

DRAFT: 2/5/14

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
JANUARY 22, 2014**

A regular meeting of the Zoning Board of Appeals was held in the Town Hall, Highland Falls, New York, on Wednesday, January 22, 2014, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

Tim Doherty, Chairman
Jack Jannarone, Deputy Chairman
Tim Donnery
Ray Devereaux
Tony Galu

Alyse Terhune, Attorney (Jacobowitz & Gubits, LLP)

ALSO PRESENT: Jim Titolo.

MR. DOHERTY: Please rise for the Pledge to the Flag. I will open the meeting of the Consolidated Zoning Board of Appeals of the Town of Highlands. Today's date is January 22 2014. We will start with a Roll Call of Members: Tony Galu, Ray Devereaux, Tim Donnery, Jack Jannarone, Counsel Alyse Terhune, and Recording Secretary, Fran DeWitt.

Next on the Agenda is the Reorganization of the Zoning Board.

A motion was made to appoint Tim Doherty as Chairman of this Board.

Motion: Mr. Donnery Seconded: Mr. Devereaux Approved

A motion was made to appoint Jack Jannarone as Deputy Chairman of this Board.

Motion: Mr. Donnery Seconded: Mr. Devereaux Approved

A motion was made to set the meeting dates for this Board to be the third Monday of each month with the exception of January and February because of holidays. Meetings will be held on the third Tuesday in January and February.

Motion: Mr. Donnery Seconded: Mr. Jannarone Approved

A motion was made to use the News of the Highlands in Highland Falls, and the Times Herald Record in Middletown as the official newspapers for this Board.

Motion: Mr. Devereaux Seconded: Mr. Donnery Approved

MS. TERHUNE: Jacobowitz & Gubits, LLP.

A motion was made to continue the use of the law firm of Jacobowitz & Gubits, LLP to represent this Board.

Motion: Mr. Jannarone Seconded: Mr. Donnery Approved

A motion was made to appoint Fran DeWitt as Recording Secretary for this Board.

Motion: Mr. Jannarone Seconded: Mr. Donnery Approved

MR. DOHERTY: Next is to approve two sets of Minutes: Minutes for January 22, 2013 and June 17, 2013. Are there any comments on them?

A motion was made to adopt the Minutes for January 22, 2013.

Motion: Mr. Doherty Seconded: Mr. Donnery Approved

MR. DOHERTY: The next set of Minutes is for June 17, 2013. I did not see any discrepancies on these at all.

A motion was made to adopt the Minutes for June 17, 2013.

Motion: Mr. Doherty Seconded: Mr. Donnery Approved

MR. DOHERTY: We have Jim Titolo here. He is going to share with us information on the proposed hotel on Route 9W.

MR. TITOLO: I appreciate your time and I appreciate the preliminary review and probably some guidance on some of these issues. (He displayed plans for the Board to review). I also prepared an agenda to try to get through some of this. Included in this package is John Hager's letter which denied the Building Permit. John recommended that I go through that procedure so that I could get to the Zoning Board of Appeals based on the variances that are required.

I would like to provide an introduction. The hotel is the former site of the Pointer's Echo Hotel, at 1610 Route 9W. It is a B-2 Zone on the top parcel which is the level parcel up top, and then extends down to Mearns Avenue into the R-3 Zone. The property is approximately 4.2 acres. Introduction is 120 unit hotel, approximately 98,000 square feet, with a restaurant and conference rooms attached. The project represents a \$17 million jobs our community.

The reason I identified A, B, C, and D on this agenda is because of discussions with John Hager and the Planning Board. They thought that these were the variances that I would need for this project. Based on this letter I think that my D wall height is wrong so I need some guidance from this Board and if no one has any questions up to now, I would like to move into each one of these variances.

MR. DOHERTY: No questions from me, if you would like to proceed.

MR. DONNERY: I do have one. These are all hotel rooms, no kitchens or anything in any of them?

MR. TITOLO: There is a restaurant and kitchen on the ground floor.

MR. DOHERTY I think what Tim is asking is, "are there any efficiency units or just strictly hotel rooms."

MR. TITOLO: All hotel rooms, no efficiency units. The first discussion is building height. It basically identifies the fact that the requirement is a 35 foot maximum height and our maximum height based on the grade across the front, (it drops almost 10 or 12 feet across the front) is 48 feet, worst-case scenario.

