

APPROVED: 9/20/10
MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
AUGUST 16, 2010

A regular meeting of the Zoning Board of Appeals was held in the Court Room, Town Hall, Highland Falls, New York, on Monday, August 16, 2010, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

Jack Jannarone, Deputy Chairman
Tim Donnery
Ray Devereaux
Ralph Montellese

Absent

David Weyant, Chairman
Tony Galu
Tim Doherty

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

ALSO PRESENT:

John Hager, Building Inspector, Greg Dyson, USAA, Troy A. Wojciekofsky, P.E., Stantec, Matt Johnson, AIA, Gensler, and John A. Lentini, Architect.

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. JANNARONE: I will open this meeting of the Consolidated Zoning Board of Appeals for August 16, 2010 and note that Mr. Weyant is absent, along with Mr. Doherty and Mr. Galu. Present myself, Mr. Donnery, Mr. Montellese, and Mr. Devereaux. First item of business is to approve the Minutes of July 19, 2010. Are there any comments from the Board Members?

MR. DONNERY: I read them over and found no objections.

MR. JANNARONE: I will take a motion to approve them.

A motion was made to approve the July 19, 2010 Minutes.

Motion: Mr. Devereaux Seconded: Mr. Donnery Approved

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MR. JANNARONE: The next item is a Public Hearing on the **Grace Baptist Church**. Is there anyone here for that? Their notice was not published in the News of the Highlands.

MS. TERHUNE: You should open the Public Hearing and then adjourn it.

MR. JANNARONE: We will open the Public Hearing. There is no one here on that issue so we will adjourn it until next month.

At 7:02 P. M., the Public Hearing was opened.

At 7:03 P. M., the Public Hearing was adjourned.

MR. JANNARONE: Proper notice was not filed. They have already been notified and that is why they are not here.

MR. JANNARONE: The next item is **USAA**, for their variance. You had some questions for them at the last meeting, right Tim?

MR. DONNERY: Yes.

MR. JANNARONE: Mr. Dyson was not here last meeting. He is going to be the manager.

MR. DYSON: I am here to talk about the operation of the facility.

MR. DONNERY: Because of the small amount of parking, my only question was how long is the average visit by the customer?

MR. DYSON: It depends on the kind of customer. You could have the banking part we are going to be doing is what I call virtual banking not traditional teller banking but since the electronic banking that would be relatively quick.

MR. DONNERY: Two to five minute visit.

MR. DYSON: Yes.

MR. WOJCIEKOFISKY: We have two new things for you to consider, one is a narrative that summarizes the operations. It is hot off the presses from USAA. The other big announcement is that as a result of last month's meeting and our meeting with the Planning Board, we have actually revised our plan and added four (4) more spaces. Previously we had eight (8) spaces now we have twelve (12). That was based on some of the feedback we got from you last month as well as from our neighbor and the Planning Board, as well. We hope that would help to alleviate some of the concerns. The information contained in the narrative should also help to describe the operations and the parking demand.

MR. JANNARONE: Why don't we take a minute to read the Information Paper, as follows:

