motion was made to approve the use variance of Section 240-56B for Mr. Lam, based on the evidence presented, in accordance with the area variances previously granted by the Board.

Motion: Mr. Donnery Seconded: Mr. Galu Approved

With a Roll Call Vote:	Mr. Galu	Aye
	Mr. Doherty	Aye
	Mr. Jannarone	Nay
	Mr. Donnery	Aye
	Mr. Weyant	Aye

MR. HENNESSY: Thank you gentlemen.

Gregg Lawless, 1027 Route 9W, Fort Montgomery, NY. Interpretation of Zoning Code to allow use of parking area without buildings in a Business Zone.

MR. WEYANT: Mr. Lawless, sorry for the delay. We had the Public Hearing at our January meeting which we held over because we needed Orange County Department of Planning approval, which we have. To summarize their feelings, they are leaving it up to us to make a decision. They noted some things on here which were more Planning Board oriented things than us, such as the type of vehicles in the lot, and whether it is consistent with the goals and objectives of the Comprehensive Plan. These are things that really don't apply to our decision, our interpretation, as to whether we can allow use of a parking area without buildings in a Business Zone. Whatever our decision is, it goes back to the Planning Board, since it was referred to us from them.

Mr. Lawless, again we talked about this at our last meeting, you are not going to be storing abandoned vehicles in that lot?

MR. LAWLESS: Abandoned vehicles? Absolutely not.

MR. WEYANT: Vehicles in disrepair or junk?

MR. LAWLESS: Will not be in that lot, no.

MR. GAILEY: Any unregistered vehicles?

MR. LAWLESS: Probably, that was the intent of the lot. Residents need a place to put their unregistered vehicles.

MR. GAILEY: Under the Law, an unregistered vehicle without a license is deemed an abandoned vehicle.

MR. LAWLESS: Abandoned, I assumed was not owned.

MR. WEYANT: What I am getting at is an unlicensed, unregistered vehicles will or will not be in that lot?

MR. LAWLESS: I did not consider it.

MR. WEYANT: We talked about it at the last meeting.

MR. LAWLESS: Unregistered vehicles? I thought we talked about abandoned vehicles.

MR. WEYANT: Yes. Someone wants to junk their car, could it be in your lot?

MR. LAWLESS: It is not a junkyard.

MR. WEYANT: I did not say it was a junkyard.

MR. LAWLESS: If you own an unregistered 1967 Chevelle, and you are working on it you can store it through the winter.

MR. WEYANT: Ownership is not abandonment.

MR. LAWLESS: There you go, ownership is not abandonment. Are we good?

MR. DONNERY: Under the maintenance law for the town?

MR. HAGER: There are definitions for an abandoned vehicle in our Code.

MR. DONNERY: You understand that you have to meet these requirements?

MR. LAWLESS: I understand.

MR. WEYANT: Any other discussion or thoughts or questions?

MR. JANNARONE: I don't have a problem with it. The decision is between parking lot and garage, since there is a parking lot next to it anyway.

MR. WEYANT: Ben, we will need some wording for the interpretation of the Code.

MR. GAILEY: What is permitted here is a parking area.

MR. DONNERY: The problem is we don't have parking areas, we have parking garages.

MR. WEYANT: Can we have a parking area without buildings in a Business Zone? We need an interpretation.

MR. HAGER: The definition is not in our Table of Uses.

MR. GAILEY: A parking area is a lot used for the storage or the parking of motor vehicles.

MR. DONNERY: Are there any requirements for the design of it, does it require it to be paved or stoned or a cleared lot?

MR. GAILEY: As John mentioned it is not even listed as a use.

MR. HAGER: It is not listed in our use.

MR. GAILEY: There is a definition in the Zoning Code. But a parking area is not listed as a permitted use anywhere.

MR. JANNARONE: That is what he is asking for, can we consider the parking garage which is permitted, be a parking area.

MR. HAGER: There are specifics for the site plan application process before the Planning Board. The Applicant would need to satisfy the Planning Board to get that approval. The Planning Board does not want to process that application at this time because that use is not specifically listed in the Table of Uses. They need interpretation whether or not it is consistent with the Code or it requires a variance.

MR. GAILEY: They applied for a use variance.

MR. DONNERY: Once again, it is a use that once you give it out, it is given out for life.

MR. GAILEY: That is right. The definition of parking garage is a building not a private garage used for the storage of automobiles or trucks and not used for making repairs. I understand that there is a parking lot without a building.

