

APPROVED: 9/15/14

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
JULY 21, 2014**

A regular meeting of the Zoning Board of Appeals was held in the Town Hall, Highland Falls, New York, on Monday, July 21, 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: Ed Dunn, Daphne Dunn, Jim Modlin, Jim Leo, and Liz Pastore (arrived at 7:01 P. M.).

MR. DOHERTY: Thank you all. I will formally open the Town of Highlands Zoning Board of Appeals Meeting for July 21, 2014. Roll Call: Tony Galu, Ray Devereaux, Tim Donnery, Jack Jannarone, and Tim Doherty. We need to approve the Minutes for March 17, 2014. Are there any comments or questions for these minutes?

MR. DONNERY: No, I have no comments or questions.

A motion was made to adopt the Minutes for March 17, 2014.

Motion: Mr. Doherty Seconded: Mr. Jannarone Approved

MR. DOHERTY: Next we have the Minutes for June 18, 2014.

A motion was made to adopt the Minutes for June 18, 2014.

Motion: Mr. Donnery Seconded: Mr. Devereaux Approved

**James and Cindy Modlin, 30 Michel Road, Highland Falls, NY,
Accessory Detached Garage, (Section 104, Block 6, Lot 9).**

At 7:04 P. M., the Public Hearing was opened.

MR. DOHERTY: Mr. Modlin, please come up. Is it just you this evening?

MR. MODLIN: Yes, I was expecting Liz Pastore; she is my Contractor. I am concerned that something might have happened.

MR. DOHERTY: Ms. Pastore arrived at 7:01 P. M. Please come up. We have before us the application for 30 Michel Road, Highland Falls. Mr. James Modlin is the actual owner of the property and Liz Pastore is the Contractor. Would you state your names and addresses for the record?

MR. MODLIN: James Modlin, 30 Michel Road, Highland Fall, NY.

MS. PASTORE: Liz Pastore, Prestige Building, 321 South William Street, Newburgh, NY.

MR. DOHERTY: Do you have the Affidavit of Mailing and Affidavit of Posting as well?

MR. MODLIN: This is the posting and this is the mailing. I asked for Return Receipts, but have not gotten anything back from the railroad.

MR. DOHERTY: I have a copy of the notice from the Times Herald Record as well. You will be speaking for this application? I need to swear you both in. Do you swear that the information provided herein to be accurate and truthful to the best of your knowledge?

MR. MODLIN: Yes.

MS. PASTORE: Yes.

MR. DOHERTY: Let's go over this application once again and the particular variances that we are going to be discussing this evening. Would you go over what you proposed to do?

MS. PASTORE: We are proposing to put a single car garage in the location where a prior green house was many years ago, from what I understand. Since we were told that it is now the front of the house instead of the rear of the house, we need a front yard variance and we are trying to push it back to the lot line so that it is 10 feet from the one side lot line and my understanding from the rear lot line as well.

MR. DOHERTY: You also have an Accessory Building in the front yard?

MS. PASTORE: Yes, front yard.

MS. TERHUNE: So this is a correct representation of where it is going to go?

MS. PASTORE: Correct.

MR. DOHERTY: There were no amendments to this?

MS. PASTORE: No. At the last discussion we were thinking of making it larger, but we are keeping it the same size.

MR. MODLIN: We are keeping it like it was last time.

The Board and Applicant reviewed the Site Plans.

MR. DOHERTY: We will discuss all the variances. The first one is the front yard setback. The Zoning requirements are 45 feet. The existing conditions are 53.9 feet, and the proposed construction is 10 feet. You are looking for a variance of 35 feet. Is that correct?

MR. JANNARONE: Is that this 10 feet right here? (A review of the plans).

MR. MODLIN: Yes.

MR. DOHERTY: Next we have the side yard setback. The Zoning requirements are 20 feet. The existing conditions are 22.4 feet, and the proposed construction is 10 feet. The variance required for that is 10 feet. Is that math correct?

MS. TERHUNE: Yes.

MS. PASTORE: What we have is there is a neighbor here and this is all wooded property so we are trying to push it back away from the neighbors as much as possible.

MR. DOHERTY: That would be the Leos, correct?