INFORMATION PAPER

Face-to-Face Program Office
August 11, 2010

1. **Purpose:** In response to questions from the Zoning Board related to parking for USAA'S new building, this paper will provide information on how our West Point office will operate and confirm the adequacy of the 12 parking spaces we are proposing.
2. **Facts:**
 - a. Our existing facility (~3,000 sq. ft.) includes 11 parking spaces. Based on current codes, our new building (~6,900 sq. ft.) would require 45 parking spaces. This side plan initially presented at the July 19th meeting of the Zoning Board proposed a total of 8 spaces (not including a dedicated loading space). A concern was raised that this might not be sufficient, and the Zoning Board asked USAA to more fully describe the operations at the new building also they could better evaluate the adequacy of proposed parking.
 - b. After further analysis of the site and related costs, USAA now plan to provide an additional 4 parking spaces, bringing the total to 12 spaces (still excluding the loading area). This will necessitate demolition of the existing retaining wall, cutting into the slope that rises toward the back of the property and building a new retaining wall. This effectively maximizes parking on the site, as cutting any further into the slope will not leave the minimum desired space between the rear property line and the new retaining wall.
 - c. Today, the building houses a staff of 4: 2 service representatives, 1 office manager (part-time), and 1 military affairs manager. We will add 1 financial advisor in the new building, for a total staff of 5. In the past, West Point staff has totaled as many as 12 people, and parking has historically been adequate.
 - d. The primary constituency USAA serves out of this location is the West Point community, which typically accesses the site by foot. The office also serves, secondarily, other resident members in the region, but these represent just 2% of the overall population.
 - e. The building will deliver new functionality to our members in a “face-to-face” channel. We expect this to deepen relationships with existing members, but not necessarily provide a big lift in terms of new resident members. As a practical matter, eligibility for membership is limited, and individuals who qualify but are not members typically have established relationships with other institutions. Additionally, we expect that most embers in the area will continue to interact with us as they do today; via phone, internet and mail.
 - f. Banking, and particularly financial advice, are new services that will cause a slight increase in member visits. Advisory services are by appointment only, taking perhaps an hour per session, and totaling 3-4 sessions per

day. Our location is such that for most members in the area, the convenience of on-site banking will not be offset by drive distances.

- g. Office hours will be from 8:30 AM to 5:00PM Monday through Friday and from 10:00 AM to 3:00 PM on Saturday. We will additionally hold educational and social events for the cadets from time to time, but these will generally be in the evening and on weekends. Again, access by this primary constituency is largely pedestrian.
3. **Status:** USAA is requesting approval of the parking variance to provide 12 spaces at this site. More are not needed by our planned operations, and in any case cannot be accommodated in a manner we believe be acceptable to either USAA or the City.
4. **POC:** Brad Wells; 210-498-7998, Peter McKenna; 210-913-0670

MR. DONNERY: So right now you only have nine (9), and you are going to go to twelve (12)? That is three (3) more spaces.

MR. WOJCIEKOFISKY: That is right. We basically maxed out the site as comfortably as we could. We have two retaining walls and some grading. Any further encroachment back into our back yard would be too close to our neighbor. We basically tried to max it out. They will be pretty expensive parking spaces to build because there is a hill that naturally goes up there and it will probably be rock. USAA thought it was the right thing to do for their operation and for the Village's concerns and our neighbor's concerns. We thought that would go a long way.

MR. JANNARONE: The Building itself has not changed; you just pushed further to the rear.

MR. WOJCIEKOFISKY: Correct.

MR. JANNARONE: You have setbacks in the back?

MR. WOJCIEKOFISKY: This is a retaining wall and the second one. We still have 30 feet or so back to our neighbor.

MR. DONNERY: Sounds good to me.

MR. DEVEREAUX: Do you technically require a setback if you are on Main Street?

MR. WOJCIEKOFISKY: No, not for parking. This is more for aesthetics.

MR. DEVEREAUX: I am very familiar with USAA having been in it a lot through time. I just went to look at it now. The thought occurred to me, and I am not trying to stir up the pot, that you could run a ramp up and you would have a lot of parking up there. You would not have to worry about your neighbors because it is just parking. You would achieve more parking spaces that way. I don't know that that poses.

MR. WOJCIEKOFISKY: We actually looked at a ramp going to the rear to try to maximize the parking and once you get the turning angles and just the grade, it basically worked out with the same number of parking spaces. We looked at a couple different concepts.

MR. DEVEREAUX: I would like to make another comment. I read the last meeting's notes, even though I was not here. I know you are changing somewhat the format and you explained it well in the Information Paper. I have never had a problem parking at USAA when I went there. There are never more than a couple of cars there. Secondly, I have gone a lot of times down, because I go all the way to the end turn around and come back and look at the village. I do this fairly frequently just out of curiosity. When I turn around, and I have done this recently, very few cars, two cars max, and you have three people working there. Personally, I don't think it is a problem. And I submit, too, that the cadets particularly may take the bus down and get off and walk in, it is right there, it is that easy. Other people and potential customers so they don't jam up you would advise to park in XY or Z. I personally do not see a problem. I know Mr. Bosch commented and he has an issue. He is there all the time, so I suspect he knows more than I do.