MR. DONNERY: Are you calling the front the 9W side or the Mearns Avenue side?

MR. TITOLO: The front is on the 9W side.

MR. DONNERY: So the grade on the Mearns Avenue side?

MR. TITOLO: The grade on Mearns Avenue is basically not applicable because all of the work happens up on the flat part of the slope.

MR. DONNERY: That grade doesn't slope off the back is what I am getting at.

MR. TITOLO: It does slope off the back and we are proposing those retaining walls that support the fill section.

MR. DONNERY: That is past the parking area.

MR. JANNARONE: Here is the retaining wall. Right down below that.

MR. TITOLO: It is about 70 or 75 feet in from Mearns Avenue before that wall.

MR. DONNERY: My main question is the parking lot area is all flat and the building is one level?

MR. TITOLO: Yes.

MR. JANNARONE: Where is the parking lot?

MR. DOHERTY: The numbered spaces.

MR. JANNARONE: This is the building. I was thinking those were the rooms.

MR. DOHERTY: I spoke to John Hager and he told me according to the Code, the height has to be considered from Route 9W.

MR. TITOLO: In fact, if we can, I rushed into this and I apologize. We are looking at the site plan by David Goetz, you can basically identify the four main lots which are three residential lots in the R-3 Zone on Mearns Avenue. The fourth lot which is the Residential Zone is part of the larger lot on top. I don't why it was done like that but that is the way it is on the tax map. For this Board we have recently submitted a consolidation of these lots back into one big lot for tax purposes.

MR. JANNARONE: So you own all four of these parcels.

MR. TITOLO: The development will affect all four lots. This one extends up like this.

MR. DOHERTY: Like an "L" shape.

MR. TITOLO: If we could move on to the next page. You can get a sense of the room layout which is PR101 from Ken's Architecture which shows the basement which is the ground floor and then the first floor with the lobby and then the rooms. PR102 provides a conceptual elevation without details on types of finishes, but it will be a masonry and stucco finish. If it would be helpful, I could spread the plans out on a table.

MR. DONNERY: The whole building is going to be 334 feet long?

MR. DOHERTY: That is what I am getting.

MR. TITOLO: No, that is basement elevation. It is over 400 linear feet from end to end.

MR. DONNERY: Very nice. Complete sprinkler system?

MR. TITOLO: Absolutely, there is a complete sprinkler system with pump and storage.

It is a requirement for any hospitality in the State of New York.

MR. DONNERY: Very good.

MR. TITOLO: If we go back to the building height. I am pretty confident that that is one of the variances that I will have to come before this Board on. The worst-case scenario is 48 feet. That would mean a 13 foot variance. Then B is the B-2 Zone extension into the R-3 Zone for parking area. John makes reference to it on page 2 referencing Code Section 240-8G allows for this Board to approve or disapprove that extension.

MR. DONNERY: You meet the required number of parking spots, I see.

MR. TITOLO: There is a requirement of 160 parking spaces and we provide 170. B is the extension of the B-2 Zone into the R-3 Zone. C, if you look at the small map on the right hand corner, mid page, we identify the fact that the requirement from the R-3 Zone line to the building is 30 feet and we can only achieve a 20 foot setback requirement.

MR. DOHERTY: Jim, that parcel listed next to it listed as O'Dell, is that open land or is that Fatsis' property?

MR. TITOLO: This piece is Frank Lilos' property. This piece is owned by Chase Manhattan Bank right now because 86 Mearns Avenue has been condemned and fallen into disarray.

MR. DONNERY: Getting back to your setback.

MR. TITOLO: The setback from the R-3 Zone line to the building is 20 feet and the requirement is a 30 foot setback. The other issues are related to side yard but we far exceed the requirement there. Then, Mr. Chairman, what I really need some clarification on is the rear wall height. Now, based on John's letter, I think it is a side yard wall height.

MR. DONNERY: Do we have that in our zoning?

MR. TITOLO: John indicates that Section 240-38A requires a maximum wall height of 8 feet in the B-2 Zone. Some of this is in the B-2 Zone; and a 6 foot in the R-3 Zone. As you extend into the southeast corner, which you see those walls are circular walls, are going to be very high.

MR. JANNARONE: So you have a double wall here?

