

**APPROVED: 12/20/10**  
**MINUTES OF THE**  
**CONSOLIDATED ZONING BOARD OF APPEALS**  
**OF THE**  
**TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS**  
**NOVEMBER 15, 2010**

A regular meeting of the Zoning Board of Appeals was held in the Highland Falls Library, Highland Falls, New York, on Monday, November 15, 2010, at 7:00 P. M.

**THERE WERE PRESENT:**

**Board Members:**

David Weyant, Chairman  
Tim Donnery  
Tony Galu  
Ray Devereaux

**Absent**

Jack Jannarone  
Tim Doherty  
Ralph Montellese

**ALSO PRESENT:**

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

John Hager, Building Inspector, and Jim Titolo.

**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 meeting for the Town of Highlands for November 15, 2010. I will note that all members are present with the exception of Mr. Jannarone, Mr. Montellese and Mr. Doherty. We do have a quorum with our four members that are here. I also, before the meeting starts, want to thank the Town of Highlands Public Library for the use of their building tonight. We really appreciate that since we had a conflict with our town Board having a meeting at Town Hall.

The first matter on the agenda is to approve the Minutes of our previous meeting on October 18, 2010 that were sent out previously to tonight. Are there any comments or corrections to the Minutes that were sent to you?

MR. DONNERY: I found none.

MR. WEYANT: Hearing none, would there be a motion to approve the Minutes as presented.

**A motion was made to approve the October 18, 2010 Minutes.**

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

MR. WEYANT: On our agenda tonight, we are going to continue with Mr. Sapienza's property at 66 Ondaora Park, Highland Falls, which at our last meeting we approved the use variance for allowing them to have the apartment above the garage. Because of the size of the floor area of this apartment, if we call it that, I believe is approximately 500 square feet now.

MR. TITOLO: I think it was 600 square feet and the requirement is 900 square feet.

MR. WEYANT: The requirement is 900 square feet. You, Mr. Titolo, are stating that the existing floor space is 600 square feet.

MR. TITOLO: I provided John Hager with those dimensions. I can't remember exactly what it was.

MR. DEVEREAUX: Do you have a schematic for us?

MR. TITOLO: I actually provided that information a number of months ago.

MR. DEVEREAUX: Jim, I reread everything this afternoon which goes back to 1973 on that property. In one place it is stated 500 square feet. Then I have seen 600 square feet. I am just curious what the real figure is.

MR. TITOLO: If you could just give me a minute.

MR. WEYANT: Sure, go ahead. While you are doing that, and perhaps Counsel or John can help me here, are we talking two variances here one specifically for the floor space and then an overall?

MS. TERHUNE: No, it would be the floor space and, as I understand it, a parking variance.

MR. DEVEREAUX: How about the side yard?

MS. TERHUNE: What side yard are we looking for?

MR. DEVEREAUX: To the left of the garage.

MS. TERHUNE: The garage is not being increased in size. Whatever is there is there. He does not need a variance for that.

MR. WEYANT: I was not aware we were dealing with a parking variance, too.

MS. TERHUNE: I know back in my notes, we had talked about this. I think with 10 apartments you would need 15 parking spaces and I see 14. Is there a 15<sup>th</sup> that I am missing?

MR. TITOLO: Yes, you are missing the three (3) inside the garage. 14 plus 3 is 17.

MR. DEVEREAUX: Jim, I raised that at a previous meeting, too. Whether you can count in this case, unlike a condominium where a person owns the condo and they

have a parking space in the garage and one outside, clearly their property. Can you count those three (3) spaces outside of the garage? That was my question and I think it was left to be decided.

MR. TITOLO: I don't know if it was left to be decided. There is no language in our Code that strictly prevents you from counting that. I understand your concern. Mr. Sapienza only needs one (1) additional parking space and there are three (3) in the garage at this point.

MS. TERHUNE: Actually you would need two (2) because typically you round up. If you are saying that there are three here and four and that is 17. You can certainly count the ones in the garage, those are parking spaces.

MR. DEVEREAUX: What about the ones in front of the garage.

MS. TERHUNE: That is a different issue. Are you asking whether blocking.

MR. DEVEREAUX: In my mind, a parking space is a parking space.

