

**APPROVED: JUNE 15, 2009**

**MINUTES OF THE  
CONSOLIDATED ZONING BOARD OF APPEALS  
OF THE  
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS  
MAY 18, 2009**

A regular meeting of the Zoning Board of Appeals was held in the Court Room, Town Hall, Highland Falls, New York, on Monday, May 18, 2009, at 7:00 P. M.

**THERE WERE PRESENT:**

**Board Members:**

David Weyant, Chairman  
Tim Doherty, Deputy Chairman  
Ray Devereaux  
Tim Donnery  
Jack Jannarone  
Tony Galu  
James Miller

Alyse Terhune, Attorney  
Paul Pelusio, Engineer (Present for the ZBA)

**ALSO PRESENT:**

John Hager, Building Inspector, Mitchell Troyetsky, Roseanne Ott, Anne Hidalgo, and Krishmatie Ridgeway.

**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 am going to open the Consolidated Zoning Board of Appeals for the Town of Highlands meeting of May 18, 2009, and note that we have a complete Board – that all members are present. The first matter is to approve the Minutes of April 20, 2009, which have been sent to you. Are there any changes to the Minutes?

**A motion was made to approve the April 20, 2009 Minutes.**

**Motion: Mr. Devereaux      Seconded: Mr. Doherty      Approved**

MR. WEYANT: Our next item is Anne Hidalgo's and Roseanne Ott's Application for the Appeal of the Certificate of Occupancy dated November 10, 2008. We are going to make a decision tonight. At this point in time, I would like to ask Ms. Terhune to summarize the issues that we have to go over before this Board tonight, and then we will go from there.

MS. TERHUNE: As the Board knows, the Application asks this Board to revoke the Certificate of Occupancy. What I will do now is summarize the claim of the

“Hidalgo Application.” We will go over what is properly before this Board and what is not.

The Hidalgo Application alleges that the retaining wall violates the Town of Highlands and New York State Building Code, and essentially, cites the Town of Highlands Code, Section 101-1, 6, 7, and 10 which governs erosion control.

The Hidalgo Application also challenges the Building Inspector’s interpretation, and asks this Board to look at a specific provision in Section 210-49, as to whether or not the Building Inspector must refer any questions or any doubts as to how he or she is interpreting the Codes to the ZBA.

The Hidalgo Application also states that the Certificate of Occupancy should be revoked because it does not comply with the Town of Highlands Zoning Code and specifically cites, among other things, the Footnote #5 of Schedule Two of the Table of Dimensional Regulations that is pursuant to whether or not a Site Plan is required for single family homes or two-family homes in the R1R District.

That the Bryants failed to seek an amendment to an approved Site Plan pursuant to Section 210-21G. That the Bryant house exceeds the 35 foot, 2-1/2 story height restriction set forth on that same Schedule Two of the Table of Dimensional Regulations. That the Bryants failed to comply with landscaping and screening and environmental considerations found in Section 210-21B 3 and 6, and finally that the Bryant Lot fails to meet the street line frontage requirements pursuant to Section 210-12.

Before we get into the interpretations that this Board may make, I am going to talk a little about what is not properly before this Board, and what this Board is not authorized to decide, and specifically, that is Town of Highlands Code 101-1, 6, 7, and 10, the Erosion Control provisions. This Board is only authorized under New York State Law to interpret and to hear appeals of the Zoning Code, not any other code, not the Subdivision Code and not the Erosion Control, etc. This Board is not authorized to hear that appeal. If the Applicant still has concerns about the retaining wall etc., then they have options other than this Board. They can, for example, mount an appeal to the State Board of Appeal. I am not sure frankly whether the State Board of Appeal would actually hear that, but I would leave that up to their Attorney to determine. Or they can seek a private action against the Bryants. This Board is not authorized to hear that issue.

Likewise, the ZBA is not empowered to enforce adherence to the site plan. Once a building permit is issued, it is really up to the Building Inspector to determine whether or not the building that goes up conforms to the site plan and/or the building permit. The considerations found in Section 210.21 B 3 and 6, which specifically describe the objectives that the Planning Board must consider when reviewing a site plan are not applicable here. First of all, there was no site plan, so there is really nothing to appeal. Again, any determination by the Planning Board as regards a subdivision, for example, or whether or not an Applicant is adhering to a site plan, to a building permit, is something that needs to be appealed to the Supreme Court. The Planning Board decision must be appealed to the Supreme Court and not here. It is my opinion that it is not properly before this Board.