MR. DOHERTY: The first is a guide rail and the rear is the retaining wall.

MR. TITOLO: No, both of them are walls.

MR. DOHERTY: So you are stepping down.

MR. TITOLO: Exactly.

MR. JANNARONE: Let's take the long one first, the real long one, the inside one. What's the height on that?

MR. TITOLO: The worst case scenario on the inside wall is from 16 or 18 feet to probably 4 feet. So, my question to the Board is, "is it the average or is it the worst case scenario that I identify." Let me show you some types of walls.

MR. JANNARONE: So the inside wall/long wall would be anywhere from between 4 and 16 feet high. What about the outside wall?

MR. TITOLO: The outside wall is being laid out right now and I think that condition would be 4 or 5 feet to 12 feet. This is the rear wall which is on the Mearns Avenue side. Apparently, from John's note, the side wall has to be considered also. This side wall goes from 2 feet to about 14 feet.

MR. DOHERTY: Where it begins the turn almost.

MR. TITOLO: Exactly. The condition is exasperated by the fact that Lilos' property drops in a big hole right there.

MR. DOHERTY: Let me ask you this on the rear retaining wall: What do you think the height on that is?

MR. TITOLO: The rear retaining wall/short wall runs from approximately 4 feet to 12 feet.

MR. DOHERTY: Twelve feet would be the far end of the turn towards Frank's property?

MR. TITOLO: Correct. When I present at the next meeting, I will have all of these dimensions down clear. On your summary sheet, if we could go there now, I have a couple questions; the wall height is the main one. I think the lot area minimum square footage, 100,000 square feet. I identified the entire lot area, I hope that is right. This is an informal meeting, but it is 4.2 acres for the entire lot.

MR. DEVEREAUX: That is about 150,000 square feet.

MR. TITOLO: It's 43,560 square feet. It's 170,000 square feet. On B-2 Zone, the percentage of the lot coverage is maximum 50%. We are only covering 10%.

MR. JANNARONE: That's if you include the rest of it is in R-3.

MR. TITOLO: It's in single ownership. We are in the process of consolidating all three lots, and the fact that we are requesting that the B-2 extend into the R-3 Zone. I am not 100% sure how to address that. I could, if this Board wants, these are half acre parcels and I could separate them if that was necessary.

MS. TERHUNE: you are still in two different zones. You say that B-2 is 50%. It looks like it is going to be more than that in the B-2 area, even though you are consolidating into one lot.

MR. TITOLO: The lot coverage is identified as the building coverage, if I am not mistaken.

MS. TERHUNE: So that whole building is still only 50%?

MR. TITOLO: The footprint of the building is less than 20,000 square feet.

MS. TERHUNE: But, if you deduct the three lots in the back, what is the remaining acreage?

MR. TITOLO: If you want me to do it that way, I can. I am still below that 50%. So I will subtract the residential.

MS. TERHUNE: Subtract the R-3, what's left in the B-2, and then give us lot coverage on B-2. That way, if the Board has to grant a variance, it will know that. I guess you can do that. I don't know how you do that. You are not surveying. Ask David to see what he comes back with. In this particular circumstance I don't if you can survey that or not, according to the District Boundary.

MR. TITOLO: I will just have to ballpark it and get it close.

MR. DONNERY: By looking at the numbers, he is still under the requirement with the building off the one lot.

MS. TERHUNE: But when you say lot area, you are saying percentage of the total consolidated lots, or are you saying 50%?

MR. TITOLO: The required zone is 50% on the B-2 Zone. I did not know if I should take the entire lot or a portion of the lot, especially considering the fact that the lot that we are on, that last lot which is the southern lot, extends down to Mearns Avenue.

MR. DONNERY: But your building is not on that lot, your parking lot is.

MR. TITOLO: Correct.

MR. JANNARONE: As long as he meets the requirement without the other lots.

MS. TERHUNE: If you do that, it would be fine.

MR. TITOLO: Good. If we continue down your list, the building height we know about, the 13 foot variance requirement. Street frontage: The lot width is 500+ feet; I don't think that comes into consideration. I could not find in the Code Book any requirement for street frontage.

MR. DONNERY: 75 feet, if I remember right.

MS. TERHUNE: In B-2?

MR. JANNARONE: In B-2

MR. DONNERY: We ran across that many moons ago. Ray will remember.