MS. TERHUNE: I think you can count the ones inside the garage unless the Board has a real issue with that.

MR. DEVEREAUX: We agree with that but not the ones that might block others.

MS. TERHUNE: Then that is an issue that the Board should talk about and decide.

MR. TITOLO: Mr. Chairman, I would like to suggest that the requirement is one plus a half for each unit. In theory, the three (3) in the garage would represent one tenant and an additional half of that space would be his space. I understand Mr. Devereaux's concerns, but throughout this village those parking spaces exist with that layout. Unless we are going to specifically address the rest of the units that are similar in the village, I am hoping we can find a way to work this out.

MR. WEYANT: I would like to get back to the area variance. We got off track with the parking. I was not prepared that it was going to be an issue. To get back to my question, do we need two (2) area variances, one (1) for the square footage and is there an overall. What am I thinking of. Are there setback requirements?

MS. TERHUNE: If he were going to change the size of the garage, then you would look at all the area variances that may or may not be required. Here, he is not changing the size of the footprint.

MR. WEYANT: It is staying the same. Because all of this preceded zoning, we have to ratify it.

MR. TITOLO: I think that I am going to have to go with Mr. Devereaux's number because I can't find any language that suggests it is different.

MR. WEYANT: John, I am going by a letter that you made stating the Applicant has acknowledged that the floor area available for the apartment is 500 square feet

rather than 900. Minimum required by Code, Section 240-37 requiring 400 square feet variance.

MR. HAGER: I don't recall where the 500 number came from, but I am guessing that it was provided by the Applicant. The building is larger than that, but I don't think you have the exact number of square feet on the second floor as the first.

MR. DONNERY: Where is the application, wouldn't it be on the application?

MR. WEYANT: No it is not.

MR. HAGER: The application was for the use variance.

MR. WEYANT: For the interpretation before the use variance.

MS. TERHUNE: It is not there. Was there an amended application filed?

MR. WEYANT: I don't know.

MS. TERHUNE: I did not get one.

MR. WEYANT: Did you find anything, Jim, about the existing square footage.

MR. TITOLO: I remember doing a sketch. For some reason, I think it is over 500 square feet and less than 600.

MR. GALU: That garage is over 24 by 24. It is almost 600 square feet.

MR. TITOLO: It is over 24 by 24.

MR. HAGER: I have 29 by 31. But again, I don't know that the second floor is as large as the bottom floor.

MR. TITOLO: It is the same footprint.

MR. DONNERY: What does that come out to?

MR. DEVEREAUX: We need the specifics.

MR. TITOLO: 29 by 31. It can't be. At some point I brought in the specifics in here and I actually did a drawing of the existing condition.

MR. DONNERY: It looks like we will have a meeting in December.

MR. HAGER: I found the letter. The Applicant has acknowledged that the area over the apartment is 500 square feet rather than the 900 square feet required by Code.

MR. WEYANT: That is what I was reading. Would we be in agreement that we could go with the 400 foot variance here as being reasonable, Mr. Titolo?

MR. TITOLO: Yes, sir.

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MR. WEYANT: Further discussion, gentlemen, on granting or not granting this area variance.

MR. GALU: The place has been occupied. It was occupied before the fire.

MR. DEVEREAUX: Illegally.

MR. GALU: Why because of the square footage?

MR. DEVEREAUX: No, because there was no CO on that space.

MR. DONNERY: It has always been illegal. There is no question about that. It has always been an illegal apartment.

MR. DEVEREAUX: We are expected to correct it.

MR. GALU: We just granted a use variance.

MR. DEVEREAUX: That is one issue. The next issue is the square footage. John, have you seen that apartment?

MR. HAGER: I have not personally been inside. The other inspector in my office has been inside.

MR. DEVEREAUX: Is the ceiling 7 1/2 feet above that entire space that constitutes 500 square feet?

MR. TITOLO: It is much higher. It is at least 8 foot. There is a large bedroom, bathroom, kitchen, and a long living room that overlooks the river.

MR. HAGER: The owners had a building permit back in 2003. That permit showed that they were actually raising the roof to accommodate higher ceilings. They showed a 7 foot 6.

MR. DEVEREAUX: For what purpose, John?