MR. JANNARONE: Every time I have been there, there have been several open parking places. I don't see a problem. Let's be clear on what is being requested. John, could you summarize.

MR. HAGER: Obviously they are revising their application now to seek relief not down to eight (8) spaces but down to twelve (12). That is a slight adjustment to the application.

MR. JANNARONE: So that we word the variance properly, if we were to grant it, the side and front set back variances remain the same as requested, but the parking would be less. You are requesting how many on parking?

MS. TERHUNE: They were requesting 37 fewer parking spaces. So they would need less. They would now need a variance of 34 fewer parking spaces because the code requirement is 46 spaces and they are proposing twelve (12) spaces.

MR. DONNERY: There is no problem with that change?

MS. TERHUNE: No, not at all. I would like to refer to the revised plan rather than the application. I will like a copy of the new plan.

MR. HAGER: I think the Applicants should follow up with submittal of an amended variance application form and a copy of the revised plan that shows the twelve (12) parking spaces.

A motion was made to grant an eight (8) foot side yard set back variance on the south side; a six (6) foot side yard set back variance on the north side; and a 34 space parking variance reducing the required 46 parking spaces to twelve (12) spaces.

**Motion: Mr. Montellese Seconded: Mr. Devereaux Approved,
With a Roll Call Vote:**

Mr. Devereaux	Aye
Mr. Montellese	Aye
Mr. Donnery	Aye
Mr. Jannarone	Aye
Mr. Weyant	Absent
Mr. Galu	Absent
Mr. Doherty	Absent

MR. JANNARONE: The next item is the application by **Ralph Herrera, 10 Liberty Street, Highland Falls, NY**. Variances for side yard and combined side yards for enlarging a non conforming deck. Can you give us a rundown on what it happening here?

MR. JOHN LENTINI: I am the Architect for Mr. Herrera. Mr. Herrera has a house on Liberty Street which is amongst the townhouse development that found itself in multiple zoned park zoning requiring that it have certain yards that it just doesn't have. The existing house is less than 800 square feet. I will open up the plans to show you the proposal. Presently, there is a roof over a deck in the back that is five (5) feet from the building and this house is less than a foot (.7) from the property line. I don't have the exact dimensions of this house but it is a foot or two from the house next door. It is less than a foot from the property line. I am not certain how to present the hardship. (He showed the property lines on the plans). The patio that he has is encroaching on a property line. What we propose to do is essentially make a deck the size of the patio and the porch, but move it in, make it more compliant, so that it is three (3) feet off the property line for the New York State Fire Code, it is a wooden structure. Mostly for cost considerations, we are keeping the roof. The roof is actually in good condition. The rest of the porch is very poor.

I am not sure what zone this house should have ended up in, but obviously it was built before the present zoning. If it was a one family zone, the yard requirements would be the same that we have, 8 and 10, which is 18 feet. The lot is 28 feet which would only allow us to have a 10 foot wide deck and it would be irrespective of this roof that we want to keep. That is how we produced this configuration here.

We believe that it is pretty standard today to have a deck in America where you can sit on it rather than a porch. This porch is more like a front porch. You can't put a table on it or entertain on it. He rents to single people. The renter actually requested this. He would like a place to stay on the deck, if we have to repair it anyway.

We are asking for extensive variances that we are required to have an 8 foot and we are only going to be 3 feet and the other side would need to be 10 feet and we are only going to have about 5 or 6 feet.

MR. JANNARONE: We can set a Public Hearing for this for our next meeting, September 20, 2010. There will be certain mailings that Mr. Hager will help you with. The News of the Highlands?

MS. TERHUNE: Yes, I usually email to David and then he emails to the newspaper 10 days in advance. It depends on when they publish and when he has to get it to them. I will prepare the Notice of Hearing.

MR. JANNARONE: Do any other Board Members have any other questions?

MR. DEVEREAUX: It is a strange set up, but it is a typical Highland Falls only more exaggerated. The house is right on the side walk and it is down.