MS. TERHUNE: Yes, 75 feet.

MR. TITOLO: I have identified this lot width as 584. That should go into the proposed construction. Actually, it is in both, because it is the entire lot.

MS. TERHUNE: It doesn't really affect the proposed construction.

MR. TITOLO: Yes.

MR. DONNERY: Your frontage: I think what they are asking you for on that Jim would be your opening to the highway. You have to maintain 75 feet as a total between your entrance and exit.

MR. DONNERY: Now you have 52 feet with the 26 foot wide entrance.

MS. TERHUNE: The street frontage means how much property you have on the street. Here he has 584. The whole lot fronts the street.

MR. TITOLO: This consideration is for the non-conforming 60 foot lot in the village or something to that extent, perhaps. I couldn't find the requirement for street frontage.

MR. DONNERY: We had people breaking lots up and putting in driveway for the road and saying that was the front of the lot. That is where that 75 feet would come in for variances purposes. We had it a couple times in Fort Montgomery when they broke up the lots behind the Holiday Inn. You more than meet what we are talking about here.

MR. TITOLO:

- The front yard setback is 50 feet. The proposed construction is 50 feet back.
- Side yard setback on one side is a 20 foot requirement from the adjoining property line, we have 58.
- Total side yard is 40 feet, we have 117 feet.
- The next line item is abutting a side street or corner lot, not applicable here.
- Rear yard setback is the 30 foot requirement. Our construction is 20.1, so 9.9 foot from the zone line.
- Residential floor area, not applicable.
- Parking requirement is 160, we have 170.
- Signage, I think we are going to maintain the requirements of the Zoning Code.

MR. JANNARONE: Just to be clear, hotels are permitted in the village?

MS. TERHUNE: It is permitted in the B -2.

MR. DONNERY: Very good.

MR. DEVEREAUX: Jim, where is the line/crest of the property where it is level and then goes down to Mearns Avenue?

MR. TITOLO: I will show you that on a future drawing, but, I would say that if you are 10- 20 feet west of this B-2 Zone, that is where that crest is.

MR. DEVEREAUX: So your parking area is going to be on the lower level then?

MR. TITOLO: That is correct. This entire area is a fill section.

MR. JANNARONE: Let's rephrase that. There is the drop off to Mearns and then because we are going up 9W, and there is a little knob up there, isn't there, going northbound the land is rising, isn't it?

MR. TITOLO: Yes. Basically, from here to here is about 14-16 feet changing grade.

MR. JANNARONE: But that is all continuous?

MR. TITOLO: Yes, but the building remains flat.

MR. JANNARONE: Then where is the drop off in the back?

MR. TITOLO: You mean the existing drop off? I would have to say if you look at this line, it probably extends plus or minus 10 feet from this property line.

MR. JANNARONE: Down to Mearns?

MR. TITOLO: Correct. That is exactly why we are putting in these retaining walls to level out that area.

MR. DEVEREAUX: So you will level that?

MR. TITOLO: Absolutely. When we meet again, I will have that tree line in so you can get a better sense.

MR. DONNERY: Are you bringing in fill or are you going to take the north side and move it down to the south side?

MR. TITOLO: That is exactly what I hope to do, Tim.

MR. JANNARONE: You just said tree line?

MR. DOHERTY: On the topographical.

MR. TITOLO: There is an existing tree line and we are going to show it so you will get a sense. So basically, I just want to clarify how to identify these wall heights, and if we can take it one by one. This is basically considered the back side or Mearns Avenue side. My question is: "Do I identify the worst case scenario or is the average wall height that I am requesting a variance on."

MS. TERHUNE: You want the highest, worst case. So if it is 16 feet, it needs to be 8. You need an 8 foot variance. Then the Board would consider that that's maybe only applicable to a portion of the wall. So that would be something the Board would consider when they deliberate as opposed to the whole wall needs an 8 foot variance.

MR. DOHERTY: So we could say that, once it starts scaling up to where it is above 8 foot, that is what we would be ruling on?

MS. TERHUNE: Basically, you would say if it is going from 4 to 16 feet, you would give him a variance for the 16 feet because he is going to need a variance for the 16 feet.

