

(WITH ATTACHMENT A)

APPROVED: 7/20/09

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
JUNE 15, 2009**

A regular meeting of the Zoning Board of Appeals was held in the Court Room, Town Hall, Highland Falls, New York, on Monday, June 15, 2009, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

David Weyant, Chairman
Ray Devereaux
Tim Donnery
Jack Jannarone
Tony Galu

Absent:

Tim Doherty
Jim Miller

Alyse Terhune, Attorney

ALSO PRESENT:

John Hager, Building Inspector, Scott and Katherine Fish, Leslie and Reamy Jansen, Kris and Doug Ridgeway, and John Giordano.

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 for the Town of Highlands meeting of June 15, 2009, and note that we have a quorum and members that are absent are: Mr. Doherty and Mr. Miller. The first matter is to approve the Minutes of May 18, 2009, which have been sent to you. Are there any corrections or changes to the Minutes?

A motion was made to approve the May 18, 2009 Minutes.

Motion: Mr. Devereaux Seconded: Mr. Donnery Approved

MR. WEYANT: The next item which is something different and new to us is the Determination Resolution from last month's meeting regarding our decision on the Hidalgo-Ott Application. I will let Ms. Terhune explain why we are going to act on this and make it part of tonight's minutes.

MS. TERHUNE: As you know gentlemen, this was a fairly complicated and intense review over several months. Many interpretations and determinations were

considered and made by this Board. What I have done is written them in a formal determination that this Board should review. You should all have had a copy of this and, hopefully, had time to look at it. You should state whether you read it and whether it comports with what you believe your determination was at the May meeting. If it does, then we will formally adopt it tonight and file it with the Town Clerk. That will start the clock. The action was taken, but again, it was very complicated. There were a lot of decisions made, a lot of discussion throughout the whole process. If there are any changes, or if there is anything in this determination that you believe is not stated properly or is not how you recall, based on your own references, then we should correct that and do that tonight.

MR. DONNERY: I have read it.

MR. WEYANT: As far as I am concerned, I believe this truly reflects the feelings of our Board at the last meeting and what we voted on.

MR. JANNARONE: My name is misspelled on the last page.

MR. WEYANT: That correction will be made. You want a formal motion?

MS. TERHUNE: Yes.

A motion was made that the Board has read and considered the Formal Determination (Attachment A to these Minutes) and that it complies with the actions that were taken at the May meeting and accurately reflects their actions.

Motion: Mr. Donnery Seconded: Mr. Jannarone Approved

With a Roll Call Vote:	Mr. Galu	Aye
	Mr. Jannarone	Aye
	Mr. Devereaux	Aye
	Mr. Donnery	Aye
	Mr. Weyant	Aye
	Mr. Doherty	Absent
	Mr. Miller	Absent

Krishmatie Ridgeway, 12 Homestead Avenue, Highland Falls, NY, front lot line area variance for a porch addition.

MR. WEYANT: Tonight we are holding a Public Hearing for Mr. Ridgeway for a variance for his porch for his home. Before the Public Hearing, we need to note that we have an Affidavit of Publication posted in the News of the Highlands, and we have a reply from Orange County Planning stating that this matter is of local importance, that they are making no decision and are leaving it in our hands. We have a notarized Affidavit of Posting and a notarized Affidavit of Mailing, as well as receipts of mailing.

Mr. Ridgeway, please hold up your right hand. Do you solemnly swear that the information provided here in to be accurate and true to the best of your ability?

MR. RIDGEWAY: Yes.

At 7:06 P. M., the Public Hearing was opened.

MR. WEYANT: Please review with the Board what you would like to do with your porch.

MR. RIDGEWAY: I do not have the drawings with me.

MR. WEYANT: You gave us those with your application.

MR. RIDGEWAY: I am putting a porch six (6) feet deep across the front of the house which is the southern exposure towards the road. It will then wrap around the westerly side again going the length of the house. That is 43 feet on the street side and 45 feet on the western side. That stipulates in there what the variance will be from the corner of the porch when it is built to the road, and I believe it is nine (9) feet.