MR. HAGER: The permit was applied for to increase the storage space, I believe. Existing use and occupancy was listed as storage workbench area and desk area. The intended use was the same. They described the nature of the work to replace the roof and to make dormers 5 feet higher on both sides to increase storage capacity and head room and put in bigger windows.

MR. DEVEREAUX: I have a copy of that, too.

MR. DONNERY: Does that have anything about the square footage.

MR. HAGER: Only for the entire building 29 by 31 which comes out to 900.

MR. DEVEREAUX: I remember an earlier discussion with Jack Jannarone because of this document called the occupation of that space to be used as an apartment fraudulently. But then you can't say that. In my mind, call it fraudulent or whatever

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you want to call it, it was to be office space or storage and then it was used as an apartment which was illegal. Then I get into the specs area variance criteria. I can ignore a lot of them whether the request is substantial is four ninths. That is considerable. It is almost half of the requirement. Therefore, in my mind I think there is no ballgame. That is me.

MR. DONNERY: I am looking at his print, and for some reason it still looks bigger than 500.

MR. GALU: It is over 500, it is almost 600.

MR. DEVEREAUX: You don't know. How can you sit there and say it is over when John has discussed it with Jim.

MR. GALU: It is 24 by 24.

MR. DEVEREAUX: The footprint has nothing to do with the second floor.

MR. TITOLO: It has everything to do with the second floor.

MR. DEVEREAUX: No it doesn't.

MR. TITOLO: The second story is built on the first story. So whatever the footprint is, unless the roof pitches in that direction, then I can understand it, but at this point, they raised that roof and you have a full footprint area.

MR. DEVEREAUX: They raised it for storage.

MR. TITOLO: Right now I have a letter that John put out June 21. The variance for the required minimum apartment size of 900 feet to 600 square feet.

MR. HAGER: That was a Notice of Hearing.

MR. DEVEREAUX: That is based upon other documents maybe statements made by you or someone else.

MR. TITOLO: John asked me to get the exact dimensions of the property. That is what I did and brought it to John.

MR. DEVEREAUX: John should do it himself.

MR. TITOLO: I think that based on our experience, I know that I am not going to mislead John or anybody here.

MR. DEVEREAUX: But a moment ago you thought that it was 500.

MR. TITOLO: No, I was trying to get to the next step, COL Devereaux, here. We have been playing this game for 12 or 14 months. I am trying to end this. I would agree that it was 500. If that would move this ball along, then I will agree to that. At this point, I have a letter that says it is 600 square feet.

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MS. TERHUNE: I did the Notice of Hearing. The 600 feet was from my notes from our original meeting, the first time he came. I wrote in my notes 600 square feet. That is where that came from, to take ownership of that. That was from my notes during the meeting.

MR. TITOLO: I think at 550 or 600 there are a number of apartments in this community that are 500 or 600 square feet. Some are probably even smaller.

MR. DEVEREAUX: Were they non-conforming pre-existing, or not.

MR. TITOLO: I am not sure.

MR. DEVEREAUX: I don't know either, and we can't base everything else that is going on upon what we are trying to discuss right now, in my judgment.

MR. TITOLO: COL Devereaux, about six months ago, you said to the Chairman that you would not vote on this issue.

MR. DEVEREAUX: I reversed that position, and I had every right to do it, and I have done it.

MR. WEYANT: Let's continue on whether it is 550 or 600.

MR. HAGER: On this plan 25 by 20 equals 500 square feet, detached garage, second floor apartment. That information was provided to me at some point, I assume by Jim. When he brought this drawing in, I must have asked him to give me a specific dimension on that and that was what was provided. The building itself, the footprint may be larger. I don't know if this shed area in the back is part of that or not.

MR. TITOLO: No it is not.

MR. HAGER: This must be what was reported to the Building Department as far as the size of the existing apartment. That is 500 so you are looking at a 400 square foot variance, unless Jim wants to have us check it. If it is that important to him, we will check it before the next meeting.

MR. GALU: What is the difference 500 or 600? It doesn't make any difference.

MR. HAGER: I apologize I should have gone down there and measured it myself.

MR. WEYANT: It will make a difference, Tony, for what this Board approves.

MR. DONNERY: We can't approve anything, legally. We just can't say we are going to give a variance without numbers.

