

**APPROVED: 10/17/11**

**MINUTES OF THE  
CONSOLIDATED ZONING BOARD OF APPEALS  
OF THE  
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS  
SEPTEMBER 19, 2011**

A regular meeting of the Zoning Board of Appeals was held in the Town Hall, Highland Falls, New York, on Monday, September 19, 2011, at 7:00 P. M.

**THERE WERE PRESENT:**

**Board Members:**

David Weyant, Chairman  
Tim Doherty  
Tim Donnery  
Tony Galu  
Ralph Montellese

**Absent:**

Jack Jannarone, Deputy Chairman  
Ray Devereaux

Alyse Terhune, Attorney (Jacobowitz & Gubits, LLP)

**ALSO PRESENT:**

Bill Edsall, Town Councilman, John Hager, Building Inspector, John Janson, Leslie Puleo, and Daniel Malarkey.

MR. WEYANT: I am going to open the Consolidated Zoning Board of Appeals of the Town of Highlands Meeting of September 19, 2011, and note that two member are not here. They are Mr. Jannarone and Mr. Devereaux. First thing we do, is we have to approve the Minutes for June 20, 2011. It has been a while since this Board has met and we do have minutes from our previous meeting of June 20, 2011 that were sent to you. Are there any changes in those minutes?

MR. DONNERY: No, I scanned through them and thought they were up to par.

MR. WEYANT: Hearing none, may I have motion that they be accepted, as presented.

**A motion was made to approved the June 20, 2011 Minutes.**

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

MR. WEYANT: Mr. Janson, come on up. I want to point out to the Board that Supervisor Magryta has asked us to finished by 8:00 P. M., because he is going to have a Town Board Meeting about the Fort Montgomery Water District. We will move things along. Have a seat, Mr. Janson.

MR. WEYANT: Gentlemen, Mr. Janson has property on 26 Mine Dock Road, Fort Montgomery, NY. Quite an old building from what I am reading.

MR. JANSON: Yes.

MR. WEYANT: You want to again, correct me if I am wrong, want to tear it down and put up a new building in the same place.

MR. JANSON: Yes.

MR. WEYANT: But the new building you want to put up will not sit on the exact foundation of the existing building which, gentlemen, pre-exists Code, by the way. Am I right so far?

MR. JANSON: It is going to sit on the same foundation. I just want to square it off.

MR. WEYANT: By squaring it off, we are going to add some further dimensions to the property, which in turn would mean that it is a condition that it would need a variance because it is not going to be on the same metes and bounds of the old house. You all have an application along with drawings of what it is going to be. Tonight is just a brief discussion, Mr. Janson, because we are going to review what you want to do and then pending any further questions by the Board, we are going to set up a Public Hearing for you at our next meeting. You, in turn, will have to do some mailings. Mr. Hager in the Building Department will help you as to who you send them to. I believe you are close to the Palisades Interstate Park Commission property land.

MR. JANSON: That is what Mr. Hager was telling me. Yes. I was not sure who owned the property.

MR. WEYANT: They in turn would have to be notified. Am I right, John?

MR. HAGER: I figured a 239 referral. They will get a letter when he does the mailing.

MR. WEYANT: Doesn't 239 go to the County?

MR. HAGER: Right. When we discussed his proximity to the Palisades property, we were discussing 239. All the adjoining and the property owners within a certain distance will have to be notified.

MR. WEYANT: You are aware of that?

MR. JANSON: Yes.

MR. WEYANT: Is there anything else you want to add on top of what I have already said?

MR. JANSON: No, because basically like I said I just want to square that little corner off.

MR. WEYANT: We are not looking at a lot of variance here, I don't believe.

MR. JANSON: The area is 10 foot by 12 foot. It will make it easier to put up a new house if it is square without that little “L” to it.

MR. WEYANT: So it would be the front yard and the side both?

MR. JANSON: I am not sure what it is actually considered.

MR. HAGER: Rear yard.

MR. WEYANT: Rear yard, I had it wrong.

MR. DONNERY: Right now you have no neighbors behind you?

MR. JANSON: No.

MR. WEYANT: So it would be rear yard and side yard?

MR. DOHERTY: Just rear yard.

MR. JANSON: It is not really the side, just rear.

MR. DOHERTY: Am I correct, John? Looking at the map, I can't see a requirement for that side yard. He has the distance.

MR. HAGER: It is just the rear yard. On the table we had put rear yard as pre-existing, non-conforming and the front yard is pre-existing, non-conforming, but that exists.

MR. WEYANT: Just the rear yard. Our next meeting is October 17, 2011. You would have to get your mailings out at least 10 days prior to that, which would be October 7. Yes, Tim.

MR. DONNERY: May I ask Alyse a question. When we grant this variance, because he does not meet the Code for the front yard, do we have to include that now, also?