MR. WEYANT: Correct, the Building Inspector had noted that in his letter to you that approximately nine feet would be necessary to allow for the addition to be built. Is there anyone in the audience that would like to comment on Mr. Ridgeway's application?

LESLIE KINGSEED: 16 Homestead Avenue. We are neighbors. We are here to offer support. We think it is a great idea. It restores the house to its previous historical look. It will add to the degree of the street and also add to the enhancement of the property values for all of us. We would be impacted because we are right next door to them.

MR. WEYANT: You are, so the porch would actually be closer to your property than the set back?

MS. KINGSEED: Yes, more than anybody else's.

MR. JANNARONE: You are on the west side?

MS. KINGSEED: Yes, on the driveway side.

MR. WEYANT: Any further discussion, gentlemen?

MR. GALU: You are making this a wraparound porch across the front and all the way to the back, right to your property line?

MR. RIDGEWAY: No. Referring to the map, he indicated the area, showing the dimensions of what he is planning to do.

MR. WEYANT: Is there anyone else in the audience that would like to make a statement or talk about Mr. Ridgeway's application? Hearing none, I would like a motion to close the Public Hearing.

At 7:09 P. M., a motion was made to close the Public Hearing.

Motion: Mr. Donnery Seconded: Mr. Devereaux Approved

MR. WEYANT: Any further discussion?

MR. DONNERY: I looked at the property and the layout. It looks like a very nice idea, very beneficial to the community and area.

MR. WEYANT: I agree.

MR. JANNARONE: We have seen the picture that shows the historical and basis for his application. This is an historical property and it will be restored to its original historic look.

A motion was made to approve a variance of approximately nine (9) feet that is necessary for Mr. Ridgeway to complete the addition of his porch.

Motion: Mr. Devereaux Seconded: Mr. Donnery Approved

With a Roll Call Vote:	Mr. Galu	Aye
	Mr. Jannarone	Aye
	Mr. Devereaux	Aye
	Mr. Donnery	Aye
	Mr. Weyant	Aye
	Mr. Doherty	Absent
	Mr. Miller	Absent

MR. WEYANT: Mr. Ridgeway, your application for a variance has been approved. You will receive in the mail from us a formal determination letter stating that. You can work with Mr. Hager on getting your building permit next.

MR. RIDGEWAY: Thank you very much.

MR. WEYANT: You are welcome.

Scott Fish, 130 Mountain Avenue, Highland Falls, NY. Interpretation of Village Zoning Code 240-10 to add an addition to an existing non conforming single family dwelling in R-3 Zone.

MR. WEYANT: Gentlemen, you have an application right now for an interpretation, not a variance, for the Village of Highlands Falls Zoning Code Chapter 240 Section 10, Minimum Front Yard Setback Requirements. I would like Mr. Hager to explain to the Board why we are looking at this as an interpretation from his point of view, and we will go from there.

MR. HAGER: It has to do with the section of the Code that is referred to as Continuance, which we like to call grandfathered, that existing nonconforming structures are allowed to continue.

MR. WEYANT: What page?

MS. TERHUNE: 240-56.

MR. HAGER: Paragraph C. It states: "A nonconforming building or structure that is not devoted to a nonconforming use may be reconstructed, structurally altered, restored or repaired in whole or in part, and the provisions of Subsection B shall not apply, except that the degree of nonconformity shall not be increased."

In this case, it is a residential use in a residential zone, and Subsection B, which is the restriction on the cost, doesn't apply.

The gray area for me in this case is how we determine whether the degree of nonconformity is or is not being increased in situations like these. I know that it has been handled several different ways over the years, but what I would like to accomplish by having this interpretation done is to have my department be able to consistently apply Code from this point on to situations that are similar to this one.

The home already exists closer to the street than what current Code allows, due to the fact that the home was built before the Code was in effect. What they propose to add onto the house will not go any closer to the street, but it will go to an area that is considered the setback area of the current zoning. The addition would not conform to the setbacks that are currently in place.