MS. TERHUNE: We have to specify what the variance is. It is important to know how big the apartment is now so that you can grant the proper variance. If I could just note something: There is no question at this point that it is not a conforming use because a use variance was granted. The bar for granting a use variance is very much higher than that for granting an area variance.

MR. WEYANT: But if we don't know an exact number here and we seem to be playing between 500 and 600. Can this Board approve this variance without a definite number?

MS. TERHUNE: I think that at this point it is up to the Board. The real issue that you are grappling with is whether it is 500 to 900 or 600 to 900. If this Board believes that it is going to make a difference in your thinking, then yes, you are going to need to know whether it is 500 or 600 or 550 or 575.

MR. WEYANT: To me, a difference of 100 square feet does not make a huge difference, in my opinion.

MS. TERHUNE: It is completely up to the Board. You can say we grant an area variance from the existing square footage, approximately 500 square feet to 900 square feet. If you think it is going to make a difference, then you should know. We have in front of us though evidence that it is 500 square feet. It seems to me that you know that already.

MR. HAGER: That is how it was presented.

MS. TERHUNE: If the Applicant thinks it is bigger than that, if he believes that, he should have an opportunity to come back to the Board and say that it is bigger than that and so the variance would be lesser.

MR. WEYANT: It falls back to the Applicant.

MS. TERHUNE: Unless we can determine from the map. If that is to scale, then you can determine because of the footprint.

MR. HAGER: You will come up with a higher number than 500 if you scale that map. I am going by what was on the Building Permit Application with the building dimensions. I don't know how close the inside walls are to the outside. The building dimensions 31 by 29.

MR. DEVEREAUX: That's 899.

MR. TITOLO: That is not my application.

MR. WEYANT: I think that it has been established by the original Building Permit Application that Mr. Titolo said it was 500 square feet - existing.

MR. HAGER: If there is trouble with that, if he wants me to go there with him and measure it, I can do that. If he wants to put in for a higher number than 500, or I am comfortable with 500.

MR. WEYANT: John is comfortable with it, are you Jim?

MR. TITOLO: I am comfortable with 500.

MR. GALU: He just gave you the dimensions. It is 699 square feet - 700 square feet - one foot short.

MR. DEVEREAUX: What are you talking about, Tony? 31 by 29 is how much. It is 899.

MR. GALU: 31 BY 29.

MR. TITOLO: That is an old Building Permit. That is not my Building Permit.

MR. WEYANT: Can I go back to what I said that the Applicant filed a permit with the Town of Highlands stating that the dwelling was a 500 square foot unit, and therefore, regarding tonight's area variance he would need a 400 square foot variance from this Board. Can we go with that number? The Applicant is in agreement with that, the Building Inspector is in agreement with that.

MR. DEVEREAUX: Let's have a motion.

MR. DONNERY: If my lawyer says it is legal. I never heard of granting a variance in this situation.

MR. WEYANT: We are using his number that was given to the Building Department when he applied for the permit.

MR. TITOLO: I am okay with using that number ladies and gentlemen. I am trying to put some closure to this. It has been going on way too long.

MR. WEYANT: Remember, the Applicant has to go to the Village Planning Board when he is done here. They will kick this whole thing around, too.

MR. GALU: What bothers me is that at the last meeting, we gave him a use variance for an apartment. Now you are trying to deny him the use of the apartment.

MR. WEYANT: I am not trying to deny him anything. He has to get an area variance from this Board before the Planning Board will act. We need to act on this area variance we just can't let it go.

MR. GALU: So let's act on it.

MR. DEVEREAUX: Make a motion.

**A motion was made to grant an area variance to Mr. Sapienza.**

**Motion: Mr. Galu                      Seconded: Mr. Donnery**

MR. WEYANT: I will ask Counsel do we place any numbers in this?

MS. TERHUNE: If the Board is accepting 500, that is the number we need to use for the area variance.

MR. WEYANT: We are voting on granting a 400 foot area variance.

MR. DONNERY: If we accept this, I would like John to go down and measure it to put the right number in it. I just don't want to see a vague variance.

MR. WEYANT: Would this Board be in agreement, and we passed a motion on this variance, that before the determination would be given, we would have the exact number from the Building Inspector.