MR. LENTINI: Walking from where I parked my car I noticed two houses next door converge at a point in a similar situation which is a lot worse than ours.

MR. DEVEREAUX: Should we wish to look at it, maybe John, you could get clearance from the renter so we can get through. On the right side, there is virtually no clearance between the two houses. On the left side you can go around and get through.

MR. LENTINI: I don't think there is a problem. Unfortunately, my client is on a cruise ship right now.

MR. DEVEREAUX: There is ample time.

MR. LENTINI: I believe the tenant is very anxious to get something going.

MR. JANNARONE: We don't want to wander in on somebody unannounced.

MR. LENTINI: I will go there right now and knock on his door to tell him to be looking out for you. If there is a problem, I will tell you, but I am sure there isn't.

MR. JANNARONE: Thank you very much, and we will see you next month.

MR. LENTINI: Thank you.

MR. JANNARONE: **Al Sapienza, 66 Ondaora Parkway, Highland Falls, NY.**, variances for an apartment above existing garage. I see no one here for this project.

I requested Mr. Hager to provide a copy for each of you of the September 25, 2003 Application for a Building Permit on this property. Down on the bottom of the first page it says Existing Use and Occupancy: Storage, work bench area, desk area. Intended Use and Occupancy: Storage work bench area, desk area. On the next page it says: Septic: No. Sewer: No. Well: No. City Water: No. There is one other thing about whether it would be occupied. Nature of Work: Repair the roof and make dormers five feet higher on both sides to increase storage capacity and head room and put in bigger windows. Number of Dwelling Units: 0. All of you have that and Alyse has prepared an opinion.

MS. TERHUNE: I don't know if you all have had a chance to read my opinion. When I was here last month, I stated that the Code was somewhat imprecise and could be interpreted a couple of different ways. You asked me to go back and take another look at the Code and look at some case law and give you an opinion. After having read the Code in more detail, within the context of other provisions, and having a very good look at the case law, it is my opinion that this would require a use variance. A use variance is a very high standard.

The only other recent decision that this Board has made that is somewhat similar is the Tonneson decision. In that case, Mr. Tonneson had property in the town. He had a couple of apartments, but in that zone you could have apartments, it was permitted, but they had to be coupled with non-residential use. It was a mixed use.

MR. DONNERY: I remember, down by the old Police Department.

MS. TERHUNE: This Board granted in that case an area variance that allowed him to add a second story that increased the square space in each apartment from 300 to I think 900 thereabouts. It expressly stated that no additional apartments would be made.

MR. DONNERY: He stayed with the same footprint of the building.

MS. TERHUNE: He did. He did not increase the number of apartments. When you look at the case law and your law, basically what your law states is that a legal non conforming use can remain on the property "so occupied." In the building on the lot on the land so occupied at the time that zoning law was adopted. So at the time that the zoning law was adopted this was a garage, while the apartment use and the house could continue so long as it was not expanded without a variance. The garage was not occupied as an apartment.

MR. DEVEREAUX: Wasn't there a statement made that in the 70's and the 80's that Mr. X lived above the garage? That was a statement made.

MR. JANNARONE: There is no indication that rent was charged and there was an apartment.

MS. TERHUNE: There is no real proof presented that it was ever occupied as an apartment.

MR. DEVEREAUX: True, just a statement.

MS. TERHUNE: Exactly. And, even if it had been, if it was abandoned for more than a year, then that non conforming use on that building is abandoned. It is my legal opinion that Mr. Sapienza would require a use variance. The standard to grant a use variance is that the Applicant has to prove that they cannot get a reasonable return on their property without the variance, which in this case, I can't imagine he could prove that.

MR. DONNERY: That is all he was asking for was an interpretation?

MS. TERHUNE: I think he was requesting an interpretation and then a variance. His question was: Tell me what I need. If I need a use variance, grant that, or if I need an area variance, grant that.

MR. JANNARONE: Not only is there the financial burden, but there are other hurdles as well. Most important is self imposed, which clearly it is.

MS. TERHUNE: There are four specific standards.

MR. JANNARONE: We should read them.