In one way, you can look at it and say that the degree of nonconforming has not changed and will not change with this proposal because the distance from the street to the house for the existing house and for the new part of the house will be the same. On the other hand, you can say that we are adding square footage to a house that is not in conformance, that it is not within the prescribed setbacks and current code, and you can say that it is increasing the degree of nonconforming. I would like the Board's input on that to see how they feel that this should be interpreted. If it is interpreted that a variance is necessary, the Applicant would like to pursue that variance. I would like the Board to understand that, based on this decision, is how we will treat all future applicants that come in, so that we would not have each one have to do an interpretation. Once this interpretation is done, that is going to basically set in place our policy in the Building Department what requires a variance or does not.

MR. JANNARONE: Will all future ones have the same specific set of circumstances as this one where you are putting something farther back than the existing?

MR. WEYANT: It deals with nonconformity more than anything.

MR. HAGER: It will be with any nonconformity.

MR. JANNARONE: Can we set a policy for everything in the future?

MR. DONNERY: Unfortunately, we can't. Everyone will have to come in front of us. Throughout the village, on a lot of the streets some of houses are built within 10 feet of the road. We have granted variances in the past. Unfortunately, everyone will have to come in front of us.

MR. HAGER: In the past, a lot of them have not come to this Board for any type of variance proceeding because the former personnel in the Building Department interpreted it, that a situation like this Applicant's, was not an increase in the nonconformity. He had checked with the Village attorneys and they were fine with that, but they acknowledged that it could go either way. It does go different ways in different towns. In the past, in these situations, building permits have been issued without the need for any zoning application. There are some benefits to that because in a lot of cases, and this is one of them, it is a simple project and it does create that extra burden of the applicant having to make the application and attend meetings. There is the time and expense involved. To the other extreme, there could be other larger scale projects that would basically get through the same loophole without any Board input.

MR. DEVEREAUX: I would like Counsel's advice.

MR. DONNERY: Are you prepared?

MS. TERHUNE: Yes. I think when you look at 240-56C, Mr. Hager is correct; it could be interpreted in two different ways. One of the purposes of zoning, especially in tight community, is that an increase in the degree of nonconformity may or may not have an adverse effect on the neighbors. One of the reasons is to consider development as it effects all of the neighbors surrounding them. If the Board interprets this as grandfathering, meaning that a variance is not required, so long as it maintains the same nonconformity, there is just more of it.

I know that Mr. Hager had a person come in and was three or four feet off the property line and wanted to double the size of the house all along that property line. He was not increasing the nonconformity in terms of the setback, but he was building a big building on the back of his porch. This did not come to the point of an application.

MR. HAGER: What she is speaking of was there was a very small extension on the house that had been there for years that stuck out six or eight feet and was close to the property line within a few feet. They were saying that they established that side yard setback as pre-existing of three feet. They came in and proposed that they wanted to add another 16 or 20 feet of house to that small addition so they would have had a much larger house that close. That one we would have sent for an interpretation if that application had not been withdrawn for reasons of financing.

In the meantime, after discussion with Ms. Terhune, we did broach the subject with the Board about a year ago. The decision was made that, when we had an applicant in this situation come forward, we would go through the interpretation process, which is where we are now.

MS. TERHUNE: So if you interpret that since it is not an increase in the setback, you are not building more into the setback, it does not need a variance. It would be

applied the same to anyone as long as they are not coming closer than what was already established before zoning. They would not need a variance.

I would consider this a more conservative interpretation that, in fact, it is an increase in the nonconformity because you are increasing the nonconforming building itself, and it is within the required setback, and therefore, that person would need a variance. That would mean that on an individual case by case basis, you would look at each application for a variance and make a determination.

At that point, you would consider the effect on the neighbors, the effect on the neighborhood, and the public would have an opportunity to speak out. Your options in terms of the Zoning Code are perhaps a little more varied than if you determined that a variance is not required and that anyone that has an existing nonconformity may enlarge it so long as it does not get shrunk even more. That is really the decision that you need to make with this 240-56C.

Here, if you determine that a variance is required, then the application would just be for a variance. You would consider the variance

MR. DEVEREAUX: My feeling is case by case basis. I don't see Carte Blanc.