Finally, in regards to one of the allegations that I advised the Board is not properly before this Board is whether or not Lot 4, the Bryant Lot, actually meets the 50 foot street line frontage requirement. That was a determination made during the subdivision review by the Planning Board. I don't know what happened at the Planning Board, I don't think we can speculate here. Either the Planning Board would have required the Applicant for the subdivision to apply to this Board for a variance, or various provision and subdivision regulations under the Town of Highlands Code that allows the Planning Board to waive certain conditions in particular situations. For example, here had they not granted that subdivision, had they not either waived or sought a variance, then that particular lot would have been land locked, there would be no way to get to it. I don't know if anyone here remembers granting a variance or applying for a variance.

MR. DONNERY: I am pretty sure we granted them a variance. I tried to look for a reference. I don't really have it.

MS. TERHUNE: In any case, notwithstanding that, whether they did or they did not, again that subdivision was granted quite a while ago, and any appeal of a subdivision would be appealed to the Supreme Court. I think those issues are not issues that this Board needs to consider tonight.

This leaves many other issues that this Board may want to consider and are properly before you. (1) Does the Town of Highlands Zoning Law 210.49B require the Building Inspector to refer zoning provisions that may or not be ambiguous to the Zoning Board of Appeals; (2) was an amended site plan required; (3) does the Bryant house exceed the height restriction; and (4) does the footnote apply here?

This Board is being asked to revoke a Certificate of Occupancy, by finding that it was issued in error. In order to find that it was issued in error, you must find that it does not conform to the Zoning Law. To find that it does not conform to the Zoning Law, essentially you have to find that the Building Permit was issued in error. You come back to the issue of the Building Permit. This Board has a couple of options before it. The threshold question is two-fold: Do you wish to reach the merit, in other words, do you want to ask and answer these questions and make these interpretations, yes or no, because there is an argument that the question is moot, for a number of reasons. For example, the Building Permit was issued, and the time to challenge that Building Permit for this Board is long past so that is really not an issue. To revoke the Certificate of Occupancy you really have to look at the underlying issue of whether the Building Permit was issued or not. That is the first question: Do you want to hear it?

If you want to hear it and reach the merit, the next question is: Does this Board wish to apply your interpretation on a forward basis, whatever you decide, or do you wish to reach the merit and apply it also backward to the Bryant's subdivision? That is a bit of a threshold question. Do you wish to reach the merit? Do you want to answer these questions that are properly before you?

MR. DONNERY: I would say yes, so we don't have these problems in the future. You can't correct the past. For the sake of John (the Building Inspector) and all

the Board Members, we can answer these questions one by one for future references.

MR. JANNARONE: I agree that we should address these issues and clear them up so that it is all take care of. That is my feeling.

MR. WEYANT: Start with the first issue.

MS. TERHUNE: The first issue is in regards to Zoning Law 210-49B. I will read them. This is a question of whether the Building Inspector is required to refer zoning provisions that may or not be ambiguous. Specifically what it states is: "Should said building enforcement officer be in doubt as to the meaning or intent of any provision of this article or as to the location of an existing boundary line on the zoning map or as to the propriety of issuing a building permit or certificate of occupancy in a particular case related to the provisions of this article, he or she shall appeal the matter to the Board of Appeals for interpretation and decision."

MR. DOHERTY: We will have to decide whether the Building Inspector had doubts?

MS. TERHUNE: Yes, the language is fairly clear. If the Building Inspector is in doubt, he or she shall pose a question to the ZBA and the ZBA will make an interpretation.

MR. WEYANT: This happened a while ago, for the application for this permit. How can we know the status of the mind of the Building Inspector at that time?

MR. DEVEREAUX: Apparently he did not have doubts, he proceeded.

MR. DOHERTY: That is my feeling. There is no way any members of the Board can put themselves in that place and time to find out if they had doubts.

MR. WEYANT: At the time the Building Inspector probably issued the Certificate of Occupancy after confirming to his satisfaction.

MR. DOHERTY: I agree.

MS. TERHUNE: I would agree that, in terms of the Certification of Occupancy, there is no evidence that the Building Inspector had any doubt. If I may speak for a moment for the Applicant, the question here arises from, and again, we go back to the Building Permit. There was that referral to the Planning Board, and then it was determined that Planning Board site plan approval was not required.

The Building Inspector, as I understand it, did confer. I think there was an application made to the Planning Department for the site plan. There was some ambiguity. The Building Inspector conferred with the Planning Board, the Planning Board Attorney and others. Then the application was withdrawn. I think the point that you are making here is whether there was doubt or not. It could be considered answered when he issued the Building Permit, rather than appealing to the ZBA to determine whether or not the footnote applied. The point is, can you know the Building Inspector's mind whether he or she is in

doubt? If he or she is in doubt, it is clear that it must be referred to this Board for interpretation. Up to the point where, it is not appropriate, and it happens all the time, that a Building Inspector will confer with others in order to make sure that he or she has comfort with their interpretation.

MR. DEVEREAUX: Is there a distinction between must be or must have been? Is it still viable and on the table, or is it history?