MR. DONNERY: What about Marchese's lot, across from him?

MR. HAGER: That is a retail sales lot and is permitted use for that zone.

MR. DONNERY: How is that worded?

MR. HAGER: There is no definition for retail.

MR. GAILEY: The use of that property is sales, retail sales? It is defined in the Code but not listed as a use.

MR. JANNARONE: If we interpret the parking garage to say that it includes the parking area?

MR. GAILEY: You could interpret it that way. You would have to interpret around the definition which refers to a parking garage as including a building. You would interpret this as a parking garage as allowing it as a parking area as well?

MR. JANNARONE: Yes, that is kind of what we were discussing last month. Could we interpret it that way?

MR. GAILEY: I have to tell you that is a tough interpretation.

MR. DOHERTY: I am in agreement.

MR. DONNERY: If we grant him a use variance to use the property as a parking area?

MR. GAILEY: That is within your authority provided again that the factors and standards for a use variance are met. Do you own this property?

MR. LAWLESS: Yes, I do.

MR. GAILEY: Has there been much public comment on this?

MR. JANNARONE: No, just the Town Councilman.

MR. WEYANT: He was concerned about the aesthetics and the Comprehensive Plan which again goes back to the Planning Board.

MR. JANNARONE: Getting back to use, it is apparent now that he is getting nothing for it now and he is paying taxes.

MR. GAILEY: The other part of the hardship there could be is the expense involved in building a garage. To serve the purpose of storage of vehicles is the same as not building the garage. My recollection is they replied in the affirmative. If the interpretation were not granted, they would apply for a use variance?

MR. HAGER: I think the Applicant did desire to do that if the interpretation is that the Table of Uses does not agree with the use.

MR. LAWLESS: I just want to be able to park some cars on my lot. I don't understand, I am next to the Marchese Dealership, I have improved the lot, spent a lot of money, I don't have any money to put a building up, I am in a Commercial Zone on Route 9W. I don't understand how I can't park cars on my lot. It seems kind of absurd.

MR. GAILEY: The use variance box is checked on the application. He did apply for a use variance. I think the Board does need some type of financial information from the Applicant before it can grant that use variance.

MR. JANNARONE: He stated that he is receiving nothing for the property now and he is paying taxes.

MR. LAWLESS: Absolutely, in fact I can't pay my taxes now, because I can't get any income.

MR. DONNERY: Can we get documentations?

MR. LAWLESS: I have nothing.

MR. GAILEY: The cost of the building, what are the factors, rents that you are forgoing by not being able to use the property.

MR. LAWLESS: I don't have any of that stuff. I just want to park the cars and have a couple of dollars.

MR. DONNERY: You will have to do a little bit more research and homework to come up with some numbers for us. Just look up the cost for a small Butler Building.

MR. LAWLESS: Minimum construction would be \$200,000.

MR. DONNERY: You need actual numbers to show us.

MR. GAILEY: You need to help yourself out.

MR. LAWLESS: I thought I was helping myself out. The situation is what it is, it is a parking lot. It has been in my family 40 years, it has never been an issue. One of the Town Board Members has an issue and that is how I came before all these Boards. I have not abandoned vehicles on it; I have cleaned it, and have been in and out of the Board Meetings. Honestly, this is not your backyard; it is a commercially zoned lot. I just don't understand. I am not trying to put up a McDonalds.

MR. GAILEY: I think what you are hearing from the Board is that they are inclined to grant the application. The Board must follow State Law with regard to financial information for hardship.

MR. LAWLESS: I understand that, I will put the paperwork together. I will do whatever is necessary. It is a very long process.

MR. WEYANT: If we get challenged by anyone as a result of our decision, we want to have substantial background as to what we discussed with you. This could all affect us as well as you. You say you want to wrap this up. Put something in writing, how many vehicles, how much a month would you expect to get from these people.

MR. HAGER: Addressing Items 2, 3 and 4. We are talking about use?

MR. GAILEY: Item 1 is the substantial financial information.

MR. LAWLESS: Item 1 is what I need to address.

MR. DONNERY: John can explain it to you. What the cost of a small building on that lot would cost to build.

MR. WEYANT: For March 16.

MR. HAGER: Should the Building Department take this as an interpretation?

MR. WEYANT: We did not make a decision.

MR. GAILEY: I think you need to at the next meeting. You don't need to make a decision tonight. You could make a decision.

MR. WEYANT: What interpretation?

MR. GAILEY: The interpretation that a parking garage requires a building as the Code says. If that were not your interpretation, we would not be talking about a use variance right now. You could make your formal decision at the next meeting.