MR. TITOLO: I need clarification from Counsel, I think. This is John's letter. He identified the fact the wall height in the B-2 Zone is 8 feet, and 6 feet in the R-3 Zone. When we had a discussion with the Planning Board, he identified a fence height of 6 feet and a wall height that was two times that. I have that in my notes. Maybe I misunderstood him.

MS. TERHUNE: These are both walls, right?

MR. TITOLO: These are both walls, they are not fences. He said that the maximum fence height was 6 feet and maybe I wrote it wrong.

MS. TERHUNE: So he is saying these numbers are walls?

MR. TITOLO: Yes, and it is contrary to my notes from the meeting.

MS. TERHUNE: Section 240-38 is permits fences and walls. It would apply to either fences or walls.

MR. TITOLO: Does it actually distinguish between and fence or a wall?

MS. TERHUNE: No, everything is fence or wall. The actual height of a fence or wall. They are interchangeable.

MR. DONNERY: Would there be any difference in a wall and a retaining wall?

MS. TERHUNE: No. "Except that where there is a retaining wall, the height shall be measured from the average..." There is a different measurement applied to a retaining wall. "The height shall be measured from the average of the ground levels at each side of the retaining wall and further excepting that any fence or wall on the uphill side of such retaining wall may be at least 4 feet high notwithstanding the provisions of the Schedule contained in Subsection A."

MR. JANNARONE: The fence "...shall be at least," in other words so you don't fall over the wall.

MS. TERHUNE: Yes.

MR. DONNERY: He is building a retaining wall; it is not a wall that someone is building that needs to build walls instead of fences.

MR. TITOLO: That would be a 4 foot height for that specific purpose.

MR. DONNERY: How does that read with the average height?

MS. TERHUNE: "When you are measuring the retaining wall, the height shall be measured from the average of the ground levels at each side of the retaining wall."

MR. DONNERY: Or is it an average from the north end of the wall to the sound end of the wall?

MS. TERHUNE: No.

MR. JANNARONE: If you cut into the slope, you are going to have higher land on one side than the other.

MR. TITOLO: Just for clarification, it would be at the worst case scenario?

MS. TERHUNE: Yes. Then it says “and further excepting that any fence or wall on the uphill side of such retaining wall may be at least 4 feet high, notwithstanding anything else. It says “...may be at least 4 feet high” doesn’t say “has to be.”

MR. JANNARONE: You don’t want anybody falling over a 16 foot wall, make it 4 feet at least.

MS. TERHUNE: That is one of these things where you can, as the Zoning Board...

MR. DOHERTY: Put a caveat there.

MS. TERHUNE: It has to be at least 4 feet high because we don’t want people falling over it.

MR. TITOLO: Absolutely, I am sure the development team would not want that either.

MS. TERHUNE: Average at the worst case.

MR. DONNERY: That still brings your average way down then, because you are going on either side of the wall.

MR. DOHERTY: I think so.

MS. TERHUNE: Yes, it does.

MR. DONNERY: Sixteen feet here but you are only going to have a 2 foot drop on this side so now you break it down and it is down to 4 feet.

MR. TITOLO: Could you say that again, please.

MS. TERHUNE: (Did an illustration).

MR. DOHERTY: This is Mearns Avenue side – it could be 16 feet.

MS. TERHUNE: It could be 16 feet.

MR. TITOLO: But it is the average.

MR. DONNERY: It is 16 foot here and then a 2 foot drop and the rest is all going to be fill.

MR. JANNARONE: If you cut into the hill, then you are going to have a different.

MR. TITOLO: So it is the height of the wall, basically, nothing to do with the average.

MS. TERHUNE: No, it is the average.

MR. DOHERTY: Your wall is going against the grade, you are 3 feet above the grad here, and then you are 16 up from here. They want the average of those 2.

MR. JANNARONE: (Did an illustration).

MS. TERHUNE: It is the average of the ground level. I think that you measure it and then you average it. It is not well written.

MR. JANNARONE: If this is a steep slope, that is going to be a significant number, but if it's a shallow slope, there is not going to be much difference.

MR. DONNERY: (Did an illustration).

MR. JANNARONE: The second wall - they are both the same because this is now level rather than having a slope.

MR. DONNERY: Well, no.

MR. DOHERTY: Because you are still stepping up on the second wall. Then that is the parking area up there.

MR. TITOLO: And this is that fence that I have to put in there.

MR. JANNARONE: Is it the ground level after fill or before fill? You are using after fill.