MS. PASTORE: Yes.

MR. DOHERTY: For both side yards, the setbacks, the Zoning requirement is 40 feet. Existing condition is 43.9 feet. Proposed construction is 31.5 feet. You are looking for a variance of 8.5 feet. That is the total for both side yards. The last variance that you are requesting is....

MS. PASTORE: Because it is in the front yard not the rear yard?

MR. DOHERTY: That is correct. Section 240.30A restricts Accessory Buildings in the front and side yards. For your proposed construction Accessory in the front of yard, a variance is required for that as well.

MR. JANNARONE: It is in the front yard, but it looks like it is in the side yard?

MS. PASTORE: Correct. You saw the house. It has a big front porch on it. That was just the enclosed back porch. But we are being told that this river view is now the back yard and this is the front.

MR. DOHERTY: Is everyone clear on that, what direction we are looking on the house?

MS. TERHUNE: What did Mr. Devereaux ask?

MR. DOHERTY: Ray said he was clear on that, but does not see how the numbers add up.

MR. DOHERTY: As a total?

MR. DEVEREAUX: Let's go down to the total for both side yards, 40 feet. 31.5 and 8.5 feet is 40 feet, no problem. Existing conditions is 43.9 feet. Mathematically, it doesn't seem to jive. Similarly, on the side yard, existing 22.4, proposed 10, 10, 20.

MS. TERHUNE: The existing conditions, I think, are from the house. That is how John looks at this. So he is looking at the existing conditions: There is a building 22.4 feet from the side yard, now they want a building 10 feet.

MR. DOHERTY: Would anyone from the public like to comment on this application?

Members of the Public reviewed the Site Plans.

MS. PASTORE: Looking at the plans, this is the existing house. We are proposing to push this back closer to this lot line so that parking comes along the property and not close to the house trying to push back away from this property.

MR. JIM LEO, 36 Webb Lane, Highland Falls: The Zoning requirements are?

MS. PASTORE: The Zoning we are about to ask for is because that even though this is the front of the house, it is considered that is the front of the house because that is the closest road. The Zoning wants a 20 foot and a 20 foot here, so we are pushing it back another 10 feet. As you know, this is all land here so we are trying to push it back towards the land more than towards the property houses here. So we are asking for a variance to push it back to 10 feet and a variance to push it back to 10 feet here. So it is only a 10 foot here. This requires two variances and a front yard variance. Here is the structure.

MR. LEO: Just the one story?

MS. PASTORE: Just the one story and the entrance would face here. So they would come down this road here and park in the garage right here.

MR. LEO: It is not a road.

MS. PASTORE: Easement. Then they would pull into the driveway and park the cars here instead of along here, which has been happening.

MR. LEO: You still can't get that close to this property line.

MS. PASTORE: We are pushing it back away from this property.

MR. LEO: Now you are encroaching on this property.

MS. PASTORE: Correct, that is why we are asking for a variance.

MR. LEO: Well, I don't own this property. I can't comment on that. I can appreciate you getting away from my property.

MR. MODLIN: We met with them Saturday and they have no problems.

MR. LEO: They are not here to say that to the Zoning Board, though.

MR. MODLIN: They told me, and I am under oath.

MR. DOHERTY: They were given the opportunity to appear. It was posted and listed in the papers, as well. They have been given a mailing.

MR. JANNARONE: By default, they are saying okay.

MR. MODLIN: Well, they told me, and I am under oath.

MR. LEO: I know why you don't want to put it down in this yard, because it will spoil your view.

MS. PASTORE: No, there is a big rock.

MR. LEO: You can do things with rock. Appreciate this used to be a beautiful Rose-of-Sharon site for me to stare out at. Now I have a barren row of dumpsters, and port-o-potties for months. Now you are asking me to stare at a garage door. I am having difficulty with it, that's all. But I appreciate you keeping it away from my front door.

MS. PASTORE: I understand.

MRS. DAPHNE DUNN, 4 Revolutionary Road, Highland Falls: I think once it is finished and they put some greenery around it and landscape it. I am looking down by my house, they did not want to go this route and they put up an L-shaped shed and they raised the roof. In the old Higgins house, go look at that.