MS. TERHUNE: That is the other issue. As to the Certificate of Occupancy there is no evidence of doubt. As to the amended Building Permit, it was issued a year ago. What the Applicant is asking is for an interpretation, if there was doubt, must it be referred here? As an attorney, as I read it, I would say yes if there is doubt, it must be referred here. However, only the Building Inspector can know if he or she has doubt.

MR. DOHERTY: I agree.

MR. DONNERY: I had a few things when I was Chairman concerning a shed in a backyard. The Building Inspector called me. The law reads that if the shed is five (5) feet from the property line, it can be put up with a building permit. There is no limit on the side yard and there is five feet on the back fence line. They wanted to put it directly in the corner. I said to the Building Inspector at the time that he should go back to the people to tell them it will cost a lot of time and money if they wanted the five (5) feet just to bring the shed closer. You don't have to do that. That was done and therefore the people did not come before the entire Board. What happened was that the Building Inspector called and asked for an opinion. He did not have to come before the entire Board, which is time consuming.

MR. WEYANT: We can't go back. I think that point is moot.

MS. TERHUNE: In my experience, building inspectors that I have worked for use all kinds of contexts to make a decision as to what an interpretation is. It is the language in the code; it is how that provision has been applied that is factors. It is likely that that building inspector will consult with prior building inspector, or counsel. I have been called many times to discuss things with the building inspector as to how things are interpreted. Finally, to summarize, if the building inspector is in doubt, he or she must refer it to the ZBA, and only the Building Inspector can know whether he or she is in doubt. Specifically here, this is an issue that is a year old.

MR. WEYANT: What does this Board need to do on this question?

MS. TERHUNE: You would make a resolution that, pursuant to 210.49B, your interpretation is that when a building inspector is in doubt and cannot make a decision as to the code, it must be referred to this Board.

MR. DOHERTY: It is the law. We are just reiterating the law?

MS. TERHUNE: Yes, essentially.

MR. JANNARONE: Does that deny or approval their motion?

MS. TERHUNE: No. They are asking you for an interpretation; it is not a denial or approval. They believe that this Code says that if the building inspector is in doubt, it must be referred.

MR. WEYANT: Do you want to make that a resolution?

MS. TERHUNE: What you may want to resolve is that is that this Board cannot know the mind of the building inspector.

MR. DONNERY: Like we determined there are other ways before coming to this Board to answer a question.

MS. TERHUNE: You may want to say that it is not inappropriate for the building inspector to seek counsel from others before a decision is made.

MR. JANNARONE: At some point he may have some doubt and he should be able to contact others.

MR. WEYANT: Why can't he just confirm the Code as it reads?

MR. JANNARONE: Does that address it?

MS. TERHUNE: You said it earlier - that that there is no way to know at this point in time whether or not a year ago the building inspector was in doubt. The evidence is that he did not come before this Board and therefore he was not in doubt when he issued the building permit. Had he been in doubt he would not have issued it; and if he could not make a decision, he would have come before this Board to ask for an interpretation. There may be occasions in the future when he or she really has doubt. The Code is truly ambiguous and he or she cannot see their way clear to make a determination to issue a building permit or a certificate of occupancy. The certificate of occupancy is not in question. As to the building permit, it happened a year ago, there is no way you can know if there was doubt.

MR. WEYANT: What kind of resolution?

MS. TERHUNE: Affirming the Code that should the Building Inspector have doubt he or she cannot resolve in any other way to his or her satisfaction, then the question must be referred to the ZBA. The building inspector is going to use discretion, and will not come before the Board with every single question. It has not happened in the past, it is not going to happen in the future.

MR. DEVEREAUX: If a decision was made that he did not need us to interpret, he would proceed with that decision.

MS. TERHUNE: That decision may be appealed. It is pretty straight forward.

MR. JANNARONE: What do we need for the minutes?

MS. TERHUNE: That 210.49B states that if the Code Enforcement Officer is in doubt, then he or she must refer the question to the ZBA. You are also recognizing that only the Building Inspector can know whether he or she is in doubt, and it is not inappropriate to seek counsel and advice from others and also counsel.

MR. WEYANT: Should we put anything in there the fact that when the building permit was issued, we did not know the state of mind of the building inspector?

MS. TERHUNE: Yes, and you can also state that the clear evidence is that the building permit was issued without a referral to this Board, therefore, you can deduce that the building inspector did not have doubt.