MS. TERHUNE: I need to ask the Board a question. If it is really 500, am I willing to grant a 400 foot area variance, because if it is greater than that. We know it is not less, correct.

MR. TITOLO: It is not less than 500 square feet. Guaranteed.

MS. TERHUNE: If the Board is uncomfortable with these numbers, then don't do it tonight. Get the real numbers. The real numbers should always be provided. All I am saying is that it was said 500 square feet and now it seems like everyone is contesting if it is really 500 square feet. If you are willing to grant a 400 square foot variance then if it is 550? I don't think you should grant an area variance tonight for 400 square feet and then have to change it in the future. That is all I am saying.

MR. WEYANT: We have a motion on the floor now to grant an area variance which would amount to 400 square feet.

MR. DEVEREAUX: With a second.

MR. WEYANT: By Mr. Galu, seconded by Mr. Donnery. Any further discussion?

MR. DEVEREAUX: I have already spoken.

MR. GALU: Who is going to determine square footage?

MR. WEYANT: We just did. We are going with 400.

**WITH A ROLL CALL VOTE:**

<b>Mr. Galu</b>	-	<b>Aye</b>
<b>Mr. Donnery</b>	-	<b>Aye</b>
<b>Mr. Devereaux</b>	-	<b>Nay</b>
<b>Mr. Weyant</b>	-	<b>Aye</b>
<b>Mr. Jannarone</b>	-	<b>Absent</b>
<b>Mr. Doherty</b>	-	<b>Absent</b>
<b>Mr. Montellese</b>	-	<b>Absent</b>

**NO MOTION**

MS. TERHUNE: Unfortunately, you need four (4) Ayes. It is a No Motion. You need four (4) out of seven (7). The Applicant can come back next month. He may want to get the exact measurements.

MR. HAGER: What about the side yard?

MR. WEYANT: What is the side yard, John?

MR. HAGER: Is a variance necessary for the side yard?

MS. TERHUNE: No, it is not. The only question I had was about the parking.

MR. DONNERY: What about this where it comes off the line?

MS. TERHUNE: Pre existing.

MR. WEYANT: Explain to me what it is, it is not a No Vote.

MS. TERHUNE: It is like a nullity. It is like the vote did not happen.

MR. WEYANT: We need four (4) out of seven (7) for approval.

MS. TERHUNE: You had three (3).

MR. DEVEREAUX: Could it go on endlessly?

MR. DONNERY: We need other Board Members.

MR. WEYANT: We need a whole Board here. Jim, I am sorry to drag this on, but we have no choice.

MR. HAGER: You would like an exact number for the next vote.

MR. WEYANT: Yes, we would like an exact number.

MR. HAGER: Is there anything else you would need?

MR. WEYANT: Is there a parking situation that we have to worry about?

MS. TERHUNE: This is up to the Board. You can count the three (3) in the garage if you feel that that is reasonable. It is like anyone else I guess who has a garage and may have to get out of the way to use it.

MR. HAGER: I think the Code just says “off street.”

MR. WEYANT: I personally don't have a problem with the parking. It seems to me that there is plenty of it.

MR. DONNERY: Tony and I were looking at it. It looks like you could squeeze a third one over here if you wanted to.

MR. DEVEREAUX: You could park in the lawn.

MR. WEYANT: The only matter for the December meeting will be the matter of granting this area variance of whatever feet that is shown to us.

MR. HAGER: Would you like an amended application?

MR. WEYANT: Yes, I would.

MR. HAGER: I will do that after we measure it.

MR. WEYANT: You can do that, John. That is a good idea.

MR. HAGER: I will fill out the form with exactly what square footage is needed.

MR. WEYANT: There will be no fees charged to the Applicant.

MR. HAGER: We do not need a variance for parking and we do not need a variance for side yard?

MR. WEYANT: Just the one variance.

MR. DONNERY: Do you want a special meeting?

MR. WEYANT: I would rather not because of trying to get everyone together. The date is December 20. Jim, we will most likely be back at Town Hall for that meeting.

**At 7:45 P. M., a motion was made to adjourn the meeting.**

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

Respectfully submitted,

Fran DeWitt  
Recording Secretary

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