MR. DONNERY: I was hoping that Jim would be here. I don't think that is legal.

MRS. DUNN: They are calling it a condo. But this looks nice.

MR. LEO: Cindy and Jim said they are going to landscape everything. Jim described to me it would be a one car and room for a snow blower inside. I don't object.

MRS. DUNN: I don't have any problem.

MR. LEO: I see more construction vehicles blocking my driveway. It should have been finished months ago, I think.

MRS. DUNN: That should be finished soon.

MR. DOHERTY: The point of this meeting is to allow them to either aye or nay on this application. If it is approved, then they move along.

MR. LEO: Well, I don't object. It wasn't a green house. It was a shed that Auggie built with storm windows and stuff.

MS. PASTORE: We have never seen it, we were just told about it.

MR. LEO: A tree crushed it before you could.

MRS. DUNN: My father had one just like it, made out of storm windows.

MR. LEO: What is the height of that building?

MR. DOHERTY: Any other comments?

MR. MODLIN: It is a standard one care garage 20 foot by 20 foot footprint. There will not be anything above it. There will be trusses above. The reason for the 20 foot is so that I have room for a lawn mower and snow blower.

MR. DUNN: It will be about 15 feet high.

MR. DOHERTY: That sounds about right.

MR. MODLIN: It is going to look like the house as it is now; same type of siding; and same type of roof. Hopefully, an improvement over what the view has been over the last several years.

MS. PASTORE: Called associate for height.

MRS. DUNN: Are you putting electric in it?

MR. MODLIN: Yes.

MS. TERHUNE: You did a lot of work on the house, didn't you? When was it built?

MR. MODLIN: Yes. 1860's. It has been difficult. The title itself is back to the early 1900's. But after that it gets murky.

MS. PASTORE: It is a little over 14 feet. I will make sure to correct that on the final application.

MR. DOHERTY: Any other comments?

A motion was made to Close the Public Hearing at 7:22 P. M.

Motion: Mr. Devereaux Seconded: Mr. Jannarone Approved

MR. DOHERTY: Gentlemen, any discussion on this application, questions or comments?

MR. JANNARONE: Why don't we go down each of the items on the check list? Do we have to do each variance?

MS. TERHUNE: No, I don't think you have to do each variance. From now on, when we have something like this, we can put it all in one, unless there is an issue with one.

MR. DOHERTY: This is an Area Variance: Balance Test.

- #1 Whether benefit can be achieved by other means feasible to applicant.

MR. JANNARONE: Yes, he could move it farther forward towards his neighbors, which he is trying not to do.

MR. DOHERTY: He is trying to be peaceable about it.

MS. PASTORE: That is the whole point they have been very upset during the whole process of renovation.

MR. JANNARONE: So I think in that regard they have tried to minimize the impact on the neighbors.

MS. PASTORE: We will have to put some Rose of Sharon bushes in.

MR. DOHERTY: Next.

- #2 Undesirable change in neighborhood character or to nearby properties.

MR. DONNERY: That would be an improvement.

MR. DEVEREAUX: Desirable improvement.

MR. DOHERTY: A desirable improvement, I think we can all agree on that.

MR. DOHERTY: Next.

- #3 Whether request is substantial.

MR. JANNARONE: Again, the reason that they are moving it back is to accommodate the neighbor and the one behind doesn't care. So it makes sense to me.

MS. PASTORE: The situation with that other neighbor is that he is up on that hill.

MR. MODLIN: That is what we were talking about. The Eristoffs came from up there down and it was Mrs. Eristoff that said they were up looking around and they cannot really see because it is so overgrown and it is quite a drop. They were glad to see that someone is doing something with the house.

MR DOHERTY: Next

- #4 Whether request will have adverse physical or environmental effects.

MR. DOHERTY: I can't see that.

Next

- #5 Whether alleged difficulty is self-created.

MR. JANNARONE: I don't have a problem with that.

MR. DEVEREAUX: Do you want a motion?

A motion was made to grant the Area Variance for this property.

