

APPROVED: 1/19/11

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
DECEMBER 20, 2010**

A regular meeting of the Zoning Board of Appeals was held in the Court Room, Town Hall, Highland Falls, New York, on Monday, December 20, 2010, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

David Weyant, Chairman

Tim Donnery – arrived 6:58 P. M.

Jack Jannarone

Tony Galu

Ray Devereaux

Absent

Tim Doherty

ALSO PRESENT:

Alyse Terhune, Attorney, (Jacobowitz & Gubits, LLP)

John Hager, Building Inspector, Al Sapienza, and Jim Titolo.

The meeting was called to order by the Chairman, at 6:57 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 meeting for the Town of Highlands for December 20, 2010. I will note that all members are present with the exception of Mr. Doherty and Mr. Donnery. Mr. Donnery should be here presently. You have all been sent minutes of our previous meeting. Are there any corrections or changes?

MR. DEVEREAUX: David, on page 2: Half way through, “.....it goes back to 1898.” I don’t think I said that.

MR. WEYANT: What should it be?

MR. DEVEREAUX: I couldn’t tell you. I know some of the data on it, but it certainly is not 1898. Whatever you want to fill in.

MR. WEYANT: Mr. Sapienza, how old is the house?

MR. SAPIENZA: 1902 it was built.

MR. WEYANT: It goes back to 1902. How is that?

MR. DEVEREAUX: Our information does not go back that far. It goes back to like 2003, generally.

MR. HAGER: It goes back to at least the 1970's, Ray.

MR. DEVEREAUX: Does it, the 70's? 1973.

MR. WEYANT: We will amend it to read 1973. Any other changes?

MR. DEVEREAUX: We have been playing with the parking issue, which we shouldn't, it is really a Planning Board issue.

MR. WEYANT: We are not going to take up parking.

MR. DEVEREAUX: I know we are not. On top of page 4: Mr. Weyant says: "Minimum required by Code, Section 240-37 requiring 400 square feet variance. I guess you know what you meant.

MR. WEYANT: It refers back to the previous page on the bottom: "John, I am going by a letter that you made stating the Applicant has acknowledged that the floor area available for the apartment is 500 square feet rather than 900." I said, "Minimum of Code Section 240-37 requiring 400 square feet requiring a 400 square foot variance." In other words 500 and 400 = 900. Any other changes, Ray?

MR. DEVEREAUX: That's good.

MR. WEYANT: May I have a motion.

A motion was made to approve the November 15, 2010 Minutes, as amended.

Motion: Mr. Jannarone Seconded: Mr. Galu Approved

MR. WEYANT: Our item on the agenda tonight, as you will recall from our previous meeting, is for Mr. Sapienza and Mr. Titolo, at 66 Ondaora Parkway, Highland Falls. We are still under discussion of an area variance for an apartment above the garage. There was discussion at our last meeting as to the exact square footage. Since our last meeting, our Building Inspector, Mr. Hager and Mr. Titolo have met. John, if you would review what you did with Mr. Titolo.

MR. HAGER: I met with him and he got us access to the apartment so we could make an exact measurement. We came up with an inside dimension of about 496 square feet for the entire apartment.

MR. WEYANT: Gentlemen, I have given all of you an amended application for you to read. The current condition shows 496 square feet, Code requires 900 square feet, so the Applicant is requesting a variance of 404 square feet. Okay, so far?

MR. DONNERY: Yes.

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MR. WEYANT: That is what we need to discuss and take care of tonight. I will open it up. Jim, the pictures you sent, do these have the actual apartment in it. Would you show us which one is the apartment in question.

MR. TITOLO: Yes, and John can verify this, so there is no question. Sorry about the quality of the photos.

MR. WEYANT: Has everybody seen this.

MR. HAGER: Jim took those pictures the day I was there.

The photos were passed to each Board Member.

MR. WEYANT: Further discussion, Gentlemen, on this?

MR. DONNERY: I have none. All I wanted was the proper language, the proper number.

MR. WEYANT: Now we have the proper number.

MR. DONNERY: Right.

MR. DEVEREAUX: Are Jim or Al going to talk at all?