1. **The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.** That has not been shown.
2. **That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.** I am not sure how that applies here.
3. **That the requested variance, if granted, will not alter the essential character of the neighborhood.** Mrs. Ignacio said it would change the character of the neighborhood, as far as she was concerned.
4. **That the alleged hardship has not been self-created.** I think this is self created.

On those criteria, for this application, he has failed.

MR. DONNERY: Right now he does not have a request for a use variance right, John?

MR. HAGER: No. The Applicant's representative did not agree with my denial letter. My denial letter simply stated that he needed a use variance. That was my interpretation. He did not agree with that interpretation. On the application, he left blank what he was applying for. I told him that he would have to find out whether the Board agrees with me or him as to whether it is a use variance or an area variance that is needed. Technically, is that asking for an interpretation, I am not sure?

MR. DONNERY: That is the way I took it, because there was no application. He was saying how do I fill the application out, do I have to go this way or that way?

MR. HAGER: He did make an application and they did file a fee. If I am not mistaken, he did file a variance fee, not an interpretation fee.

MR. DONNERY: You would get back to him and say that with advice from Counsel?

MR. JANNARONE: We would have to vote.

MS. TERHUNE: You could do a couple things. I thought he wanted an interpretation and then a variance if he needed it. It is not that clear by his application. What you could do is to rule on the interpretation. You need a use

variance, if that is what you decide. Then if he wants to apply for a use variance, should he have to pay another fee?

MR. JANNARONE: Is it clear that he has not applied for one. Let's make sure, since I think we are just prolonging the inevitable.

MS. TERHUNE: Variance from Section 249, which is a question mark.

MR. HAGER: We did collect a fee for a variance.

MR. DEVEREAUX: What kind of variance?

MS. TERHUNE: Table of Use Regulations. He has a question mark there. Again, I think he does not agree that he needs a use variance, so there was the interpretation. But I think that perhaps the intent was to ask for a variance and hope that the Board determined that he did not need a use variance. I was the one to ask if he was asking us for an interpretation. What he really needed was an interpretation, but he was asking originally for a variance and he just did not agree with John that he needed a use variance.

MR. DONNERY: That was the way I took it. Our move right now would send John back to him and say that the Board, with the advice from Counsel, says that you have to apply for a use variance.

MR. JANNARONE: Hadn't he applied for a variance? That is my point. My feeling is that we should vote on whether a use variance is required and if it is vote on that use variance.

MR. DONNERY: I don't think we need to vote on that if we take advice from Counsel.

MR. JANNARONE: We have to formalize that a use variance is required because that is her advice and I think we will probably take that.

MR. DONNERY: We don't vote on that, I don't believe, right?

MR. DEVEREAUX: Why not?

MS. TERHUNE: You would make a determination that a use variance is required. Then you can either deny the use variance or not. My only concern is that you don't have to make a decision on the use variance tonight. He is not here for some reason. That is a little concerning, because essentially he will have to take that apartment out of there. Did he know he was on the agenda tonight?

MR. HAGER: I assumed that he did know that.

MR. MONTELLESE: Does he have to be present?

MS. TERHUNE: He does not have to be present. If this Board wants to take action tonight as to interpretation, and/or a variance, it can. You can also discuss it and vote next time.

MR. JANNARONE: I think we do have to vote on whether or not we take her advice if this is a use variance. That is the first item. Then we can decide whether or not we would cite it as a use variance tonight or not. Am I making myself understood?

MR. MONTELLESE: The question is did he apply for a use variance at this time.

MR. HAGER: I would say that: No he didn't because he was not in complete agreement that he needed one. He was awaiting interpretation.

MR. MONTELLESE: Then we can't vote on that.

MR. HAGER: I can get back to him and say that here is the interpretation. Now amend your application to state that you are asking for a use variance or withdraw your application.

MR. JANNARONE: He is going to lose if he does try to get a use variance. That is pretty clear.

MR. DONNERY: More than likely, he will withdraw.

MS. TERHUNE: He may make a case. He may come before this Board and bring financial records and say that he is losing money without this apartment. He would have to show you iron clad proof.