Motion: Mr. Devereaux Seconded: Mr. Donnery Approved with a Roll Call Vote:

| | | |
|----------------------|---|------------|
| Mr. Galu | - | Aye |
| Mr. Devereaux | - | Aye |
| Mr. Donnery | - | Aye |
| Mr. Jannarone | - | Aye |
| Mr. Doherty | - | Aye |

MR. DOHERTY: I will contact Bruce in the Building Department. I will leave a message in the morning.

MS. TERHUNE: I will draft a written resolution so there is a written document on file.

MS. PASTORE: They were the only people we were worried about. They seemed to be okay, which is nice.

MR. DOHERTY: That is all part of the package. Good luck to you, and good luck on the project.

MS. PASTORE: We are nearing the end. Thank you.

MR. MODLIN: Thank you very much, I appreciate it.

MR. DOHERTY: There is one other thing that has been brought to my attention. A request of the Board from Jim Titolo in regards to the **Old Guard** application. He feels as though the Planning Board will be closing SEQRA this coming Thursday and has requested we hold our August meeting on August 4, 2014, a week from this Monday, rather than waiting for the third Monday in August. I told him I could not give him an answer but that I would approach the Board with that and see what the general consequences is on that.

MR. DONNERY: I have no problem with that.

MR. DEVEREAUX: I have no problem.

MR. GALU: I will be going away August 5. I could attend August 4.

MR. JANNARONE: They have been delayed an awfully long time. This would be in lieu of the August 18 meeting?

MR. DOHERTY: Yes.

MR. DEVEREAUX: It is interesting, all eyes on the Planning Board, if we don't give them the 13 feet, they can't have the 4th floor, which will kill the whole project. Just to put it into perspective.

MR. DOHERTY: Yes, I know. That is all part of the process.

MR. JANNARONE: We have already had the Public Hearing, so it doesn't matter?

MS. TERHUNE: You adjourned it. So you would re-open it.

MR. JANNARONE: We would not be stepping on anybody's toes by changing the date because they have already had their chance to comment.

MS. TERHUNE: You don't have to re-notice it or anything, but you would publish that you are having a special meeting and here is the agenda. To re-open the Public Hearing for the Old Guard and what ever else comes before the Board.

MR. DOHERTY: Actually, I think I have to ask them for more money for their escrow account, as well. I think Kelly Blauvelt stated that to me.

MR. DEVEREAUX: The Planning Board did that.

MR. JANNARONE: We got more money from them last time, didn't we?

MR. DOHERTY: Yes, I think it was \$1,000, but there is an equation that they can't have less than a certain percentage. They will get back what is not spent. I will get that information from Kelly and give that information to Jim. If we are all in agreement, and they get their approval on Thursday from SEQRA, we will be having our meeting on Monday, August 4, 2014. I will also check with June Patterson to find out if the room is available. If not, I will let everyone know we would meet in the Library.

MR. DEVEREAUX: If they don't get the approval, then it is in abeyance for another period of time.

MS. TERHUNE: They can close SEQRA. They cannot approve the Site Plan until you give them the variance, if you give them the variance.

MR. DEVEREAUX: So ours is the next step after Thursday.

MS. TERHUNE: Yes, assuming that they close SEQRA on Thursday.

MR. DOHERTY: So assuming they close SEQRA on Thursday, they come to us on August 4 then they go back to the Planning Board.

MS. TERHUNE: Then they go back to the Planning Board. My only caveat is the SEQRA documentation is pretty extensive. A Negative Declaration, if that is what the Planning Board decides, will be fairly lengthy. Because clearly there is going to be impact, so the Planning Board, if they issue a Negative Declaration, will have to explain, in detail, why they did that. They can close SEQRA, but it may take them a while to issue the Negative Declaration.

MR. JANNARONE: Can we act in the interim?

MS. TERHUNE: I think that you really cannot act until you see the Negative Declaration so that you can reasonably issue your own Negative Declaration because you, too, have to say that you are going to issue a Negative Declaration. You can't just completely rely on the Planning Board, especially if you haven't seen it.

MR. DONNERY: But I thought we made them the Lead Agency.

MS. TERHUNE: They are the Lead Agency but you, as an involved agency, must issue your own Negative Declaration. What it is going to say is, "we agree with the Planning Board's Negative Declaration."

MR. JANNARONE: That our variances are not causing any problems.