MR. DONNERY: Ground level. We had that with Tonneson down there, when his building was too high and they brought in 3 feet of dirt around it and now there is no more height requirement.

MR. JANNARONE: I know, but as far as what it means in this specifically, as measured from the average of ground levels at each side of the retaining wall. Is that prior to fill or after fill.

MS. TERHUNE: It is after.

MR. DEVEREAUX: Should we not be consulting with the Village engineer?

MR. JANNARONE: Because if you fill it right up to the top, you have cut the height of the wall in half on paper. I don't think that is the intent.

MS. TERHUNE: Why don't we do this, since there is a question, direct John to consult with the Village engineer to give us a clear interpretation of this provision and then Mr. Titolo will have to give them some idea of what those walls are going to be so you know what to ask for.

MR. DONNERY: I think Ms. Terhune should be involved in that also so it can be put into a legal term when they are done.

MS. TERHUNE: I will. I think that John needs to clarify his interpretation for you. I think what you are asking is that he discuss it with the Village Engineer so that we get a clear sense from an engineering and an interpretation perspective. If that is not clear, then the Applicant can ask you to interpret John's interpretation. What is going to happen is John is going to clarify the interpretation and then he is going to know how to measure his walls, then he will know how much of a variance he needs.

MR. DEVEREAUX: We all need to look at the property, as well, I think.

MR. TITOLO: You are more than welcome at any time. Call if you need me there.

On my wall heights, should I ask John for further clarification of this and copy everybody?

MS. TERHUNE: I think that the Chairman should also call John and say "That this is not very clear, and the Board would like you to clarify the measurement of the retaining wall, and is it before or after fill?"

MR. TITOLO: We had this when I was on the Planning Board and it was after the construction.

MS. TERHUNE: That makes most sense.

MR. TITOLO: So I will address lot area, and the wall height I will wait for further clarification.

MR. JANNARONE: Out of curiosity, you identified the top of the building, where will it be visible from down below you? You know that people are going to come in and say "am I'm going to look up and see this building up there. Can you identify?"

MR. TITOLO: I can ask our engineer to do a section through it. We are not disturbing much of that hillside at all. That will be forever green. That is

identified as residential lots. Nobody can ever build on those lots. All that tree line stays. I will try to do that.

MR. JANNARONE: People are going to ask “will I be able to see this from where I live?”

MR. TITOLO: From Mearns Avenue.

MR. DONNERY: You will have people from the experience of the Holiday Inn that are going to ask “if this is going to put a shadow on their property,” which I don’t think so.

MR. TITOLO: I think the mountain behind us puts more of a shadow.

MR. JANNARONE: Will they be able to see it though? They will be concerned.

MR. DOHERTY: That’s their right.

MR. DONNERY: If you remember, that is what people were saying. Their engineer had it all laid out for spring, summer, and fall. The shadow of this building will never leave the property. I think it will be same here will never leave your property.

MR. DOHERTY: The lot itself?

MR. DONNERY: Right.

MR. JANNARONE: People will be able to see it from further down. Maybe or maybe not, I don’t know.

MR. DONNERY: Naturally, it’s going to be massive up there. It is going to be a 500 foot structure with 30 foot of wall on it.

MR. DOHERTY: I think if you are down at the park you will be able to see it. Excuse me, but I think you are expressing the folks of the people on Mearns Avenue and whether or not they will be staring at the back of this building.

MR. JANNARONE: In particular.

MR. DOHERTY: That’s why we have the Public Hearing for them to come and express their views.

MR. DEVEREAUX: Then maybe whatever the expected height is going to be, throw it up and put a flag on it and then people can get an appreciation.

MR. DOHERTY: They did that with the cell tower remember that, they stuck a weather balloon on it.

MR. TITOLO: Going back to the agenda, if we can. So I have the discussion and the Board has identified some things that I should address. Possible other considerations? Is there anything that comes out to you with other considerations? John, the Building Inspector is very concerned that you might find something that none of us found. So I have that question. Then, the next meeting is February 18, 2014. The March meeting will be March 17, 2014.

Can we go back to this wall issue with this colored drawing? On the southern most piece of the lot, which is towards Lilos' property, the majority of that wall is in the B-2 Zone. That retaining wall runs from approximately 4 feet to 12 feet roughly, in the B-2 Zone. Does this Board want me to identify the requirements in each of the Zones for each of those pieces of wall?