MS. TERHUNE: No, because he is not otherwise changing the footprint. The only thing he is changing is the back, really the rear yard. He meets the side yard setbacks. The only variance that is required is to expand the non-conformity by adding 120 square feet to the rear yard setback.

MR. WEYANT: Any questions, Mr. Janson?

MR. JANSON: No really.

MR. WEYANT: We will see you on October 17.

MR. JANSON: Works for me. Thanks.

MR. HAGER: Mr. Janson, I will help you go over that list.

MR. DONNERY: I have to take a ride down there.

MR. DOHERTY: It is down by the dock.

MR. GALU: By the Wine Cellar.

MR. DOHERTY: Is that the house that is being held up by the two by four?

MR. DONNERY: That is great to see someone do improvement there.

MR. WEYANT: Mr. Malarkey, your request is for an interpretation of Code involving property in Fort Montgomery. I have copies of a memo for all Board Members from Mr. Hager explaining the situation. I understand that tonight your neighbor has changed the footings of what you thought was going to be close to your property has been moved.

MR. MALARKEY: This was done just today. Before I had asked for the meeting and paid the \$75 for the interpretation of the word “unobstructed.”

MR. WEYANT: As a result of your neighbor making that move, do you still want to continue with this?

MR. MALARKEY: Yes, there are other issues. I have a copy of the site plan. I asked Mr. Hager to bring the good copy of the site plan. There has been lots of work done that is not on the site plan.

MR. WEYANT: Before we get into that, I was under the impression that you are only dealing with the lamp post base situation. That is what you had on the application.

MR. MALARKEY: And it also said other issues that were not on the site plan.

MR. WEYANT: If there are other issues, we really need to know that they are, besides the lamp post.

MR. MALARKEY: There really was not much space to list them all. It is right on the site plan.

MR. WEYANT: What you need to do before our next meeting is to come up with a list of what these issues are, as an addendum, as an addition to the application so that I can get that out to our Board Members.

MR. MALARKEY: All right. Without disregarding the issue of the lamp post, I called Mr. Hager 4:00 P. M. this afternoon and left a message on his machine. The fellow did move the stanchion, however, the electrical panel - he moved that back within the 10 foot setback. So I still need an interpretation of the Code of the words “unobstructed” “free and clear” and “open to the sky.” I need those expressions interpreted. As I said, he remedied the stanchion today this is before I filled out the paperwork. He moved the electric panel which was off the property within the 10 foot setback. He just did that today at 4:00 P. M.

MR. WEYANT: By asking us for an interpretation, you are disagreeing with what the Building Inspector has said as far as his interpretation of the Code. You would like an independent review by this Board of that section of the Code involving obstruction. So far so good?

MR. MALARKEY: Yes. I made a couple of that one section. I am on limited income, so I can't afford more copies.

MR. WEYANT: There is a copy machine downstairs. We will need a copy of anything you want to hand us.

MR. MALARKEY: I have a copy of the site plan. It is not the best quality. I had asked Mr. Hager to bring the original site plan.

MR. HAGER: It is on the table.

MR. WEYANT: Am I right, Alyse, that we would go through a Public Hearing, and all the requirements of a Public Hearing?

MS. TERHUNE: Yes, that is correct. The only other thing that I would add is that if there are issues with the site plan. For example, if it doesn't comply with the site plan, typically you would not go to the Zoning Board of Appeals. That would be something to discuss with the Building Department.

MR. MALARKEY: I have a letter here that says I should not be going to the Building Department; I should go the Zoning Board of Appeals.

MS. TERHUNE: For an interpretation, yes, not if you are concerned that the applicant is not following the site plan that was approved.

MR. MALARKEY: Everyone is pointing me to another direction. I'm sorry, if someone would tell me where to go. Someone said the Planning Board and other people say the Town Board, Building Inspector, and the Supervisor himself.

MS. TERHUNE: The authority of the Zoning Board of Appeals is to interpret or vary the Code not to enforce site plan adherence. That is just a general rule.

MR. MALARKEY: So who would enforce site plan.

MS. TERHUNE: The Building Department is charged with enforcing the approved site plan. I am sure Mr. Hager can direct you to the right Board.

MR. MALARKEY: Are you telling me to go to him?

MS. TERHUNE: No, I am telling you generally that this Board is only charged and authorized with an interpretation of the Code which is what you are asking for or a variance from the Code which is not what you are asking for. If you have any other issues which you seem to have alluded to, that you have other issues with the site plan, to the extent that it deals with an interpretation of the Code, you are correct to be here. If it deals with something else, this Board will not be able to help you.

MR. MALARKEY: Who would enforce?

MS. TERHUNE: I don't know what your issues are. All I am saying is that if you are concerned about adherence to the site plan that is not an issue that comes before this Board. They did not approve the site plan, so they cannot enforce it.

MR. MALARKEY: Okay, once again, where would I go to for enforcement? He ripped out everything along my yard there which it says clearly “trees and brush to remain. He put up a stone retaining wall without any engineering of what is going on there.