MR. WEYANT: We could do it now.

MR. GAILEY: Essentially, it would be that the Board's interpretation of the Code that a parking garage use requires a building, as defined in the Zoning Code. That would be the motion.

MR. WEYANT: Then, as I understand it, he would request a use variance from us.

MR. GAILEY: He did apply for a use variance. He had that box checked on the application.

MR. WEYANT: Let's take this interpretation right now, we are all in agreement.

MR. DONNERY: A parking garage requires a building on the property.

A motion was made that the Board interprets the Code that a parking garage requires a building on the lot; it cannot be open air parking.

Motion: Mr. Donnery Seconded: Mr. Doherty Approved

WITH A ROLL CALL VOTE:	Mr. Galu	Aye
	Mr. Doherty	Aye
	Mr. Donnery	Aye
	Mr. Jannarone	Aye
	Mr. Weyant	Aye

MR. WEYANT: Mr. Puscama, 80 Rose Drive, Unit 45, West Point Mobile Home Court, Highland Falls, NY, for an area variance for space between mobile homes. We discussed this at our last meeting and set a Public Hearing for tonight for his

request for a variance. A minimum of 30 feet between mobile homes is what the Code reads and he will need a variance of approximately 17 feet.

MR. HAGER: I believe it is 10 feet.

At 8:18 P. M. the Public Hearing was opened for Mr. Hugo Puscama.

MR. WEYANT: Mr. Puscama, Mr. Martinez, 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. PUSCAMA, MR. MARTINEZ: Yes, we do.

MR. WEYANT: I will note for the record that we have the Affidavit of Publication in the News of the Highlands published on February 6, 2009, Affidavits for Mailing to the property owners in adjoining lots, and Affidavit of Posting of the Signage.

MR. DOHERY: A question on the adjoining lots: Are those individual lots within the trailer park? What adjoining lot?

MR. WEYANT: We had this discussion at our last meeting. Mr. Puscama was to provide a letter from the Partnership that they have no objection. You have land owned by the Corporation.

MR. PUSCAMA: I provided a letter from William Huffer and it was signed by the owner.

MR. WEYANT: Tim, yes we did talk about this. We know that the trailers that were there before Code, a lot of things have been done down there, additions, etc. Would you explain to the Board what you want to do?

MR. PUSCAMA: We are trying to build an addition on the left side. There were some problems with that with the separation between this trailer and the neighboring trailer. That is when we approached the owner of the lot and asked what if we were to build on the other side of the trailer. There was an existing empty lot that was not in use because it was too small to hold a trailer. They used to have very small trailers back then. They approved it and we submitted a set of blueprints to build on the right side of the trailer and not violate any of the rules of being too close to the neighboring trailers. That is why we are here, because at first we received a letter that we were within the law, but with the measurements, we are coming in a little close.

MR. WEYANT: Because of the fact that it is near a Town road, we did have to go through Orange County Department of Planning. They also came back and said that they had no problems with this and it was strictly a local matter to be handled by us. Is there anyone in the audience tonight to talk or have any comments about Mr. Puscama's application before this Board?

MR. KYLE LAMITIE: I am the neighboring trailer. I submitted a letter and I am satisfied now.

MR. HAGER: There are two other variances at the same time. They are in regards to a highway and a private roadway. Again, it is the same type of situation. The current Code requires much more what that trailer park is designed for. The Code requires a 50 foot setback from a public street, and the current for the whole unit is 20 foot. That requires a 30 foot variance.

MR. GAILEY: Can this addition be any closer to the public street?

MR. HAGER: No. The setback within the park is required to be 25 feet and the 7 foot six inches.

MR. GAILEY: Is there anything close to the area?

MR. PUSCAMA: There is a tree and an electric pole.

MR. GAILEY: It would actually be more non-conforming,

MR. WEYANT: Hearing nothing else from the audience, I would ask for a motion to close the Public Hearing.

At 8:26 P. M., a motion was made to close the Public Hearing.

Motion: Mr. Weyant Seconded: Mr. Jannarone Approved

MR. WEYANT: Any further discussion?

MR. DOHERTY: The partnership?

MR. GALU: A letter was given with the information.

MR. PUSCAMA: We have two letters.

MR. GALU: I did not see them.

MR. HAGER: The partnership is the owner and also owns the land. They sent letters and mailings to the property owners and the neighboring trailer owners.

MR. GALU: If the neighbors have no problem, I have no problem with it.