MS. TERHUNE: Right. You have to at least have seen it. You can't say you agree with it if you haven't seen it.

MR. JANNARONE: Even if they get it approve this week if they don't have the Negative Declaration, we can't meet on August 4, is that what you are saying?

MR. DEVEREAUX: We have to be flexible, I think.

MS. TERHUNE: We need to be flexible because closing it and doing all the documentation to support the fact that it is closed and you have issued a Negative Declaration is going to take a little bit.

MR. JANNARONE: A couple weeks or more, right?

MS. TERHUNE: I don't know. A lot of it is up to the engineering firm because much of it has to do with the engineer who can say, well - here is the impact and here is how it has been mitigated. I can write the Negative Declaration, but I need all that stuff to put in it.

MR. DONNERY: You will be the one writing it?

MS. TERHUNE: I will be writing it but I will be relying on very specific information from the engineers.

MR. DOHERTY: Will we, as the ZBA, be getting a copy of that Negative Declaration?

MS. TERHUNE: You will absolutely get a copy of that Negative Declaration and you will base your review very much and your Negative Declaration on what they say.

MR. DONNERY: So we couldn't just say that based on Counsel's advice, we are going to pass this.

MS. TERHUNE: You could say that, but if the variance is challenged, it could get messy. I don't want to have to defend that. I would rather say that the Planning Board issued a Negative Declaration, it was all documented. The ZBA looked at that documentation, considered whether a height variance would impact what has been done, and decided no for these reasons and issued its own Negative Declaration and then approved. That is really a lot cleaner because you really need to see the Negative Declaration.

MR. JANNARONE: So really, we are on hold for August 4 is what you are saying.

MS. TERHUNE: You can call a special meeting at any time really with notice. I would not advise you to issue a Negative Declaration based on just me saying that they did it.

MR. DEVEREAUX: Someone has to advise the hotel folks that we can't move on this. I am sure they must know this.

MS. TERHUNE: I have explained this to them numerous times.

MR. DOHERTY: I can attest that it has been explained to them a couple of times that everything is based on SEQRA.

MR. JANNARONE: So we have to get a Negative Declaration, do a Negative Declaration, and then vote on the variances.

MS. TERHUNE: You close the Public Hearing; you review the Negative Declaration whenever it is issued by the Planning Board; you consider that and issue your own Negative Declaration. You can say this was issued on this date, you were all provided copies, you all reviewed it in detail, you discussed it at the public meeting, and then you vote to issue a Negative Declaration for these various reasons, and then I write that up. That is exactly what will happen at the Planning Board. I am going to advise the Planning Board that they do a lengthy and detailed Negative Declaration because there has been a lot of public interest in this. I don't want to jeopardize the project or any of my Boards.

MR. DEVEREAUX: The issue has been the height.

MS. TERHUNE: This Board will be the ones they might likely challenge as to why would you vote to approve that variance when you didn't look at it? I just want to make sure you are protected.

MR. DONNERY: We are only going with the height because we went with the fire department. Mr. Tonneson was here to explain in detail that West Point has a ladder truck of 65 feet plus Fort Montgomery has a truck that can go to 65 feet. They did not express any safety concerns with us going up that high. That is what made me feel comfortable.

MS. TERHUNE: That will part of the record and part of your determination and you will want to address visual impact. Because the Planning Board is not issuing a height variance, they will not be as responsible for dealing with the visual impact as you might. There has been a lot presented at the Planning Board about what you can see from Mearns Avenue. That will be in the Planning Board's determination. You can rely specifically on that to find, for example, the height will not impact visually from Mearns Avenue.

MR. JANNARONE: Nobody at our Public Hearing complained about the view from Mearns Avenue. They have at the Planning Board?

MS. TERHUNE: Lots of people have. There have been concerns and they have been addressed, hopefully, but it is the height variance that is going to impact probably more than anything else.

MR. DEVEREAUX: Alyse, something I asked at our meeting to Jimmy Titolo if he couldn't throw balloons up the height of that so to see from Mearns and get some idea as to what it might or might not look like. You're not going to get the full impact, obviously.

MR. JANNARONE: Nobody at our meeting said anything about that.