MR. WEYANT: If they want to. It is entirely up to them.

MR. TITOLO: If the Board has any questions, we will answer them. We have presented all the information that was asked of us.

MR. WEYANT: And you have.

MR. SAPIENZA: The garage has been there for 100 years so the walls were straight up already, so I just raised the roof. The size of that thing was restrictive. I did not know I had to. It was my own fault. I did not make it any bigger because that has been the building forever. I put in a marble bathroom, the bathtub is a Jacuzzi, it is a spa, there is a skylight, added two more windows over the river, a hardwood floor, and nice molding. I made it as nice as humanly possible. It is like a luxury apartment. I made it really, really, really nice. That is all I can say.

MR. TITOLO: Mr. Chairman, John and I walked through. The apartment is not small by any means.

MR. WEYANT: Well, it is by means of Code.

MR. JANNARONE: It is small.

MR. HAGER: It does not meet the minimum requirement for current zoning. I think what Jim is trying to say is compared to many of the pre-existing, it is not small by that standard.

MR. DONNERY: My only concern was the exact measurement.

MR. WEYANT: I know you wanted the exact measurement and the wording, which we have. To remind all of you this still has to go before the Village Planning Board when we are finished with it. Go ahead, Ray.

MR. DEVEREAUX: David, there was never a question in my mind about the quality of the work in the house and I am certain the apartment is equally as good. No question about that. I became a little bit perplexed because it was suggested by someone that Mr. Sapienza and I have a personal issue. There is no personal issue. I have not seen Al in forever. It has been 5, 6 or 7 years perhaps. That is no go.

MR. SAPIENZA: Like we had a bad personal issue? No. They are crazy.

MR. DEVEREAUX: It has been suggested. We will leave it at that. I want to make that very clear. There is nothing between us. The issue is, Gentlemen, whether we want to give a 45% of 900 variance. That is what it comes out to. The 496 divided by 900. That, to me, is extremely much. If you go into the New York Planning Federation Area Variance criteria, there are two things that strike me, and I have addressed them in a piece of paper that I would like enclosed with the minutes.

Memorandum dated 12/20/10, to the ZBA Town of Highlands, Subject: Sapienza Area Variance, 66 Ondaora Parkway, Highland Falls, from Ray Devereaux to be attached to these Minutes.

One is whether the request is substantial. In my judgment 45% is huge. The other is whether alleged difficulty is self-created. Well, maybe by Mr. Sapienza's statement, perhaps he could have done something else, but he didn't. The apartment was used as an apartment for many years, evidently. Jack raised the issue of a lot of things that had to do with taxes and otherwise. We are not going to go there. Those are the two issues that I wanted to basically address.

I think John summarized it very well, the Building Permit dated September 30, 2003 stated "to accommodate dormers for an upstairs storage area" signed by Mr. Sapienza and other family members, his mother and sister. A history of recent statements relating to the Sapienza property was provided to the Board by John Hager. This is a very comprehensive summary. He stated among other details, "The Building Department's concerns are that any interpretations that may be rendered by the Zoning Board on this application may be consistently applied to similar situations that may come to light on other properties in the future. There are many accessory structures within the community that other owners may consider modifying for use as dwellings, if permissible." In my judgment it sets a BAD precedent. Enough said. Obviously, people don't agree with me.

MR. WEYANT: I would like Alyse to address the precedent part, Ray.

MS. TERHUNE: Certainly the Board should be concerned about setting precedent. However, New York Case Law basically says that if you can distinguish one variance from another, one property from another, and articulate your reasons for your decision, then it doesn't necessarily create a precedent. Because in real estate it is really the only law that allows specific performance because each piece of property is different from the other. So in this case, and in all cases, where the Board is making a decision, it is important to go through each one of the articulated standards and

talk about those, so that when you do make your decision, you have a record in the minutes that can be transcribed into the approval or the denial that sets forth how the Board looks at each one of those standards. Is it substantial, it is self-created, is it a detriment to the community? Each one of those, there are five all together. We may want to go through those.

