

APPROVED: 6/21/10

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
MAY 17, 2010**

A regular meeting of the Zoning Board of Appeals was held in the Court Room, Town Hall, Highland Falls, New York, on Monday, May 17, 2010, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

David Weyant, Chairman
Tim Donnery
Tony Galu
Ray Devereaux
Jack Jannarone
Ralph Montellese

Absent

Tim Doherty

Alyse Terhune, Attorney, (Jacobowitz & Gubits, LLP)

ALSO PRESENT:

John Hager, Building Inspector, Julia Hood, Joe Baldomir, Ralph O. Heavner, Esq., and Maureen Rizzo (arrived late).

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 bring the Consolidated Zoning Board of Appeals for the month of May to order and let you know that Supervisor Margryta is asking that we move right along because the Town Board would like to use this room for their meeting following ours. I promised him that we would move along. I will note that all members are present with the exception for Mr. Doherty, who I expect to be here.

We have the Minutes for March 15, 2010 which were sent to you quite a while ago. We need them to be approved. Are there any additions or corrections to those minutes?

MR. DONNERY: I found none.

MR. WEYANT: Hearing none, would you like to make a motion.

A motion was made to approve the March 15, 2010 Minutes.

Motion: Mr. Donnery Seconded: Mr. Jannarone Approved

MR. WEYANT: Our first application tonight is for John and Marie Rizzo of 5 Glen Road, Highland Falls. They applied for a building permit to enlarge their existing front porch which will require three (3) variances for the front, the side, and the total. You should all have copies of their application. They are not present.

MR. HAGER: I expect them to be here, they called earlier to check the time.

MR. WEYANT: John, would you give us an idea as to what they want to do.

MR. HAGER: They actually started construction on the deck at the front of the house. We asked them what they were doing. They told us they were expanding it and we said they had to come in for the variance. We issued a building permit for the renovation work to the existing part of the porch. However, they wanted to extend to the face of the house to right, increasing the amount of non-conformities. They need a total of three variances - front yard, side yard and total variance.

MR. WEYANT: We do have a drawing in our packet where the proposed deck would be put. It is a matter of setting up this application for a Public Hearing. Do you have any questions?

MR. WEYANT: Our next meeting would be on June 21, 2010, at which time we can have a Public Hearing on this. Any questions gentlemen, at this point?

MR. DONNERY: None at this time.

MR. WEYANT: I am sure they will be here for the Public Hearing and we can review what they want to do. It is a matter of setting up the Public Hearing for June 21, 2010. I am sure Mr. Hager will help them with the requirements for the Public Hearing.

MR. HAGER: Yes, we will help with the mailings and you will take care of the advertisements.

MR. WEYANT: Yes.

MR. WEYANT: Next are Julia Hood and Joel Baldomir at 11 Evergreen Lane, Highland Falls. Yours is an interesting one because you want to add to your present deck.

MR. RALPH HEAVNER: Actually, there is an existing deck.

MR. WEYANT: And your name, sir.

MR. HEAVNER: For the record my name is Ralph O. Heavner, 5 Wayne Avenue, Stony Point, NY.

MR. WEYANT: You are representing?

MR. HEAVNER: I am.

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MR. WEYANT: Yes, I realize we have an existing deck which pre-existed code.

MR. HAGER: They have applied for a building permit. The deck has existed for a few years now and was built by a previous owner. We were made aware of it in the Building Department by a neighbor. We checked the files and there were no building permits issued on it so we got in touch with the current owners. They filled out the application. There are two variances that are necessary, one for side yard and one for combined side yards.

MR. WEYANT: So this deck has been there all this time with pre-existing code and now you want to add to the deck?

MR. HEAVNER: I don't know if it was pre-existing to the code. It was pre-existing to the present home owners' purchase of the property.

MR. HAGER: The deck was built around 2005.

MR. WEYANT: When it was built in 2005, any documents?

MR. HAGER: I have no record of a building permit in my file. It does violate the current Zoning Code.

MR. WEYANT: I was on this Board then and I don't recall it ever coming here.

MR. DONNERY: Where is Evergreen Lane?

MR. HAGER: It is a private lane behind Church Street and Homestead Avenue

MR. WEYANT: The present deck butts right up to the property owner on the other side, am I right?

MR. HEAVNER: We believe that is correct, right up to the property line.

MR. WEYANT: There is really no room to maneuver here. You are right on the property line at this point.

MR. HEAVNER: It is not a very wide deck.

MR. WEYANT: We have some pictures.

MR. JANNARONE: What is the shape of the deck?

The sketch was reviewed.

MR. JANNARONE: The deck is not rectangular. It goes along the property line.

MR. HAGER: It looks like the previous owner made an attempt to make sure that it was not over the line. They must have been aware they were very close to the line. It is not parallel to the house.

MR. JANNARONE: The deck itself is a trapezoid.

MR. HAGER: The deck may slightly encroach. The most variance they could get would be zero. If you approve a variance and get into the building permit, it may need to be trimmed slightly. This would have to be a zero setback.

MR. DONNERY: The deck is not shown here.

MR. JANNARONE: No, it is not. It is not a rectangular deck. It is up to the property line or very close.

MR. HAGER: The Survey Map shows 4.4 feet from the corner of the house to the property line, depending on where you measure the deck. If you measure on top of the deck, it goes slightly further than the 4.4 feet, and if you measure below the deck it is just about there. Not knowing where the surveyor took his reference point, it is hard to say whether it is on the line or slightly over the line.

MR. WEYANT: Any other questions? Hearing none, we will set a Public Hearing for June 21, 2010. The Building Department will give you the details for the mailings required and signage affidavits. We will discuss it in June.