MS. TERHUNE: It is your responsibility as a Board to consider that fact, specifically during SEQRA because visual impact and community character is part of a SEQRA Review. For example, if you want balloons.....

MR. JANNARONE: Balloons blow in the wind.

MR. DOHERTY: They did the same thing with the cell tower; it's a hefty balloon.

MR. DEVEREAUX: They can project. Someone who is very well spoken and carries weight is Ed Rose. I went to one of the Planning Board Meetings and he spoke very well, but took exception to certain things. He was basically saying that this is an unusual project. To put that size of a building on four acres is most unusual. Normally it would be on God knows what. So that was an issue. I don't know how that is going to carry it all. With us, basically all we have to do is worry about the height. The walls have all been resolved.

MS. TERHUNE: Yes. Your review is limited to what you are being asked to do. For purposes of SEQRA, the only variance is the height. That is the only thing you have to deal with.

MR. JANNARONE: Say that again, as far as SEQRA is concerned; but there are other variances.

MS. TERHUNE: The application to you is the height variance.

MR. DOHERTY: No. We have the walls, use variance, residential and the corner in the back.

MS. TERHUNE: That is not really a variance because in your Code it allows you to do that. It allows the ZBA to allow that to happen so it is not exactly a variance - it is more of an approval that you make. You have been given the authority by the Village Board to allow that to happen

MR. JANNARONE: You are talking about the Use Variance?

MS. TERHUNE: The Use.

MR. JANNARONE: Are the walls still there that we were briefed on several months ago?

MS. TERHUNE: I think the walls are still there. They will have to update the application if that has changed.

MR. JANNARONE: Those are variances, too right?

MR. DOHERTY: The heights of the walls. The question was because it is a stepped up wall. There is one wall and then there is another wall as they are grading up.

MS. TERHUNE: It is a height variance on the walls. They were trying to figure out where you measure them from.

MR. DONNERY: If you measure them from the center, they don't need a variance. That is what we came up with.

MS. TERHUNE: We asked John Hager to tell us how he normally does it and we accepted his interpretation.

MR. DOHERTY: He split the difference from one end to the other.

MS. TERHUNE: I would have taken from the worst case, but he did not do it that way.

MR. DOHERTY: So that particular variance does not apply?

MR. DONNERY: It just needs to be worded properly.

MS. TERHUNE: Yes, it does apply. I don't think they changed the height of the walls, I think they still need the variance, they had to determine how much they needed based on how it was figured by the Building Inspector.

MR. JANNARONE: Those things don't really have environmental impacts, or do they?

MS. TERHUNE: They have visual impact and community character impact. The environmental impact of the wall has to do with storm water and things like that more than anything else.

MR. DEVEREAUX: When you were talking about the Use Variance, is it really a special exception use, which is a Planning Board issue. I don't know what the context was.

MS. TERHUNE: The context was because the lot is bifurcated between B-2 and R-3 between Residential and Commercial. Your Code says that the ZBA can approve pushing the use into the other zone. It can push the Commercial use into part of the Residential use. It is a use, but it is not exactly a variance because it is already allowed in the Code.

MR. DOHERTY: It is just an Aye or a Nay at that point?

MS. TERHUNE: Yes. It's this Board which is quasi-judicial saying that you would allow them to do that.

MR. DONNERY: It is all in the wording.

MR. JANNARONE: So we are on standby for August 4?

MR. DOHERTY: Yes. I will speak with Jim Titolo tomorrow. It all depends on what happens on Thursday and whether or not we get a copy of SEQRA.

MR. JANNARONE: Tony is going away but does anyone else have any conflicts?

MR. DEVEREAUX: Later in the month.

MR. DOHERTY: It would be August 4, 11, or 18. The 18th would be our regularly scheduled date. Tony, when will you be back?

MR. GALU: I will be back on August 13.

MR. DOHERTY: I expressed to him that we would like to accommodate him but we can only do what is allowed for us to do. I understand they want to get things rolling. It will also depend on everyone's availability.

At 7:50 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Jannarone Seconded: Mr. Donnery Approved

Respectfully submitted,

Fran DeWitt, Recording Secretary

**The next scheduled Consolidated Zoning Board of Appeals
meeting is Monday, August 18, 2014**