MR. DONNERY: The reason that I was going to vote “yes” for this, Ray is the idea that they meet parking requirements.

MR. DEVEREAUX: We are not addressing parking, Tim. It is not on the table.

MR. DONNERY: Can I speak or no?

MR. DEVEREAUX: Excuse me.

MR. DONNERY: Can I speak or no?

MR. DEVEREAUX: Of course, Mr. Chairman has the right to tell you not to.

MR. WEYANT: Go ahead, Tim.

MR. DONNERY: In the way of what our Attorney is saying is that some places do not have parking. Here they are proving they have ample parking and I looked at the area and they do have ample yardage so to speak. They have a beautiful yard so that they can get out. They are not cramming something into a corner somewhere where people don't have a place to walk around. That is my reasoning for voting “yes” for this. Looking at the whole spectrum of the property is basically my reasoning.

MR. GALU: There are apartments in Highland Falls that are a lot smaller than that. I can tell you that right now.

MR. JANNARONE: That does not have anything to do with what we are talking about tonight - the fact that there are smaller ones. We are talking about converting something that says storage to an apartment.

MR. GALU: We gave them a use variance.

MS. TERHUNE: I would interject. You are no longer converting. He has his use variance.

MR. JANNARONE: It says right there on the application – storage.

MS. TERHUNE: The point here is yes, but he already got his variance. He did need one, but he got it.

MR. JANNARONE: Just to be a devil's advocate here, you just said that you had to be able to distinguish this property from all others so as not to create a precedent. Tim just came up and said that well because they have parking that distinguishes it from others. There is one example. However, if there are other places in Highland Falls that have adequate parking, are they then covered by this precedent? We have to have more than just parking, I think, to distinguish this property from others.

MR. DONNERY: That is what I was saying about the layout of the whole property. They have the house, the big beautiful side yard there. Do you understand what I am saying?

MR. JANNARONE: I know. Is that enough to distinguish it from all other properties in Highland Falls so that we don't create a precedent? I am following up with what she just said.

MR. WEYANT: I think Alyse will respond.

MR. GALU: Half the village who lives up town in the apartments - they all have to park in the municipal parking lot when it snows.

MR. JANNARONE: I know. We are not talking about them. What I am talking about is what Alyse just said - we have to be able to distinguish this property from all others so as not to create a precedent so that when anybody else in the village wants to convert their garage, it will be clear.

MR. GALU: We are not trying to set a precedent. Every case is individual.

MR. JANNARONE: She just said that we have to be able to distinguish.

MS. TERHUNE: It is good to build a record to distinguish. One distinguishing factor here is the parking. It is apparently a big property. If additional parking is needed, the Planning Board can force them to put the parking in, or they can send them back here for a parking variance if the Planning Board decides they need one. I think what this Board decided that that is not on the table.

The other factors are: For example, is there going to be a detriment to the community or the neighborhood? That is something that might be distinguished from all others. If you have a house and now you are going to build on to it to make another apartment, it is pretty easy to distinguish one decision from the next. In terms of a precedent, you would have to consider these five factors and every single one of them are exactly the same for application #2. In that case, you probably should grant the variance because it is exactly the same. But how often are you ever going to have two exact same applications with the exact same substantial or non-substantial variance being requested, the setbacks, the property itself?

MR. GALU: We are put on this Board to serve the people, we to try to help them. We are not here to try to condemn them. That is the idea of this Board. Do we bend the rules? Yes, we bend them, that is what we do, that is what this Board is all about.

MR. TITOLO: There is no question in my mind that there are "x" amount of units that are 500 square feet or less in the north end in this village. They are approved, they exist. Thank God John's department has reviewed them to make sure that they achieved all of the fire safety. We don't have the ability to build any new units. If we do, it would mean tearing down old units. At that point I understand there should be a requirement to achieve the 900 square feet per unit, but at this point, we have old units that to some extent we want to maintain the historic characteristics of these units and we need to provide apartments not only for an income stream for the

property owner, but for people who want to rent them. It just so happens that most of these people are from West Point. That is what Mr. Sapienza does. This is not an absentee landlord. This is a landlord that comes up every weekend if not every other weekend. He has a full time staff on site. We have a problem in our community with absentee landlords. I find it hard to understand why this Board, the Planning Board, the Village in general would make it restrictive for a property owner who does so much for his property and the Village.