MS. TERHUNE: That would be something that you would see John Hager about, or Larry.

MR. HAGER: The way I see it, it is related. His question about the pole base and his question about the retaining wall are similar in that neither requires a building permit. His question is whether or not the Zoning Code stating “unobstructed to sky” allows for those types of structures.

MR. MALARKEY: The pole base needs a variance. It has to be unobstructed. A fire truck would have to get through. That is why they came up with this 10 foot setback. One is a fire break for houses so that all house are not close together and if one burns they all burn. Also for access and egress for fire equipment and other emergency vehicles.

MS. TERHUNE: So, John, what you are saying, is that to the extent that anything is done on that property?

MR. HAGER: I would give Mr. Malarkey a similar answer, and he may disagree with my answer about the retaining wall. My answer is that type of work does not require a building permit therefore it is not subject to a site plan review. Our Code says you can't have a building permit until you get a site plan review. If there is no building permit required for the work, then there is no site plan required either.

MR. MALARKEY: It defies the site plan. It says trees and bushes remain. There is no berm on the front here. The berm he built for the side is a lot bigger than what is there, and he moved the electrical panel. It is right on the property line. He remedied the light post today. The light post is not on the site plan. I am also here to speak on behalf of Marchese Chevrolet people. He moved my light post, but he did not move theirs, and they wish for theirs to be moved.

MR. HAGER: I would just like the Board to know that the site plan applicant the owner of the property that is being discussed moved whatever he moved today at his option. He was not written an order by this department to move anything. He was made aware that there were some complaints. I think he was aware that this appeal was made, but no demand was made for him to move that. He chose to move it.

MR. MALARKEY: Because he knew when he installed the light posts on the rear of the property, which are on the site plan, those were with the 10 foot setback of both adjoining properties on each side. However, these were done at the zero hour. He called Mr. Hager and said “while I have the machinery here can I put the light posts in on the front.” Light posts which are not on the site plan, light posts which never received a variance. Mr. Hager said “sure.” I would have at least said “stop everything,” let me get in my car and drive down there and say “no those have to be out 10 feet from where you intend to put them, like the ones in the back.”

MS. TERHUNE: So to the extent that you have specific requests that relate to this interpretation, then if you could list them for the ZBA. Then the ZBA will consider that.

MR. WEYANT: I will need those 10 days prior to our next meeting.

MR. MALARKEY: I can have them written up tomorrow.

MR. WEYANT: Fine. If you do, drop them off at Mr. Hager's office.

MR. MALARKEY: I will try to make copies for everyone, too.

MR. WEYANT: We are going to set a Public Hearing date for October 17 for you also. You will have mailing and posting requirements to do on the property and about the property. Mr. Hager will help you out on that. If they are not done properly, we will not be able to have a Public Hearing. The Building Department office will help you as to what you have to do for the State requirement.

MR. MALARKEY: I know how some people find it easy to find the one thing that is not done. I will get on everything. There will not be a "t" that is not crossed.

MR. WEYANT: We will see you on October 17.

MR. MALARKEY: Okay.

MR. HAGER: There is one other point that needs to be made. Mr. Malarkey has been presenting this as though the poles have been installed. The poles have not been installed. The concrete base for the poles has been installed. The poles are not yet installed.

MR. MALARKEY: Which in effect is more or less nine tenths of the pole itself. The concrete stanchion with an electric conduit to it, what do you do slap a metal pole on it and four bolts. It is 90% done. It is tantamount to having a building foundation within 10 feet of your house. It is a permanent fixture, it is permanent structure.

MR. WEYANT: Mr. Malarkey, we will talk this all out at our October meeting.

MR. MALARKEY: Thank you very much for your time. I get aggravated sometimes.

MS. LESLIE PULEO: I am here representing Marchese Chevrolet. It is my understanding; we have a light pole that is just about two feet from the property line, which is kind of in conjunction with his concern. Do I need to go through all the same process that you have just stated, or can we appear at the hearing to voice our concern.

MR. WEYANT: You can certainly appear at the hearing. If your question is the same interpretation that Mr. Malarkey is asking for, I don't think there is a need to do it at the same time. Certainly you can come to the public hearing and let us know the situation.

MS. PULEO: Thank you.

MR. WEYANT: As far as other discussion goes, the Homeland Towers situation is still up in the air. They asked for another continuance. They may come in October or they may not. They are looking for alternative sites that the Planning Board suggested to them and they have not definitively come up with another site yet. That is still up in the air.

I want to note for the record that you have all received from the Comptroller's Office Workplace Violence and Sexual Harassment Training which is going to have to be done by everyone on this Board. Please make yourself available to meet on either of those two dates.

I have nothing else.

**At 7:22 P. M., a motion was made to adjourn the meeting.**

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

Respectfully submitted,

Fran DeWitt  
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is  
Monday, October 17, 2011**