**A motion was made to affirm the Code the way it is written.**

**Motion: Mr. Miller      Seconded: Mr. Devereaux      Approved**

**With a Roll Call Vote:**

<b>Mr. Galu</b>	<b>Aye</b>
<b>Mr. Miller</b>	<b>Aye</b>
<b>Mr. Jannarone</b>	<b>Aye</b>
<b>Mr. Doherty</b>	<b>Aye</b>
<b>Mr. Devereaux</b>	<b>Aye</b>
<b>Mr. Donnery</b>	<b>Aye</b>
<b>Mr. Weyant</b>	<b>Aye</b>

MS. TERHUNE: The second question before this Board is: Was an amended site plan required pursuant to 210.21G. The Applicant is suggesting that the house was moved and that should have triggered site plan approval at that point in time. Subsection G of 210.21. This governs building permits, site plans, procedure and standard. It states that: "An application for an amendment of any approved site development plan approval may be processed in accordance with the site-plan provisions. An amendment is only required where the modifications or changes have a material and substantial impact on the balance of the site development plan and functioning of the development."

I will open this up for discussion with the Board. The question here is relative to the Bryant house, should they have been directed to get site plan approval because they changed the position of the house?

MR. DONNERY: They were totally within their property lines. They have more than enough property to do anything they want with the house as far as square footage and acreage, according to the maps. They just turned it slightly and moved it slightly. I imagine that your father has done that a lot over the years putting up houses. Isn't that right, Tony? As long as it is within the footprint, you can move it forward and backward. That never required anything in the past.

MR. GALU: That is right.

MR. JANNARONE: What does the subdivision site plan require?

MR. DONNERY: That was all approved.

MR. GALU: The houses are all proposed, but they don't have to be in that spot.

MR. DONNERY: Right, that is what we are saying.

MS. TERHUNE: One question to ask is whether or not others in that subdivision made substantial modifications.

MR. DOHERTY: That we know.

MR. DONNERY: I think this is the only one.

MR. DOHERTY: The house up on the hill.

MR. DONNERY: I can't go back to the approvals for John Dodson and Roy Hannawalt. I imagine they moved some of them. There is more than enough property to do what they want.

MR. DOHERTY: There are plenty of rocks in the area.

MR. JANNARONE: When a building permit is issued, does that show where the house has to go?

MR. GALU: No. If it sits on this lot, you can move it backward and forward and sideways on the site as long as it meets the setbacks.

MR. JANNARONE: Does the building permit show the house location?

MR. HAGER: Generally, when a permit is issued, in an area like this, a subdivision, a map would be submitted. The Building Department would determine if it meets the setbacks. If it does, we would approve that location, and it should be built in that location. If the building were relocated, we would require an amendment to the building permit.

MR. JANNARONE: They apply to you and you say this is where the house belongs?

MR. HAGER: I think what Tony is saying is when the plans for the subdivision were made and later on the details were changed.

MR. JANNARONE: Does it have to go in that spot?

MR. HAGER: Yes, unless a building permit amendment is requested.

MR. JANNARONE: They apply to you for the permit. The problem is that people are defying the building ordinance. I don't know whether it is a zoning problem.

MS. TERHUNE: He required an amendment. We want to look at 210.21B also in the context of what are the directives and in the context of A. What you have here is that this division directs its site plan procedures. Where you don't have a site plan like here and, in fact, A exempts one and two-family residences. When

you don't have a site plan in the first instance, it can be argued that it does not apply. If it requires a site plan, for whatever reason, multi-family houses, or there is a specific item in the code that requires site plan approval, this is what governs that. You go through the Planning Board procedure and you get the site plan approval. If the Building Inspector determines that you made a significant and material change, then he or she can require that you go back to get a modified site plan approval.

The questions for this Board are: (1) Are you going to apply site plan approval amendment where there was not site plan required in the first place; and (2) are you going to apply this selectively to the Bryant home. Were other homes moved, in some cases substantially, without any site plan review?

MR. JANNARONE: There was not a site plan and they built something else. What about the other two houses, were there building permits?

MS. TERHUNE: We can ask John.

MR. HAGER: With the others, there were no building permit amendments issued. I believe there were no building changes. It is before my time in the Building Department. In this particular one there was an amendment. Construction progressed in a manner that was in violation of the building permit regulations. Anyone that proposes to build a house and makes a change should make the Building Department aware that they are making a change. In this particular case, there was a change and when it was noticed by the building department, a permit amendment became necessary.

An example is in Ondaora Parkway. The Board Members may recall recently an application for a front yard set-back variance at #78. In order to avoid the rock the house needed to be relocated and they had to go before the Zoning Board to make the change. In this particular case, the Bryant property, there were no zoning issues, no zoning requirements to come to this Board.

MS. TERHUNE: There was no site plan other than what was presented to the Building Department. It gets confusing because you have a subdivision where houses are located and you think a house is going one place – but until it is subdivided and the building begins, it is hard to know what you are going to run into on the site. There has to be some flexibility. Under this particular section of the Code, if a site plan is required, and again one or two-family houses are exempt; it is unusual that they would need the Planning Board site plan approval process. If they do, and the Building Department then determines there is significant change, for whatever reason, they at that point, may send it back for an amendment. Here there was an amendment to the plan that was submitted to John.