MR. WEYANT: Let's get back to the situation at hand. This property all preceded Code, and I dare say a lot of the apartments in the north end that you are referring to all preceded Code. I think that has some bearing here, too.

MS. TERHUNE: The other issue to look at, one of the standards: Is this the variance that is needed? Can you grant a lesser variance and still achieve what the applicant is looking for? In this case, you can't. That is another weighing factor. And finally, the use variance, the standards there are very high, much higher than an area variance. This Board has granted a use variance. This Board would have to build quite a record to deny an area variance. That would be my advice as your attorney.

MR. HAGER: Can I comment on that?

MR. WEYANT: Sure.

MR. HAGER: Ray mentioned some language that I had in the memo to the Board. I mentioned my concerns about an interpretation. I think that I probably was referring to the interpretation that you've already made. That was pretty restrictive, or a more conservative interpretation that the use variance was necessary. In my mind, it has given the Building Department the guidance that we need that when situations like these arise, we know that they do require action of this Board not the opposite interpretation in which case it would not have been a use variance. What I was looking for has been achieved in that regard.

MR. WEYANT: Any further discussion?

MR. DEVEREAUX: I will close by saying that I don't think we should rubber stamp for anyone, we should follow the Code, not absolutely, but I mean if we are talking about 750 or 800, I don't know, pick a figure, then maybe that would be acceptable. But when we are talking about almost 50%, I think that is greater and I have a concern that in the future when people come in and they have something similar. I know it is case by case basis, I understand that fully, but if we don't give it, where to they go. Then they can sue us.

MR. TITOLO: Mr. Chairman, I would also note that Mr. Devereaux had, a number of months ago, recused himself.

MR. WEYANT: Jim, let me stop you. We covered this at previous meetings.

MR. TITOLO: I don't know why it is being allowed.

MR. WEYANT: Mr. Devereaux mentioned that he would consider recusing himself but he did not, and he certainly has the right to vote.

MS. TERHUNE: If Mr. Devereaux, as he stated on the record, feels that he can make an objective determination, then he does not need to recuse himself.

MR. JANNARONE: I would like to address Jim: You said why is the Board putting you through all this trouble? There is a very good reason: it is the law. You have to meet the standards of the law, go through all the hoops, and do everything right. That is the reason. It is not because we are trying to give you a hard time, or do anything else. It is our job to follow the law, interpret the law, and make decisions. We can't do that unless we go through the process.

MR. TITOLO: I am very familiar with the process, Mr. Jannarone.

MR. JANNARONE: I know, but you were saying that we are putting an undue burden on you.

MR. TITOLO: I was told that what I had to do was to solve all of the requirements for a use variance. That we did months ago. At this point, I would like you to make a decision.

MR. WEYANT: That is what we are here for tonight, Jim. So we are going to get there eventually. Any further discussion?

MR. DEVEREAUX: Last point, David. Under the criteria: May impose reasonable conditions. So therefore, we can, and it has already been mentioned, that they are willing to do whatever it will take to get the variance, including a barrier going up the stairs. You had put trees in years ago, I know, but obviously some died, or whatever, in order to satisfy the neighbor that was across the fence.

MR. WEYANT: It seems to me we discussed this prior to tonight. Didn't we? I think Mr. Sapienza said something to this effect.

MR. TITOLO: We actually offered that to Mrs. Ignacio. A new line of trees would block her view of the property. But Mrs. Ignacio indicated that it would also block her view of the river. She did not want the trees. But we have spoken to John. As soon as we satisfy this requirement, providing the Planning Board approves, we will address that.

MR. WEYANT: That is what I was going to go to next. I think this is a Planning Board thing, too.

MR. JANNARONE: Isn't it reasonable for us to attach the requirement that the stairs be enclosed. Can't we do that?

MS. TERHUNE: You can, just as the Planning Board can, impose conditions that have to do with the variance itself. So here, if you can articulate a reason why you would want the stairs to be enclosed, you can.