A motion was made to approve the following three (3) variances for Hugo Puscama:

17'-6" Variance of Zoning Code Section 240-29J (5) in regards to setback from private road.

30'-0" Variance of Zoning Code Section 240-29J (5) in regards to setback from public street or highway.

10'-0" Variance of Zoning Code Section 240-29J (4) in regards to separation between mobile homes and accessory structures.

MR. DONNERY: The whole area is so non-conforming. Trailers are on top of one other. Do they meet fire inspection codes? Everything is just so close.

MR. HAGER: I can't speak for the rest of the park. If they get this variance, they come in and will work with the Building Department based on what it submitted, they will meet fire codes.

MR. GALU: It is going on the other side the north side toward the cemetery.

MR. DONNERY: That is all coming down?

MR. GALU: Yes, it is all coming down.

MR. WEYANT: The plans are available.

MR. HAGER: A stop order was issued on the plans in front of you. They were required to come in and submit for a building permit. They came back with the alternative design which is on the opposite side. There is more space. In the field in looks great. When you compare it to the current Code it still requires a variance. The fire code is not involved here.

Motion: Mr. Jannarone Seconded: Mr. Galu Approved

WITH A ROLL CALL VOTE:	Mr. Galu	Aye
	Mr. Doherty	Nay
	Mr. Jannarone	Aye
	Mr. Donnery	Aye
	Mr. Weyant	Aye

MR. WEYANT: The motion passes 4 to 1. We have granted your variance and you will receive communication in the mail and you should be in touch with Mr. Hager for the necessary permits.

MR. PUSCAMA: Thank you very much.

MR. WEYANT: Mr. Hennessy represents Krzysztof Grubecki, 264-270 Main Street, Highland Falls, NY, lot area per dwelling unit variance and height variance. This is a referral from the Village Planning Board to this Board. I believe what Mr. Grubecki wants to construct something. Mr. Hennessey is the architect. Please review for us what he wants to do.

MR. HENNESSY: What we have here is three doors down, an empty lot. Mr. Grubecki is seeking to build a three-story building. It is new construction, and it will have a masonry exterior and most likely a wood frame inside that. With the plat, it is planned for commercial on the first floor, and residential on the second and third. Each of the residential floors will have two (2) units each. Each unit is a two bedroom and one bath. It also will have a combined living/dining/kitchen and a private balcony. That is the general project.

MR. WEYANT: Which zone?

MR. HENNESSY: This is located in a B-1 Zone.

MR. WEYANT: What do you need from this Board?

MR. HENNESSY: What we are seeking are two (2) area variances. They are both in Section 240-25, Table of Dimensional Regulations. The first one is lot area minimum per dwelling unit. The requirement is 2,500 square feet per dwelling unit, requiring 10,000 square feet. The lot is only 3,368 square feet. That would produce a combined variance of 6,632 square feet or 1,658 per unit.

The second variance is for height. When we submitted the application, we probably should have given you're the dimensions. I had copies of what is proposed. The maximum height per the Table of Dimensional Regulations is 35 feet, and right now this building is designed at 43, which would require an 8 foot variance. The majority of that is the parapet to give the property's building some look. The roof falls in right about 35. It is not as if we would be occupying above that level.

MR. JANNARONE: That is from the sidewalk?

MR. HENNESSY: Yes.

MR. JANNARONE: Is there a basement?

MR. HENNESSY: Yes.

MR. GAILEY: First floor or below?

MR. HENNESSY: Below the commercial. There are no parking requirements here because we are within the parking district for both the commercial and residential. The plan had called for an access for the rear basement area, and there is an easement for the property to allow access through the Village property. The other issues with the Planning Board were resolved.

MR. WEYANT: So you need two (2) variances and you will go back to the Planning Board and they would take it from there.

MR. HENNESSY: Yes, this will go back to the Planning Board and there will be a Public Hearing.

MR. DONNERY: Do you know the height of the buildings that are going to be on either side of you?

MR. HENNESSY: No, I don't. I asked Mr. Hager if there were any record of the exact heights of those buildings. By eye, I could tell you for sure that we are not going to be the tallest one on the block. I would guess that there are similar buildings of the same height.

MR. DONNERY: Ward & Hicks.

MR. HENNESSY: That seems like it is taller. Village Hall must be over us, too.

MR. DONNERY: I am just worried about the two on either side of you.

MR. DOHERTY: Dr. Parry's is the other one.

MR. HENNESSY: The one on the right is smaller.

