

APPROVED: 1/19/10

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
NOVEMBER 16, 2009**

A regular meeting of the Zoning Board of Appeals was held in the Court Room, Town Hall, Highland Falls, New York, on Monday, November 16, 2009, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

David Weyant, Chairman
Ray Devereaux
Jack Jannarone
Tim Doherty
Tim Donnery
Tony Galu – Arrived 7:02 P. M.

One (1) Vacancy

ALSO PRESENT:

Alyse Terhune, Attorney, Tina Norton, and Daniel Norton.

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 November 16, 2009 meeting, and note that all members are present with the exception of Mr. Galu. We have Minutes to approve from October 19, 2009, which were sent to you prior to tonight's meeting. Are there any corrections or changes? Hearing none, I would ask that someone make a motion to approve the Minutes.

A motion was made to approve the October 19, 2009 Minutes.

Motion: Mr. Devereaux Seconded: Mr. Doherty Approved

MR. WEYANT: Mr. and Mrs. Norton, please come forward. We have a Public Hearing scheduled for Mr. and Mrs. Norton for their property on 97 Mine Road in Fort Montgomery. Before we start the Public Hearing, I need to have from you some formal things. First are the Affidavit of Mailing and the Affidavit of your Signage.

MR. DONNERY: I know the signage is there. I went up there to look at it. Even with all the rain.

MR. WEYANT: I have an Affidavit of Mailing, an Affidavit of Posting of the Signage, and I also have an Affidavit of Publication from the News of the Highlands for tonight's Public Hearing.

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

MR. WEYANT: Mr. and Mrs. Norton, please hold up your right hand. Do you solemnly swear that the information you provide herein to be accurate and true to the best of your ability?

MR. AND MRS. NORTON: I do.

MR. WEYANT: Please review with us again why you are here and what variances you need from us.

MR. NORTON: The variance is under Chapter 10, Section 11.2. We are trying to build or place a pre-fabricated garage in our front yard. According to the Law, it has to be 45 feet. We want to put it right up to the property line, and off to the side of the property line we need 20 feet, and we want to put it 6 feet. It may have been unclear last time. The property line ends about 4 ½ feet from the road, and even though we are only asking for 6 inches at the absolute corner, it will still be 4 ½ feet from the road. I made some additional photos where we put a piece of wood where the end of the garage would be and then measured it so you could see that it would not be right against the road.

MR. WEYANT: I have a Memorandum from our Building Inspector, John Hager, who is on vacation and could not be with us tonight and I believe he spoke with Mr. and Mr. Norton.

“Memorandum dated November 12, 2009 to the Town of Highlands Consolidated Zoning Board – David Weyant, Chairman, from John C. Hager, Construction Inspector/Code Enforcement Officer, Town of Highlands Building & Planning Department. Re: 97 Mine Road, Fort Montgomery (S18-B1-L19.2).

“Please be advised that I have spoken with the Highway Superintendent regarding the above referenced property. The main concern the Highway Department has, is that close proximity of the proposed garage to the street could increase the chances of damage to the structure as a result of snow-plowing activities.

“The Highway Superintendent suggested that the owners of the property offer, in writing, that they will accept responsibility in the case that snow-plowing results in damage to the structure. The owners of the property have been informed of this suggestion and have indicated that they would be in favor of such an agreement. The owners may bring an example of such an agreement to the ZBA meeting.

“Also, the Highway Department recommends that the vehicle garage door be required to be an overhead type door, in order to avoid door swing into the roadway.

“The Building Department can take measures to make sure that both of these suggestions are addressed during the Building Permit process.”

MR. WEYANT: John Hager has reviewed this with you?

MR. NORTON: Yes.

MR. WEYANT: Would you comment further on that.

MR. NORTON: We would have no problem with such an agreement. We did not make a copy of one for this evening. We have no problem with that even if it requires putting some kind of reflective sign or something on the side. The edge of the garage would be pretty much lined up where there is a telephone pole. We figure there will not be much trouble.

MR. WEYANT: I have spoken with Mr. Hager about this, and he assured me that the Nortons would be in favor of this agreement, and that he would be sure, during the Building Permit process, that this would be taken care of.

MR. JANNARONE: Would this agreement be binding on future owners of the property?

MR. WEYANT: That I can't answer.

MS. TERHUNE: Any future owners of the property would buy it with the garage already there so they would be constructively apprised of the potential problem.

MR. JANNARONE: Three or four owners down the road, nobody will know anything about this agreement.

MS. TERHUNE: I know, but it will not permit future owners from maybe bringing an action against the Town.

MR. JANNARONE: That is my point.

MS. TERHUNE: But, there is nothing this property owner can do that is going to stop future owners from bringing some kind of action for just about anything.