MR. WEYANT: But no site plan was required.

MS. TERHUNE: We are getting back to the issue of whether there should have been a site plan? It is hard to look at these without the underlying question of a site plan.

MR. WEYANT: There was no site plan.

MS. TERHUNE: We can look at the other items and come back to this.

The next issue is whether the house exceeds the 35 foot 2 ½ story restriction set forth in the Table of Dimensional Regulations in R1R. In order to find that it does, we would have to find that the front of the house does not face Hillcrest, but faces the Hidalgo property.

MR. WEYANT: We hashed this through.

MR. DONNERY: On the map, if you draw a parallel line, it definitely faces Hillcrest. It even faces Overlook. By looking at this, in my mind, it is clear cut. It faces Hillcrest.

MR. DOHERTY: The front of the house is the front of the house.

MR. DONNERY: It faces Hillcrest.

MS. TERHUNE: The issue is under your Code, the front lot line is the line that fronts a street or road.

MR. DOHERTY: Private or otherwise.

MR. WEYANT: The street right of way is on the front of the lot.

MS. TERHUNE: A street is in the federal, state, county, or town highway, or any highway road or any street shown on a subdivision plat or any roadway public or private used for vehicular traffic by the public. Hillcrest is a street shown on a subdivision plat. To find that that this is not the front of the house, you would have to find that there is a street here.

MR. DOHERTY: There is nothing.

MR. WEYANT: The side of the house facing Hillcrest is the front of the Bryant house.

MR. DONNERY: Just draw a parallel line across.

MR. HAGER: Hillcrest goes east to west and Overlook goes north and south.

MS. TERHUNE: Looked at the map and asked for clarification.

MRS. HILDALGO: Discussed the streets, house position and the front of the house on the survey map, showing them to the Board members.

MR. HAGER: I can get the scale from downstairs, if necessary.

MR. DONNERY: Read the law again.

MS. TERHUNE: Applicable Definitions: The front yard: "An open unoccupied space on the same lot with the building situated between the nearest roofed portion of the building and the front line of the lot and extending from side lot line to side lot line". Front lot line: "The street right of way line at the front of the lot". Remember, one argument is that the front lot line was not in compliance, another thing to consider. Street: Any federal, state, county or town highway, or road or any street shown on a subdivision plat or any roadway public or private used for vehicular traffic by the public. Where is the house facing? Does it face Hillcrest?

MR. JANNARONE: The shortest distance in is shown in the white area.

MR. DONNERY: It is the corner of the house at that point. They naturally shaded here. The house itself faces Hillcrest, in my mind. That is why I am trying to read the law. We granted a variance for this lot for the width for the frontage for the access point. Shouldn't this map come off the front of their house? It is their property that touches Hillcrest.

MR. HAGER: I don't see it the way they see it. I can get the scale for a measurement.

MR. DONNERY: It is not a measurement. My question is: Their property that touches Hillcrest is on the upper part of Hillcrest not the lower part.

MR. HAGER: It is a flag lot, right?

MR. DONNERY: Right. If I want to draw a line, I want to draw it from their property line. If you come off their property line, their property line runs into the front of the house, not the side. Do you understand what I am trying to say, Ray?

MR. DEVEREAUX: I do.

MS. TERHUNE: The other concern is, and I do want to make a note for the record, that according to the Board, a lot frontage variance was issued for this particular lot which we talked about earlier. One of the allegations is that it does not meet code because it does not meet the frontage required on the street.

MR. HAGER: On a public street.

MS. TERHUNE: On a public street. On one hand you are saying it does not comply because the front of the lot is not wide enough and on the other hand you are saying that it is not the front of the lot, and the house does not face that. The Board has to determine in context whether or not they believe that the front of house faces Hillcrest and that is the front, and if so, it complies with height, or not, and it does not.

MR. WEYANT: My feeling is that the side of the house that is facing Hillcrest is the front of the house.

MR. DOHERTY: The existing front or the existing side?

MR. DONNERY: What we are trying to say is that the front of the house faces their property. You go up their property line, way up here, that faces the front.

MR. DOHERTY: I am in agreement.

MR. WEYANT: I feel that the side of the house that faces Hillcrest Road is the front of the house.

MR. DOHERTY: Which side is that?

MR. DONNERY: The front of the house that faces the front of their property? Would that be the proper way to say it?

MS. TERHUNE: You can make a motion that the house meets or does not meet height requirements. The house as it is positioned now, the front of the house, as it is presented by the Applicant is the front of the house, because it faces Hillcrest, or not.

MR. WEYANT: That is how I feel.

MR. GALU: It faces Hillcrest.