MR. WEYANT: We will set you up for a Public Hearing for March 16. You will have to go through the normal procedures.

MR. HENNESSY: Do you need additional plans for that?

MR. GAILEY: Do you have anything else?

MR. HENNESSY: I have the site plan.

MR. WEYANT: Mr. Hennessy, are you all set?

MR. DONNERY: The square footage of each apartment?

MR. HENNESSY: There is a little confusion. He showed the lot area per dwelling unit. The dwelling unit is 917 and 926, required is 900.

MR. DONNERY: They are a little over.

MR. DOHERTY: Overlooking the parking lot or Main Street?

MR. HENNESSY: The parking lot. It is nice to have a little bit of open space.

MR. DONNERY: Is there any problem with the fire department? John, could you check that out. Check on a building that is higher than code and the necessity for a fire escape.

MR. HAGER: I will check into that.

MR. WEYANT: Anne Hidalgo and Roseanne Ott, 8 Hillcrest Road, Fort Montgomery, N, appeal of Certificate of Occupancy, dated November 10, 2008. At the last meeting Mr. Troyetsky, you set the basis for why you are here and we are further discussing this tonight with you. This Board has since received a response from Mr. Hager on the points that were brought up.

MR. GAILEY: I spoke with the Board in Executive Session before the meeting relating to this application giving them legal advice on some issues that they don't typically deal with relating to the preliminary issues before the Board addresses the merits of the application of appeal. What I would ask you do to, because in my mind, and I don't have an opinion on these yet, I am just familiar with the concepts of the potential issues, and the fact that the building is constructed and the Certificate of Occupancy has been issued. I am aware you brought suit earlier, and also the issue of whether the neighboring property owner has vested rights, and to what affect those legal principles may have on the Board's authority to make a determination on the merits. It is up to you, of course, if you would

like to address those issues, not tonight, but as part of the Public Hearing presentation. I think that would be helpful to the Public and this Board.

MR. TROYETSKY: I would be glad to address those issues. I don't know if all the issues you have just raised are pertinent to the Board's interests and the Board's jurisdiction in this matter. Some of the items that you addressed do go to the rights of my client to enforce other matters that affect their property in other actions taken by the owners of the lot adjacent to them. What we are here for in front of the ZBA for is simply for them to enforce the provisions of the Code. We are enforcing the provisions of the deed restrictions and other matters that do not pertain to this Board. If you want me to address them, I will. What we want the ZBA to do is to enforce the Code where we believe it was not enforced. To say that it is moot because provisions of the Code were ignored, stop work orders were ignored and things were done in violation, and to say that it is moot because it is done already, is to ignore the powers of the Board and the purpose of the Board, in my mind.

MR. GAILEY: Case Law will be reviewed and we will have a Public Hearing.

MR. WEYANT: We will set a Public Hearing at our March 16, 2009 meeting to go through everything here. There are several requirements that you need to do including certified mailings and postings. We will do the publication in the News of the Highlands. This is in Fort Montgomery, which requires 500 feet from the property in question.

MR. TROYETSKY: Certified mailings to everyone within 500 feet?

MR. WEYANT. Yes, ten days prior to our meeting, March 6, at the latest.

MR. TROYETSKY: And the posting, where should the sign be posted?

MR. DONNERY: Front yard and side yard.

MR. WEYANT: I believe the packet will contain the information.

MR. DOHERTY: I have yet to view this property. Would I be able to stop by one day?

MR. WEYANT: You were not at the last meeting, when they gave us free access.

MR. JANNARONE: Do you have the pictures?

MR. TROYETSKY: I do not have the colored pictures. Can I send them in to you?

MR. DONNERY: Just bring them to the Public Hearing.

MR. WEYANT: I will go with you Tim, give me a call. Also, Mr. Jannarone. Later in the morning on Saturday would be best.

MR. JANNARONE: That is not a meeting?

MR. WEYANT: Absolutely not a meeting. We are going to be viewing the property.

MR. TROYETSKY: Was there any reference to Orange County Planning or anything as discussed at the last meeting in regards to the Hudson River distance or the railroad? Was there any particular Planning Board issue?

MR. GAILEY: I will check on that.

MR. WEYANT: I have nothing further gentlemen. I will take a motion adjourn.

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

Motion: Mr. Jannarone Seconded: Mr. Donnery Approved

Respectfully submitted,

Fran DeWitt
Recording Secretary

**The next Zoning Board of Appeals meeting is
Monday March 16, 2009**