MS. TERHUNE: Yes. Is there a portion of that that runs through to the R-3?

MR. TITOLO: Yes.

MS. TERHUNE: It is a little bit tricky with these walls because you have to look at each Zoning District and the requirements. You may need multiple variances for those walls, depending on which zone it falls in. Is the retaining wall on the northern end is in the B-2 Zone and a little tiny piece on the corner. I don't know that you would worry about that it is so miniscule, how we would even measure that.

MR. TITOLO: The 8 foot wall in the B-2 Zone on the north end, inside the variance, I don't identify, correct?

MR. DOHERTY: You're on the north end, Jim?

MR. TITOLO: Yes.

MS. TERHUNE: If it is not going to be any taller, then it is not going to be your worst case. Either side is what you are going to look at, whatever is worst case.

MR. TITOLO: Sorry about that, just for clarification. So for the next meeting the requirements are the application and the EAF.

MS. TERHUNE: I think you can use the same one that you used for the Planning Board.

MR. JANNARONE: Just so you don't get hit at the next meeting, in John's letter #3, it says additionally, Section 240-39A requires a minimum 30 foot transitional yard across district boundary lines. What is that?

MR. TITOLO: That is why I identified the 30 foot setback, instead of 30 foot setback, we only have a 20 foot setback. I am pretty sure.

MS. TERHUNE: Well, it is slightly different 240-39A. I think he is saying that in addition to the setback, you are going to need a variance from 240-39A.

MR. JANNARONE What does 240-39A say?

MS. TERHUNE: (Read 240-39A). You have to have a transitional yard with nothing in it of 30 feet between the residential and the non-residential. You need a variance for that. First of all you are asking for an extension for the parking in the R-3 Zone, so you will need a 30 foot variance there from the transition. You need a variance from the setback and then you need a variance from the transition.

MR. TITOLO: Is it simply 30 feet or is it 30 plus 30 feet?

MR. DONNERY: No, a total of 30 feet.

MS. TERHUNE The problem is that the general purpose for these transitional yards and screening is, in fact, to provide a buffer. Here, even though you are not extending the building, you are extending the parking for commercial use.

MR. TITOLO: The buffer would be to the adjoining property owner who theoretically would be on Mearns Avenue not in the middle of our lot.

MS. TERHUNE: That is correct. So I think you need to ask for the variance but then the Board would consider that, in fact, you have consolidated the lots, and there is really nobody back there.

MR. DOHERTY: A moot point, so to speak.

MR. JANNARONE: He has to ask for the variance. But if you approve him going into R-3 in the first place, it is logical she is saying that you have to approve the variance for the transitional yard. He does have it in reality.

MR. TITOLO: 75 or 80 feet from Mearns Avenue.

MR. DOHERTY: To that lower retaining wall.

MR. TITOLO: It is probably 80 or 90 feet to the actual parking lot.

MR. DOHERTY: Something else to consider.

MR. JANNARONE: You just don't want to come up short by not asking for it.

MR. DOHERTY: That's true.

MS. TERHUNE: Absolutely.

MR. TITOLO: I appreciate everyone's time, sorry to drag everyone out on a 7 degree day. I will formally submit to John.

MR. DOHERTY: Actually, I will call him tomorrow. If you have any questions, if you want to meet with him in the afternoon, we can consider what has to be done.

MR. TITOLO: Thank you.

MR. DOHERTY: Any other discussion from anyone? I have one: Is everyone receptive to notification of meetings via E-Mail or do you prefer telephone calls?

MR. DONNERY: Telephone calls; I don't do E-mails that often.

MR. DOHERTY: I will put a sheet together for next timeout for everyone to put their E-mails on. Like to send it out on Friday, but I will make the calls as well.

MR. JANNARONE: Some people need a telephone call.

MR. DEVEREAUX: We can do that right now. E-Mails and Telephone Nos.

MR. DOHERTY: Also, Tony asked me to find the terms for each Board Member.

MR. DONNERY: It is in the Minutes we just approved. Tony Galu – 2014, Tim Donnery – 2018, Ray Devereaux – 2017, Tim Doherty – 2015, Jack Jannarone -

At 8:00 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
Tuesday, February 18, 2014**