MR. WEYANT: And that the height should be measured from that side, facing this way.

MR. DONNERY: My reasoning why it is the front of the house is because it faces the property that they own, that touches Hillcrest. I understand where she is coming from since she is drawing a line from here. In my mind, this is their driveway; you drive in and drive down your driveway. I would draw a line this way. I personally believe that is the front of the house because that touches their property.

MR. WEYANT: Do you want to add what Tim said.

MR. DONNERY: That portion of their lot property touches Hillcrest and therefore, that is why I am saying that is the front of the house.

MS. TERHUNE: If I can paraphrase. The Board is determining that Hillcrest is a street and that the Bryant house complies with height restrictions because the front of their house, as shown, faces Hillcrest.

MR. DONNERY: This would be the front of their property, right?

MS. TERHUNE: Yes, for which they received a variance. This Board is determining that the house faces Hillcrest with the main entrance that faces the driveway. The house that faces the driveway is the front of the house.

**A motion was made that the Board determines that Hillcrest is a street and that the Bryant house complies with height restrictions because the front of the house, as shown, faces Hillcrest, for which they received a variance, and the house faces Hillcrest with the main entrance facing the driveway, and the side of the house that faces the driveway is the front of the house.**

**Motion: Mr. Miller                      Seconded: Mr. Doherty                      Approved**

**With a Roll Call Vote:**

<b>Mr. Galu:</b>	<b>Aye</b>
<b>Mr. Miller</b>	<b>Aye</b>
<b>Mr. Jannarone</b>	<b>Aye</b>
<b>Mr. Devereaux</b>	<b>Aye</b>
<b>Mr. Doherty</b>	<b>Aye</b>
<b>Mr. Donnery</b>	<b>Aye</b>
<b>Mr. Weyant</b>	<b>Aye</b>

MR. WEYANT: We need to go back to the footnote.

MS. TERHUNE: The question before the Board is one of interpretation is whether or not Footnote #5 requires all properties and all lots in R1R to get site plan approval. Schedule 2, Table of Dimensional Regulations. The property is serviced by the municipal sanitary sewage system. The minimum lot area per dwelling unit is 20,000 square feet. The construction of the principle building on the lot shall be prohibited in areas of slope equal to or greater than 20%. Dwelling units and all other buildings constructed shall be located on the property in such a manner as to preserve the greatest amount of existing vegetation as possible. To achieve these objectives, the Planning Board shall review and regulate proposed development by the process of site plan approval as set forth in 210-21, except that one and two-family dwellings that also require site plan review and approval in accordance with provisions thereof. Any lot in R1R District must contain a minimum of 40,000 square feet. 20,000 square feet is exclusive of any environmentally sensitive land and restrictions...

The question before this Board is whether or not it believes that this requires site plan approval for all lots in R1R.

MR. JANNARONE: I believe it does. I think the wording is in there. We know that one or two lots did have site plan approval. What we do about it is one thing and what it means is another. I feel it does mean what it says that it requires that site plan approval be required. I think we ought to split this up and decide what it means and what we are going to do about it.

MR. WEYANT: To go back to what you said, Jack. In this instance, some of the other lots in the subdivision have gotten site plan approval. I agree with you.

MS. TERHUNE: It is up to this Board. The Building Inspector did not read it that way. The Building Inspector determined that it was there because these lands are specifically in R1R and are environmental sensitive, and because it is in the Dimensional Regulations and not the Use Regulations. His determination was that it was only for lots of less than 40,000 square feet. None of these lots

are less than 40,000 square feet that would have to get site plan approval. I think it can be read either way and it is ambiguous. The context of ambiguous code is that it is construed in favor of the property owner. So where there is an ambiguity in the code the courts will look at that and construe it in favor of the property owner. The considerations that this Board needs to determine are: Should it apply or not apply, what does it say, what is the context of how it has been applied in the past, and how is it read in context with other parts of the code. The Board needs to discuss and decide this.

The second part is what to do if you decide it applies or not.

MR. JANNARONE: It would appear the Code is designed to protect the Scenic Hudson Highlands. The fact that other people in the R1R have had site plans is a factor. The Zoning Board should make the ruling clear as to what it means.

MR. DEVEREAUX: I agree with you. So should we move forward or deal with it retroactively?

MS. TERHUNE: This Board can certainly in all these issues decide whether or not to apply it retroactively or on a go forward basis. If you find that it applies, you can also find that under the circumstances, given that in reliance on a valid permit, and after substantial completion of the project, that it would be inequitable to apply this to the Bryants or to anyone else in that subdivision that has not applied. This is an ambiguous code as I said before. The Building Inspector determined that it was applicable to smaller than 40,000 square foot lots because then you did have a site plan so that you could situate the house on a smaller lot. I think it is ambiguous and that you can find it either way.