MR. DOHERTY: Can an agreement like that be deemed like an easement?

MS. TERHUNE: You can have it recorded in the chain of title so that any future owner would be aware of that. A title company doing a title search would be aware of that document. I am sure you can do that. The garage is obviously going to be there, if that is where they put it.

MR. WEYANT: There does not appear to be a stumbling block with you as far as having this agreement?

MR. NORTON: No, we have no problem with the agreement.

MS. TERHUNE: There would be a recording fee.

MR. NORTON: We would be fine with that as well.

MR. WEYANT: Fine. Are there any other questions, Gentlemen?

MR. JANNARONE: Are we voting on this tonight?

MR. WEYANT: Yes, we are.

MR. JANNARONE: My concern is safety. Driving down hill on Mine Road, let's say it is winter, at night, it's around a curve. That is what bothers me, it is a blind curve and you have a car coming out from a garage that is just right on the property line, and four feet from the highway. You really can't see it. I can see someone coming around that curve and a car backing out and, bam there is an accident. We would be liable for that, but then they are going to say why did the Town approve something like this?

MR. WEYANT: You are saying there is an existing telephone pole there?

MR. NORTON: There is.

MR. WEYANT: It could possibly be in that same area.

MR. JANNARONE: I am talking about a car backing out into the road.

MRS. NORTON: That is where we usually park. It is our parking spot.

MR. DONNERY: But once you put a building up, you can't see. You can't see until you are totally out of the building. At least right now you can look up.

MR. JANNARONE: Let's face it: people go fast on Mine Road. It is down hill, it is around a curve, and there are no proper site lines to this building. Whereas, the building further down you can at least see because it is on a straightaway. For someone coming down that hill, this can be very dangerous for someone backing out.

MR. DEVEREAUX: I have a question pertaining to the rear of the garage toward your house. How much can you dig out of that relatively easily to push it back a little bit further?

MR. NORTON: Not much. Realistically, two feet at the most.

MR. DEVEREAUX: Is it all rock in there?

MR. NORTON: There is a small retaining wall of railroad ties and then probably a foot to two feet of dirt. If that would be enough to make it work, there is a smaller size garage that is only 16 feet deep. We could go in that route if that extra two feet would make the difference. That would probably be easier for us.

MR. JANNARONE: What I am saying is with the building there, you cannot see somebody coming down the hill and they can't see you until they are around the corner. It is going to be more dangerous than it is now with the current situation. Why should the Town put itself on the line? We have Zoning Laws to prevent this kind of thing from happening.

MR. DEVEREAUX: If you had a setback where you could achieve enough space so that the car could back in preferably and then you could pull out?

MR. JANNARONE: You cannot guarantee that future owners would back in.

MR. NORTON: We usually back in. But true, we can't guarantee that future owners will back in.

MR. JANNARONE: It is a safety hazard in my opinion and that is my whole objection to this.

MR. NORTON: The other option that we have that may or may not make a difference here is that we could move it over. On the initial drawing it was not right up against the edge of the property line on the side. We have another four or five feet we just did not want to waste that space. We could move it over so that we are not so right up against that telephone pole.

MR. JANNARONE: You still can't see.

MR. NORTON: Realistically you can't see anyway. I understand your point. There is a wall of trees and such here. I can tell you that pulling out is a little bit hazardous and I usually back in.

MR. JANNARONE: That is an existing. If we, as a Town, go out of our way to make a major variance here to say that it is okay, then we are really putting the Town on the hook.

MR. DOHERTY: Would you consider that correct, Alyse?

MS. TERHUNE: Again, you can't really anticipate litigation. There is no one here to object to this. There are any number of things that could obstruct view. If I had to put a percentage on the likelihood of winning a suit like that against the Town, I would say it would be pretty unlikely. It does not mean that they would not bring a suit, but it is very hard to sue a municipality like that because you granted a variance to allow someone to build into a setback.

MR. WEYANT: Would the agreement also come into play?

MS. TERHUNE: No, the agreement would not come into play. Sometimes they have those mirrors that could be put up for visibility. I am just making that suggestion. Certainly, if you request the Applicant to perhaps move it back a little bit or to angle it a bit differently so that there is more space. I think that would probably protect the Town from any kind of litigation.

MR. JANNARONE: Is there any way to rotate it 90 degrees so you come out heading down hill and then turn out?

MR. NORTON: There is actually a gigantic rock there. It would be possible but not worth it. That was our original thought.

MR. DEVEREAUX: You should take every reasonable precaution to prevent something from happening. There is a neighbor two doors down with a two car

garage. I have been told that you are not going to use it for your every day car but for a sports car.