MR. WEYANT: I swear, Jack, we are treading on Planning Board area.

MS. TERHUNE: The ZBA has the authority absolutely to a condition.

MR. JANNARONE: It is right here: Undesirable change in the neighborhood, character, or to nearby properties, it is right there.

MR. SAPIENZA: Those stairs that are there have been there since forever. The entrance has been there. Let me just state, I will do whatever makes my neighbors happy. If Mrs. Ignacio wants me to do that, I will enclose it. If she wants me to put in bushes, I will. I want to make my mother be able to survive and make the community better. I will do whatever makes my neighbors happy.

MR. JANNARONE: We can accommodate that but also put that in as part of the variance. Then everything is covered. No one can ever say that he promises and does not fulfill.

MR. SAPIENZA: Whatever my neighbors want, I will do. If you put it in writing, I am happy to do it.

MR. DEVEREAUX: Well not the neighbors, it is what this Board would impose, not what the neighbors would prefer. You could say, sorry neighbor.

MR. SAPIENZA: I would not do that.

MR. JANNARONE: But future owners could.

MR. WEYANT: Could we have motion.

MR. DONNERY: One quick statement. But Ray, we did all that with Rockwell down there and we got nothing.

MR. DEVEREAUX: Well, was that our fault?

MR. DONNERY: No.

MR. DEVEREAUX: The Town did not want to take them to Court. That is not our fault, we did due diligence. We did the right thing and imposed whatever we had to impose on them. We couldn't take anything further.

MR. DONNERY: Okay, done.

MR. WEYANT: Would someone like to make a motion?

A motion was made to approve the 404 square foot area variance with the requirement that the stairs be enclosed so as to prevent someone on the stairs from seeing into the adjoining property.

MR. WEYANT: Any other restrictions? The Planning Board will handle others. There is a motion on the floor that the area variance of 404 square feet be approved subject to the enclosure of the stairs. Is that the right word?

MR. DONNERY: Enclosure or screening?

MR. WEYANT: No, you are inside.

MR. DONNERY: An enclosure would mean a roof.

MR. JANNARONE: It is a visual barrier not a screen.

MR. TITOLO: What is the last decision on the enclosure, I did not hear you?

MR. DONNERY: That is what I am trying to determine.

MR. JANNARONE: It is a visual barrier. It is not a bug screen, in other words.

MR. DONNERY: He does not need to put a roof on.

MR. JANNARONE: He does not need that to meet that requirement. It is up to him as far as that goes.

MR. WEYANT: Go ahead, Alyse.

MS. TERHUNE: Sides but no roof?

MR. JANNARONE: It must have sides.

MR. DONNERY: Six foot sides.

MR. JANNARONE: It prevents anybody on the stairs from viewing into the adjoining property to the rear.

MS. TERHUNE: If he wants to put a roof on it, fine, but he does not have to.

MR. WEYANT: As long as the view is taken care of. Is there a second to the motion?

Motion: Mr. Jannarone Seconded: Mr. Donnery Approved,

With a Roll Call Vote:

Mr. Devereaux - Nay

Mr. Montellese - Aye

Mr. Galu - Aye

Mr. Donnery - Aye

Mr. Jannarone - Nay

Mr. Weyant - Aye

Mr. Doherty - Absent

MR. JANNARONE: I do feel it is substantial.

MR. WEYANT: The motion is carried by 4 to 2. The variance is approved. We will leave it up to the Building Inspector that it is adhered to.

MR. SAPIENZA: Whatever Mrs. Ignacio wants.

MR. WEYANT: Our next meeting is January 18, 2011. Please remember that the 17th is Martin Luther King Day which is a holiday. We go through this every year. We will be meeting on Tuesday, January 18, 2011. We will reorganize and go from there.

MR. DONNERY: Reorganization. Is there anything in front of us?

MR. WEYANT: I have nothing in front of us. The Building Inspector has mentioned that we can expect next year some cell tower talk. That will be next year's project.

MR. DONNERY: I have been hearing that.

At 7:25 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, January 18, 2011**