**A motion was made that it is this Board’s interpretation from this point on to require site plan approval in R1R lots.**

**Motion: Mr. Jannarone                      Seconded: Mr. Devereaux      Approved**

<b>With a Roll Call Vote:</b>	<b>Mr. Galu</b>	<b>Aye</b>
	<b>Mr. Miller</b>	<b>Aye</b>
	<b>Mr. Jannarone</b>	<b>Aye</b>
	<b>Mr. Devereaux</b>	<b>Aye</b>
	<b>Mr. Doherty</b>	<b>Aye</b>
	<b>Mr. Donnery</b>	<b>Aye</b>
	<b>Mr. Weyant</b>	<b>Aye</b>

MR. WEYANT: I don’t see how we can go back and apply this against properties that have already been built.

MR. DONNERY: Alyse said before that the Courts would always rule in favor of the property owner.

MS. TERHUNE: They would interpret an ambiguous code in favor of the property owner. You have not done that.

MR. WEYANT: We can’t go retroactive on this.

MS. TERHUNE: Let's open it up for discussion as to whether, based on finding that this applies, that you wish to revoke the Certificate of Occupancy for the Bryants.

MR. WEYANT: I can't see that.

MR. JANNARONE: Was the application timely?

MS. TERHUNE: The application for the Certificate of Occupancy for this Board was timely. The application of whether or not the building permit should have been issued, and whether or not there should have been a site plan approval was not timely and all of this is determined by the Courts. A finding that you are revoking the Certificate of Occupancy means that they cannot move into the house or if they were already in, they would have to move out.

MR. WEYANT: They would have to do what to get it back?

MS. TERHUNE: They would have to go through site plan approval in front of the Planning Board. So however long that would take – whether or not they would get site plan approval.

MR. DEVEREAUX: What is to be achieved going thorough that process?

MR. DONNERY: More unnecessary expenses for everyone.

MS. TERHUNE: This Board has a fair amount of equitable discussion, so you can consider factors when you consider whether or not to apply this to the Bryants. You can consider whether this applies to anyone else. You can consider the hardship as against the benefits. The hardship applying it and requiring the Bryants to go back for site plan approval; there is no guarantee what will happen once they go before the Planning Board verses the benefits. I am not sure at this point that revoking the Certificate of Occupancy means that they are going to leave the house. I am not sure the Planning Board will require them to do that.

MR. DEVEREAUX: All three houses are built.

MS. TERHUNE: You don't have applications from anyone else to revoke any one else's Certificate of Occupancy.

MR. JANNARONE: Would it be timely at this point?

MS. TERHUNE: No.

MR. DOHERTY: Hypothetically, if this Board voted to revoke the Certificate of Occupancy could we have a footnote or caveat that they could occupy the house during the process?

MS. TERHUNE: I am not sure if I can answer that question. I think I would err on the side of caution and assume that once you revoke a Certificate of Occupancy, you revoke it.

MR. HAGER: It is unlawful to occupy a house without a Certificate of Occupancy.

MR. WEYANT: Again, I don't see how we can revoke the Certificate of Occupancy.

**A motion was made that notwithstanding the finding of this Board that the footnote applied and that lots within the R1R District must seek site plan approval, under the circumstances in fact here, where the Bryants substantially completed their house pursuant with valid building permits, and were not required to seek site plan approval at the time, and**

**WHEREAS, no one else in the subdivision, including the Applicant, was required to seek site plan approval prior to having a building permit issued showing that in the past at least to this subdivision, even though there was a map note, that no one in the subdivision was required to seek site plan approval;**

**THEREFORE, this Board finds that it would be inequitable to apply this footnote retroactively to the Bryants or anyone else in that subdivision, and that the hardship of revoking the Certificate of Occupancy is not outweighed by the benefits of doing so, and that finding will apply to all lots in R1R from this point forward.**

A request by Mrs. Ott to speak with Attorney Ms. Terhune was denied.

MR. JANNARONE: Referred to a letter dated March 31, 2009, to the Zoning Board of Appeals, from Bloom and Bloom, PC regarding the Application of Anne Denisse Hidalgo and Rosanne F. Ott for Revocation of a Certification of Occupancy, excerpting Page 5 stating:

"I will immediately proceed with the remediation of the berm within the deed restriction parameters per the report of my Engineer Michael Sandor, P. E. together with the approval of the Town Engineer and the Building Inspector, which is the same as I have continuously agreed to do from the time I bought the property."