MR. WEYANT: Yes, it scares me to make a decision that could affect all kinds of things in the future.

MR. JANNARONE: We would be abdicating our responsibilities.

MR. WEYANT: Yes, we might be opening it up to something that we don't want to.

MR. DONNERY: It is throughout the community. Like Mearns Avenue, where houses are on right on top of one another.

MS. TERHUNE: There may be instances where a variance is not a problem, you would issue a variance. Or you would issue a variance but modify it.

MR. JANNARONE: It is our job to do variances.

A motion was made that the Board's interpretation of Section 240-56C is that, in the future, any additions to non-conforming buildings (unless constructed completely within current Zoning regulations) would be considered to be an "increase in the degree of non-conformity" and applications for variances would be required prior to issuance of a building permit. The ZBA will deal with such applications on a case by case basis.

Motion: Mr. Weyant Mr. Jannarone Approved

**With a Roll Call Vote: Mr. Galu Aye
Mr. Jannarone Aye
Mr. Devereaux Aye
Mr. Donnery Aye
Mr. Weyant Aye**

Mr. Doherty **Absent**
Mr. Miller **Absent**

MS. TERHUNE: I will write that determination saying that 240-56C requires any increase in a nonconformity to get a variance.

MR. WEYANT: What does this mean for Mr. Fish?

MS. TERHUNE: If Mr. Fish is interested in a variance, then you can set a Public Hearing.

MR. WEYANT: We will set you up for a Public Hearing for July 20, 2009. You will need to go over the application with Mr. Hager.

MS. TERHUNE: Do you need a 239 Referral?

MR. WEYANT: This is way up top on Mountain Avenue, a State Road. This is a County requirement.

MS. TERHUNE: I will prepare a 239.

MR. DEVEREAUX: In view of the fact that the Fish's spent \$75 for an interpretation which will not be required in the future, in cases like this. Could we relieve the \$75?

MR. WEYANT: In Mr. Hager's letter to Mr. Fish said that the additional fee would be \$175. Any questions? We will see you in July.

MR. HAGER: Does the Board need any kind of a modified application or can we just change the variance?

MR. WEYANT: We should redo it to show the variance request and you can distribute copies and get them out.

MR. HAGER: Please be in touch with the Building Department and we can take care of the application and get you the list of the properties.

MR. JANNARONE: Did West Point ever respond to the porch for the Ridgeway application?

MR. WEYANT: Not to my knowledge.

MR. HAGER: I know they mailed out something to West Point.

MR. WEYANT: The State responded.

Hexagon Enterprises, 142-144 Main Street, Highland Falls, side yard and parking variances in a B-1 Zone.

MR. WEYANT: You are Mr. Giordano?

MR. GIORDANO: Yes.

MR. WEYANT: The property as I know it here in Highland Falls is the former bowling alley property in the business district. As Mr. Galu and I know it, Tony Mack ran the bowling alley.

MR. GALU: Ed Sporbert.

MR. WEYANT: Go back before that.

MR. DONNERY: Who built it?

MR. GALU: Mr. Vanzo.

MR. WEYANT: I understand from correspondence, that you have been to the Village Planning Board.

MS. TERHUNE: He was not at the meeting on June 10. It was discussed at the special meeting that was called for another matter.

MR. WEYANT: We have some correspondence from the Planning Board.

MR. GIORDANO: I did not even know they had a meeting.

MS. TERHUNE: It was a special meeting on another matter.

MR. WEYANT: Victor Solaric, is your architect?

MR. GIORDANO: Yes.

MR. WEYANT: Mr. Solaric got correspondence from Paul Pelusio, Village Engineer, asking for more material. To highlight one thing: "While the Applicant can pursue anticipated variances without a referral from the Planning Board, I would strongly recommend an appearance at the June meeting of the Planning Board to brief the Board of the site plan changes and discuss the non-conforming site design elements prior to making a formal variance petition to the ZBA. Final issues and concerns of the Planning Board based on the May 22 site layout can be talked about at the June meeting with a referral to the ZBA by consensus of the Board for all necessary variances. Affording members of the Planning Board an opportunity to discuss with the Applicant the site layout as it is currently conceived with minimized discussions, deliberations, and potential changes when the Applicant petitions the Board for final site approval."