MS. TERHUNE: You were not aware of a violation? There is nothing in the record for 2005?

MR. HAGER: No one in the Building Department was made aware of this until after the current owners purchased it. They have been in the house for three (3) years. Unfortunately, the previous owner built it and apparently never asked for a permit. It did not come to light until after the title was transferred.

MR. JANNARONE: They are trying to make this existing deck legal?

MR. HAGER: Yes.

MR. JANNARONE: Not change it in any way?

MR. HAGER: If they get the variance and we issue a building permit, the violation goes away. That is all they are seeking.

MR. WEYANT: They are not adding to the existing deck?

MR. HEAVNER: No. Whatever is there now we just want to make legal.

MR. WEYANT: You just want to make it legal.

MR. HEAVNER: Thank you for your time.

MR. DONNERY: There is no rush on that decision.

MR. WEYANT: The deck is there. He wants to legalize it.

MR. HAGER: The alternative is that if they don't get the variance or building permit, the deck has to be removed. They would rather not do that, obviously. Unfortunately, when they purchased it they did not realize that it was in violation.

The survey that was provided to them did not show it. The bank must have missed it or whoever was involved in the sale. It is a problem that they have to address now. The previous owner is deceased, no assistance there.

MR. DONNERY: It looks like the house is actually non-conforming, also.

MR. HAGER: Yes. The whole lot is non-conforming, and everything in the neighborhood is non-conforming. If the deck had predated, it would be allowed to remain. It does not predate, it is not on the survey for 2002. The deck was built around 2005. The current owners thought maybe a permit was issued and we just did not have a copy. We can find no reference for it. There was an inspection done by the Town's Building Inspector in 2007 when these people bought.

At the time, the inspector was doing inspections whenever there was a sale. The Town issued what was called a "Sale C.O." These owners thought that if they got a document from the Village or the Town saying that they did a sale inspection, everything must be good. They relied on that, as did the title company. I don't think that the Building Department's intention at all was to be doing zoning compliance inspections. However, there are no limitations on that "Sale C.O." document. These owners were adamant that the Town gave them a document and they thought they were in the clear. It needs to be resolved.

MR. DEVEREAUX: The next door neighbor, John?

MR. HAGER: The neighbor made us aware of this. The neighbor has expressed interest in making comment at the Public Hearing, or at least in a written form. I am guessing it won't be positive comment.

MS. TERHYNE: Is this the same neighbor that was there when the deck was built?

MR. HAGER: I think so. I don't know what precipitated this, why they waited until now to bring it up. There was a drainage issue, too. It might have been they lost their patience with the drainage. The current owner is of the opinion that the Town really dropped the ball by issuing a certificate. I can see their reasoning, but I don't particularly agree with it either. But I do agree that those certificates were confusing and that is one of the reasons we don't do them anymore. They are not being charged any fees for a building permit or the zoning application. That is partly because the Town feels they share some of the responsibility for the confusion.

MR. DONNERY: We will have a lot of questions for Alyse on this at our next meeting.

MR. HAGER: The Applicant is not in any hurry on this. It is the Building Department that is driving this. We want to see this violation taken care of.

MR. WEYANT: It should be taken care of.

MR. DONNERY: We should take our time and do it right. There is no rush.

MR. HAGER: There is no real urgency on this. The neighbor will ask me every now and then as to what the status is. There is no house directly next to the deck. The

property that the neighbor owns is L-shaped and is open area. It does not make the violation any less of a violation.

MR. DONNERY: I want to get up and look at the property.

MR. HAGER: I mentioned to the owner that some of the Board Members may want to look at the area. I would recommend that you call ahead before you go.

MR. DEVEREAUX: I found the street after a fashion, and it looks like a driveway. It does have a sign.

MR. HAGER: There is very little room to turn around. You might want to park on Church Street and walk. It is very tight. Everything there is close together. There are all kinds of non-conformities there. I can understand how the previous inspector would not have seen the deck was there in violation. Everything there is in violation. Most of it predates the Code. How would he have known that it was built in 2005?

MR. DONNERY: Now I can see how it was built. You can't see it from the street.

MR. HAGER: The neighbor does not live there, he rents it. His tenant may not have told him about it.

MS. TERHUNE: The owner is there now?

MR. HAGER: No, the owner does not reside there, he still rents it out.

MS. TERHUNE: But the owner is the one who made the complaint.

MR. HAGER: Yes.

MR. MONTELLESE: When he bought the property, the bank surveyed it?

MR. HAGER: The only survey that has been provided to me is the same one that you have with the 2002 date on it. I guess it was not surveyed in 2007 when it was sold. Maybe the bank decided it was a pretty recent survey and they accepted it. In this case, it was probably a mistake.

MR. DONNERY: How does that work, Alyse. Who is responsible for the survey?

MS. TERHUNE: It is really the buyers' responsibility to get that survey done. Because there were no violations on the books, that would not have turned up in a title search. They would not have known there was a violation. It was their responsibility to have it surveyed. On the other hand, there is no violation, so why have it done.

MR. WEYANT: Mrs. Rizzo.

MRS. RIZZO: I was not sure if I had to be here.

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MR. WEYANT: You did not have to. We have already entered it in the Minutes. You will have a Public Hearing on June 21, 2010. Mr. Hager will tell you the requirements and the things you will need. He will go over all that with you. We have already reviewed it.

MR. HAGER: Be sure you are in touch with me to go over everything since the mailing must be done ten (10) days prior to the June 21, 2010 Public Hearing.

MRS. RIZZO: I will.

At 7:18 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 Consolidated Zoning Board of Appeals meeting is
Monday, June 21, 2010**