MR. NORTON: That is correct. For storage.

MR. DEVEREAUX: You would not be taking it out regularly.

MR. JANARONE: That would not make a difference. All good intentions here do not carry over to the future.

MR. NORTON: At first when we took it to the Building Department, we had asked about putting it at the top, because we did not think we could put something in the front. We cannot put it at the top either because of the variance. That would also be more of a hindrance on our neighbor because we would have to use their driveway to get to it. This way we would not have to affect the neighbor and we could store our car. That is why we went in that direction.

MR. DEVEREAUX: Is it feasible that these people could pay for a sign to be placed back 25 feet back or so or something like that? This is done all the time with trucks entering.

MR. DOHERTY: Like driveways or something to that effect.

MR. NORTON: Again, we would be willing to do that, whatever it takes.

MR. WEYANT: You seem amenable to making it smaller.

MR. NORTON: The smallest we could make it is 16 feet and still make it a garage. The next size down would be 14 feet. The sports car would still fit, but we would have to use barn doors.

MR. WEYANT: Not to try to tell you what to do. Maybe it would be more feasible for this Board if you come back with a new set of plans, a little it shorter.

MR. NORTON: With a different orientation. Yes, we can do that.

MS. TERHUNE: You can adjourn the Public Hearing and open it again next time.

MR. NORTON: Would we do mailings again?

MR. WEYANT: No. I am noting for the record that no one in the audience is here to comment on this variance application.

MR. DEVEREAUX: How about your neighbors, do they have any problem with it?

MR. NORTON: No, we mentioned it to them and they did not seem to have any problem with it.

MR. DEVEREAUX: Where did you post?

MR. NORTON: On the telephone pole.

MR. DONNERY: The rain rolled it around.

MR. NORTON: We don't park down there. We did notice that it was rolled.

MR. DONNERY: I would like to see you really consider how much you can get this back. I have a problem with that being that close to the road, also.

MR. NORTON: Again, it is 4 ½ feet from the road, six inches from the property line.

MR. JANNARONE: We deal with variances on your property. It is a major variance to put something right onto the property line.

MR. DONNERY: Only because of snow removal. I think it would be better in your interest if you can get that back as far as you can.

MR. WEYANT: I sense the feeling of this Board is that we have you go back and have you resubmit with a new drawing with a smaller size. We can adjourn the Public Hearing. I am trying not to have a meeting in December because of the Holidays.

MR. NORTON: We are actually okay with that. We are going to ask the Building Department to not do this until the spring now that it is getting into the winter and the snow. We don't mind waiting until January with the new plans.

MR. DOHERTY: Our variance is good for two years, is that correct, if we approve it?

MS. TERHUNE: Two or three years.

MR. DOHERTY: And the Building Department permit is good for a year. You don't have to start work until the spring.

MR. NORTON: We are not opposed to missing December.

At 7:17 P. M., the Public Hearing was adjourned for Mr. and Mrs. Norton for the property on 97 Mine Road, Fort Montgomery, to our January Meeting.

MR. WEYANT: I am noting for the record that neither Brian Andreichuk nor Brian Krzeminski are present tonight for the Public Hearing on their proposed variance for 4 Bridge Terrace in Fort Montgomery. This Public Hearing was noticed in the News of the Highlands for tonight. I am apprised by Counsel that it is up to the feeling of this Board as to whether or not we should continue a Public Hearing. There is no one here to answer our questions should we have any. I have no problem in holding this over until the January meeting.

MR. JANNARONE: There is work going on there.

MR. WEYANT: He can't get a building permit. He needs Planning Board approval, as well as ours. I am surprised neither one is here.

MR. DONNERY: They just stopped and are waiting for approval. There is a small construction trailer there.

MS. TERHUNE: I am sure John has not issued anything to them. They could be testing for lines.

MR. WEYANT: We also don't have our proof of mailings.

MS. TERHUNE: We don't know if it was properly posted.

MR. DONNERY: Signs were up in the front yard.

MS. TERHUNE: Do we know about the mailings?

MR. WEYANT: I don't know.

MS. TERHUNE: You can certainly open the Public Hearing and then adjourn it. Your timeframe does not start until you close the Public Hearing.

At 7:20 P. M., the Public Hearing was opened for Brian Krzeminski, who is the builder for Brian Andreichuk, the owner of the property at 4 Bridge Terrace in Fort Montgomery, and note that neither one is present, nor is anyone from the Public present to comment on this application.

At 7:21 P. M., the Public Hearing was adjourned until the January meeting.

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

Motion: Mr. Jannarone Seconded: Mr. Devereaux Approved

Respectfully submitted,

Fran DeWitt
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is
Tuesday, January 19, 2010**