I get the feeling from that letter that the Planning Board has not fully decided yet and is looking for final site plans.

MR. GIORDANO: These are not them?

MR. WEYANT: I do not know. I feel that they would like you to hold off until our next meeting, so they can go through and further discuss the project and then recommend to us, which is the normal case. Usually we get a referral from the

Planning Board saying that an Applicant has been before them and they need variances. They really don't have that yet, other than your application.

MS. TERHUNE: If I may, maybe I can bring the Board up to date, as well as the Applicant. We had a special meeting on June 10, not about this application, but about something completely different. When the Applicant was last in front of the Planning Board, it appeared that he might need parking variances and a side yard variance. The Applicant, in response to concerns from the Planning Board, redid his map, redesigned the site, and he angled the parking spaces so there would be more room in the back for trucks to turn around. As a result of that, he definitely needs a parking variance and side yard variance. The Planning Board has not had a chance and won't have a chance to look at his new plan, prior to the Applicant making application here. What the Planning Board is saying here and is recommending to your Architect, is that the Applicant has every right to pursue, on his own, area variances to the ZBA? The only concern would be that after the Planning Board reviews the new site plan, there may be other variances required, meaning that you would have to come back and make another application.

My suggestion to the Board would be that, certainly, nothing can be done without a Public Hearing and a referral. It may be that you may want to discuss this with the Applicant tonight, and perhaps set a Public Hearing because he will be in front of the Planning Board before he comes back here for the Public Hearing.

MR. WEYANT: What concerns me is do we have the up to date plan?

MS. TERHUNE: I think you do have the up to date plan. The only issue is that the Planning Board has not reviewed this plan. They have the old plan. They made suggestions as to the parking, which the Applicant made, and he lost three or four parking spaces. As soon as he made those changes, which is what the Planning Board asked him to do, he immediately needed a parking variance, as well as another side yard variance. To save time for the Applicant and time for this Board as well, after the Planning Board Meeting at the end of the month, it may be that he does not need any other variances, and those are the only ones he needs. The Planning Board may make other suggestions and determine that he needs other variances.

To keep the process moving, there is no reason why this Board could not go ahead and set a Public Hearing.

MR. WEYANT: But then, wouldn't we have to specifically cite which variances he is applying for, and couldn't that then possibly change?

MS. TERHUNE: Yes, it could, but then what he would do is amend his application. You would either postpone the Public Hearing if it is a substantial amendment, or you would open the Public Hearing and keep in open.

MR. WEYANT: We are able to publish.

MS. TERHUNE: Yes, you have an application in front of you.

MR. WEYANT: But it could possibly change. Would we have to republish?

MS. TERHUNE: Not unless something substantially changes as a result of the Planning Board looking at this plan. The Applicant has two choices: He can wait and see if there are any changes and come back next month. It may be the same plan or a slightly different plan. We don't know. If it is a different plan, he would have to do that anyway.

MR. DONNERY: You could just keep the Public Hearing open.

MS. TERHUNE: If nothing changes, then he is a month ahead. If something changes, then he is a month behind.

MR. GIORDANO: My Architect has been in touch with your Architect and they are pretty much on the same page. This is what your Architect asked him to do.

MS. TERHUNE: Yes, that is true. The only issue is that the Planning Board has not reviewed this plan. They may look at this plan and have other comments that your Architect would then have to respond to, which could potentially change the plan. It may or may not. It may make a very diminutive change that does not require another variance. I think what the Planning Board's Engineer and the Planning Board wants to make sure of is in pursuing it this way, does not mean that you are representing absolutely every variance that you may or may not need. We know you need two, but you may need more. It is up to the Board

MR. DEVEREAUX: When does the Planning Board meet?

MS. TERHUNE: They meet the fourth Thursdays. They will meet two weeks before this Board meets.

MR. WEYANT: That is next Thursday. They will contact me.

MS. TERHUNE: After they review this plan, they will tell you officially what variances he needs.