**Motion: Mr. Weyant      Seconded: Mr. Devereaux      Approved**

<b>With a Roll Call Vote:</b>	<b>Mr. Galu</b>	<b>Aye</b>
	<b>Mr. Miller</b>	<b>Aye</b>
	<b>Mr. Jannarone</b>	<b>Aye</b>
	<b>Mr. Devereaux</b>	<b>Aye</b>
	<b>Mr. Doherty</b>	<b>Aye</b>
	<b>Mr. Donnery</b>	<b>Aye</b>
	<b>Mr. Weyant</b>	<b>Aye'</b>

MR. DEVEREAUX: Nothing to do with the vote, but it should be irrespective of 40,000 square feet.

MS. TERHUNE: You are basically saying that that footnote applies to all lots in R1R regardless of size.

MS. TERHUNE: The final question of whether an amended site plan is required for 210-21G. You decided that R1R lots require site plans. Had there been a site plan and had it been amended, then if they changed the site plan, it would have been required to be amended. However, given the fact that you are not applying the site plan requirement retroactive in this particular case to this particular lot or any others, I would recommend that this Board find that this is moot and does not apply. There was no site plan required, you are not requiring one now, therefore, and there is no need to amend one that is required.

MR. DONNERY: There is no vote required.

MS. TERHUNE: Yes, a motion will be required.

**A motion was made that the requirement for site plan approval was found to be not applicable in this particular instance to the Bryants or anyone else in that subdivision, and since a site plan was not required in the first instance and since the building permit was not timely challenged, then the Board finds that this question is not applicable and does not have to be decided.**

**Motion: Mr. Weyant                      Seconded: Mr. Donnery                      Approved**

<b>With a Roll Call Vote:</b>	<b>Mr. Galu</b>	<b>Aye</b>
	<b>Mr. Miller</b>	<b>Aye</b>
	<b>Mr. Jannarone</b>	<b>Aye</b>
	<b>Mr. Devereaux</b>	<b>Aye</b>
	<b>Mr. Doherty</b>	<b>Aye</b>
	<b>Mr. Donnery</b>	<b>Aye</b>
	<b>Mr. Weyant</b>	<b>Aye</b>

**At 8:25 P. M., a break was requested by the Board Members.**

**At 8:30 P. M., the meeting continued.**

**Krishmatie Ridgeway, 12 Homestead Avenue, Highland Falls, NY, front line area variance for a porch addition.**

MR. WEYANT: The second application on our agenda tonight is an application by Krishmatie Ridgeway. From what I understand from your application, Mr. Ridgeway, is that you want to construct a porch on your property, however, it will involve a minimum front yard setback requirements. You will need a variance from this Board in order to finish construction of this porch. Can you describe for us what you want to do?

MR. RIDGEWAY: I wanted a porch six (6) foot deep to run along the front of the house facing Homestead Avenue to run the full length of the house and then to tuck around on the west face of the house and go to that extremity. It will be an L shaped porch.

MR. WEYANT: You will need approximately a nine (9) foot variance because our setback is 20 feet.

MR. DEVEREAUX: It will be (7) feet.

MR. DOHERTY: Seven (7) feet and change.

MR. DEVEREAUX: The porch comes out six (6) feet.

MR. WEYANT: The point is that you need a variance for the front yard setback and your next step will be to hold a Public Hearing at our meeting on June 15 2009. Prior to that, you need to follow the instructions that come with the application. You need to post signage on the property, at least 10 days prior to June 15; you need to send certified mailings. Since you are in the village, it will be everyone next to you plus across the street adjoining properties. Will the USMA be involved?

MS. TERHUNE: I would send a notice to the USMA.

MR. RIDGEWAY: There are several people that I have not determined where the boundaries are. How far down, up and across the street should be notified?

MR. DOHERTY: Just those that touch your property and across the street.

MR. WEYANT: Mr. Hager will help you with the requirement information.

MR. RIDGEWAY: Who at West Point would I contact?

MR. DEVEREAUX: John, why don't you contact West Point.

MR. HAGER: We have the address for West Point and will contact them.

MR. JANNARONE: Does Orange County need to be notified?

MR. DOHERTY: It is not abutting Route 218 or Main Street.

MR. HAGER: Route 218 is very narrow and is right against the Main Street.

MS. TERHUNE: Yes, we should notify them.

MR. DOHERTY: You have a picture?

MR. RIDGEWAY: Yes. Just so you know that what I am doing is restoration plus. We have no idea whether the porch folded around the house the way that I intend to do, we are doing it for our own convenience. It is perfectly obvious that between 1890 – 1910, which I guess is the age of this portrait, indicates that there was a porch there, and we plan to use this as a template for building the porch so that it shall have as close to same look as it did.

MR. WEYANT: Thank you Mr. Ridgeway. We will see you in June.

**At 8:37 P. M., a motion was made to adjourn the meeting.**

**Motion: Mr. Devereaux    Seconded: Mr. Doherty    Approved**

Respectfully submitted,

Fran DeWitt  
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is  
Monday, June 15, 2009**