MR. JANNARONE: He would have to show why this (2003 Permit Application filled out by Mr. Sapienza) isn't fraud then.

MS. TERHUNE: That is another issue.

MR. JANNARONE: And why taxes have not been collected.

MS. TERHUNE: My opinion legally is that he needs a use variance.

MR. JANNARONE: Would anyone like to make a motion.

MS. TERHUNE: I think that your interpretation is that in this particular instance on this property he needs a use variance. That should be in the record. It should be a determination. If someone else comes before you with exactly the same circumstances, then there is no question.

MR. HAGER: You are agreeing with Legal Counsel and you are agreeing with the Building Department's interpretation, and that is your official interpretation.

MS. TERHUNE: Yes. Now you have officially interpreted the Code.

MR. DONNERY: Now John would say that, if anything happened like this again, this has been before the Board, and a use variance is required. The standard has been set.

MR. HAGER: You don't need to make that interpretation again.

A motion was made that a use variance is required for this application.

**Motion: Mr. Devereaux Seconded: Mr. Montellese Approved
With a Roll Call Vote**

Mr. Devereaux	Aye
Mr. Montellese	Aye
Mr. Donnery	Aye
Mr. Jannarone	Aye
Mr. Weyant	Absent
Mr. Galu	Absent
Mr. Doherty	Absent

MR. DONNERY: I vote “Aye” but I don’t think we vote on interpretations.

MS. TERHUNE: You may be correct.

MR. DONNERY: We agree on interpretations, but we don’t vote on them. However you want to put it in the record is fine with me.

MR. JANNARONE: I think that it is very important to respect the integrity of the process that the Building Department can make reasonable plain language interpretations of the Code and not be subjected to trying to come up with cutting corners or quibbling or anything else. The Code means what it says in plain language. We need to give the Building Inspector that kind of backing.

MS. TERHUNE: The Village Board can change the Code. They can offer all kinds of relief, but it is not there now.

MR. DONNERY: Like John said, if anybody comes across another one, this has already come before the Board and this is protocol.

MR. HAGER: It is clear to me. I know what my interpretation was, and I now know what yours is. If the situation comes up again, we don’t need to have an interpretation. It definitely requires a use variance and they should go ahead and apply for a use variance.

MR. DEVEREAUX: He can come in and apply for a use variance, not and/or?

MS. TERHUNE: No. If he makes an application for a variance at this point, it must be a use variance.

MR. DEVEREAUX: If that is bounced, he has no recourse?

MS. TERHUNE: He can take you to court.

MR. DEVEREAUX: But he can’t come in for an area variance?

MS. TERHUNE: No.

MR. DONNERY: But he has to abide by those standards.

MR. DEVEREAUX: Pretty strict.

MR. JANNARONE: Very strict, for a purpose.

MR. DEVEREAUX: Regarding financial return matters, if we were talking about two apartments in the main house and one in the garage, now that is substantial. Talking about if the rents were relatively similar, maybe he could meet them, number one, possibly. When you are talking about nine in one, it is not insignificant, but it certainly is not considerable, in my mind.

MR. JANNARONE: The next item is the **Hidalgo appeal**. A decision has been reached and Alyse is going to fill us in.

MS. TERHUNE: She appealed the original decision. Then their attorney made a motion to reargue and renew. That was denied. At this point, the time frame for perfecting the appeal for the actual decision has run and they have not perfected. It is done as to the ZBA.

MR. JANNARONE: The time ran out, is that what you are saying?

MS. TERHUNE: When you appeal a decision from the Supreme Court, you have six months to perfect the appeal unless you ask for an extension. To appeal a decision, you basically file one piece of paper and say I don't agree and I want the higher court to hear this. That is not enough, you have six months from that point to file all your pleadings, basically a memorandum of law, and stating here is why the lower court was wrong. I don't think they have done that. I think it is done.

MR. JANNARONE: Does anyone else have anything?

At 7:39 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Devereaux Seconded: Mr. Donnery Approved

Respectfully submitted,

Fran DeWitt
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is
Monday, September 20, 2010**