MR. WEYANT: That is what I want, something from them telling us what he needs.

MR. GIORDANO: They have these drawings. I gave them to them at the last meeting. I was not on the agenda at that time.

MS. TERHUNE: Yes, he is on the agenda for July.

MR. WEYANT: We can set a Public Hearing based on what we know so far for July 20.

MR. JANNARONE: If that is what he wants to do?

MR. GIORDANO: Yes.

MR. WEYANT: Right now we are looking at a side yard variance and the parking as the two variances.

MR. JANNARONE: If it is 12 feet required, and he has 10, and if we publish and it turns out that he needs more, is that a legal problem?

MS. TERHUNE: If these are correct, there is no problem. If he needs more, or he needs a third variance, you would want to re-publish. You will be showing the public a different plan. You might open the Public Hearing but you would likely keep it open.

MR. WEYANT: My publication date for this would be July 10. It surely gives the Planning Board enough time between next week and then to notify me.

MR. GALU: Before the Planning Board he just needs two variances?

MR. DONNERY: No, they have not approved this site plan.

MR. GALU: It is a pre-existing building.

MR. DONNERY: Not the parking.

MR. HAGER: There is a change of use of a portion of the building. That is what triggered the Planning Board review.

MR. DEVEREAUX: It is considered an office, so it is one parking space for every 150 square feet.

MR. GIORDANO: I am increasing the offices.

MR. DEVEREAUX: John, a question. Under the total for both side yards, 12 feet is required. Can you explain?

MR. HAGER: That is a good one. Alyse and I have already gone over that a few times, as on Grubecki. The best we can come up with is that you don't need to have a side yard, period, but if you are going to provide one, 12 feet is what it should be, not more, not less. In theory, he needs two side yard variances. One for the side where it is less than 12, and one for the side that is more than 12.

MS. TERHUNE: If it more than 12, he would not need one.

MR. HAGER: It does not say minimum 12. It is poorly written.

MS. TERHUNE: It is poorly written and ambiguous. We have gone round and around on this for Grubecki and perhaps even for another one. The only way we can see that this makes any sense is you either don't need any, because it is a business district, so you might have buildings next to each other. If you have any space, then we need 12 feet. If you don't have 12, then you need a variance.

MR. HAGER: It does not make sense. The only thing I can figure is if you are going to have an alley, they want it to be at least 12 wide, for firefighting ability.

MS. TERHUNE: That does make sense. If you have no way to get between the buildings, that is an issue.

MR. DONNERY: I think it has more to do with clean up. If you only have four or five feet, there is no way to get in and out to clean it.

MR. HAGER: Unless the buildings are tight against each other. It is hard to say, you can't get inside the head of whoever wrote this. It would have been nice if they had done it more clearly.

MR. DEVEREAUX: We should consider changing it at some point so it is understandable.

MS. TERHUNE: This Board cannot change it.

MR. WEYANT: That is a Town Board function.

MR. DEVEREAUX: We can recommend.

MS. TERHUNE: Yes, just like that footnote. All code has its ambiguities. That is why we have a Zoning Board.

MR. HAGER: That is why they have a notation for process.

MR. WEYANT: Mr. Giordano, we will set you up for a Public Hearing for July 20. You will need to go over the requirements with Mr. Hager for mailing and signage before the meeting. Hopefully, the Village Planning Board will get back to me as a result of their meeting with you next week.

MR. DONNERY: We will have to notify New York State.

MR. WEYANT: Yes, Main Street.

MS. TERHUNE: I will do that.

MR. JANNARONE: He will publish after the Planning Board meeting, is that the plan?

MR. WEYANT: We have to publish by July 10. Hopefully, I will have the outcome of the Planning Board and the referral and be able to publish.

MR. DONNERY: You have to write to the State.

MS. TERHUNE: Everything goes to the County and they will respond.

MR. WEYANT: I have no further discussion, gentlemen.

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

Motion: Mr. Donnery Seconded: Mr. Devereaux Approved

Respectfully submitted,

Fran DeWitt
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is
Monday, July 20, 2009**