

APPROVED: 9/19/11

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
JUNE 20, 2011**

A regular meeting of the Zoning Board of Appeals was held in the Highland Falls Library, Highland Falls, New York, on Monday, June 20, 2011, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

David Weyant, Chairman
Jack Jannarone, Deputy Chairman
Tim Donnery
Tony Galu
Ray Devereaux – arrived at 7:02 P. M.
Ralph Montellese

Absent:

Tim Doherty

ALSO PRESENT:

Alyse Terhune, Attorney (Jacobowitz & Gubits, LLP)

John Hager, Building Inspector, Fred Brennan, Albert Vallejos, Mario Canteros, A.I.A., Chris Grevious, Konstantinos G. Fatsis, Harvey J. Green, Karen Ward – arrived at 7:05 P. M., Mary McCormack, Glen Moyer, Chris Moyer, Jim Thompson, Mr. and Mrs. Fiducia.

The meeting was called to order by the Chairman, at 7:00 P. M. 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 June 20, 2011, and note that all members are present with the exception of Mr. Doherty and Mr. Devereaux.

First thing on the agenda is to approve the minutes for May 23, 2011, which have been mailed to you. Mr. Devereaux has arrived.

A motion was made to approve the May 23, 2011 Minutes.

Motion: Mr. Donnery Seconded: Mr. Montellese Approved

MR. WEYANT: The next matter on the agenda tonight is a holdover from our previous meeting on May 23 for Ms. Karen Ward of 192 Old State Road. She has applied for area variances for adding a porch and garage to her home. At our last meeting, we closed the Public Hearing. She was not present then and is not present now. John, have you heard anything from her?

MR. HAGER: I called her last week, Friday, I think. She was made aware of the meeting and reminded. She thought she would be here. She was not a 100% sure.

MR. WEYANT: Gentlemen, we can proceed on her application if you like without her present if you want to further discuss it, or we can hold it over until our next meeting and still be within the 62 days from the time that we closed the Public Hearing. What would you like to do? Would you like to act on this now or would you prefer having her here to answer any questions you might have.

MR. DEVEREAUX: Dave, you have a letter.

MR. WEYANT: I have a letter from a neighbor who was in disagreement with giving the variances. To answer your question Ray, yes, there was a person who butted up to that property and was concerned about his property value declining should we grant the variances. We have not heard further.

MS. TERHUNE: On this side?

MR. JANNARONE: Yes.

MR. WEYANT: I don't remember the name.

MR. DONNERY: Is that the house that is up for sale now?

MR. WEYANT: Not that I am aware of. I am sorry I am not finding the letter here. I know it was read into the record.

MR. DEVEREAUX: That was the essence of it.

MR. WEYANT: I know that person was concerned with the value of his house declining.

MR. DEVEREAUX: I will be honest, I just went there. That is why I was not here right on time. I went to look at it again. One part of me says there is sufficient room to do the two-car garage. In view of the fact that your neighbor is not too happy with the fact that you are going to put a two car garage in, I submit that maybe one car - that still gives you two two-car garages on your property.

MS. WARD: I would like to say that the Rivera's and then everybody south of me are within less than 10 feet from their property line. The guy that is complaining about where my house is relative to the required setbacks is nine feet from the property line currently. All those houses around my house predate whatever the new code became when it said ten feet on one side 15 one side and 30 feet to the rear. It is not like my house is going to be so different than everybody around me. It is going to be more like everybody around me. I say that everybody looks at my house and sees how big my yard is and they see that side yard and say wow we got a lot of space on the side of our house, but it is not their yard to do with what they want to do. I would say that it was a legitimate complaint if he had setbacks. He has not setbacks. What is the big deal? I am in training to be an architect. I did not know I was going to be accepted to Columbia or RPI. I did not get into Columbia, I got into RPI. I need to have a place to store stuff while I am temporarily at RPI and help pay my taxes here, and share my place with another person for the three years I am up there.

When I come back, I plan to stay in Highland Falls and be an architect and possibly work out of my house. It is garage space that I need because crawl space is always wet. I don't have storage in this house because it sits on ledge and there is nothing I can do to remediate the water problem. I run two dehumidifiers over French drain around the house but water trickles up through the rock and still maintains a high level of relative humidity. I can't store anything in the crawl space that I value. Everything has to be stored in plastic bins and constant dehumidifying. It is Highland Falls. I would like to have my piece of heaven here. It means to me.

MR. DEVEREAUX: You mean the apartment above it?

MS. WARD: No, the bigger house, so that I don't have to move. I have two kids at West Point. They want their bedrooms here. If I rent out part of the house, they have to give up their bedrooms. It is a two-bedroom house. You can't rent your place to someone without creating bedroom space for them. So by raising the attic on the existing garage and tacking on a garage beside it, I can get all my stuff to my side and access that bedroom over the garage for the boys. We can still come back here on the weekend. They get their break on Saturday and Sunday and not disrupt the person that is renting. It is not even renting, they are sharing the house with me. That is my plan to expand the house so that I can still come back on the weekend and not interrupt someone that has the two bedrooms and living room and we share the kitchen.

MR. DEVEREAUX: I see.

MS. WARD: If I did not get into Columbia this fall, which I didn't, I was going to do this renovation over the course of the summer and just apply somewhere else. But RPI accepted me after the deadline, which I didn't expect. Now I am doing the project and going to school at the same time.

MR. WEYANT: Anything else, gentlemen? Can we review what variances are necessary?

MS. WARD: This is R-3. It is ten feet on one side, 15 feet on the other, and 30 feet setback from the rear property line. The front of the house already has a variance when they built the house. My house also has a very large easement from State Road to the rock wall that used to be the J. P. Morgan Estate. It does not give you the effect that there is a variance in place. It looks like my house sits 30 feet or more off the road because the shoulder is so deep.

MR. WEYANT: We are looking at three area variances.

MS. WARD: There is a combined 25 foot.

MR. WEYANT: A combined side yard variance 5.6 feet from the required 25. An individual side yard variance of 8 feet from the required 15. The front porch will require a variance of 12.5 feet from the required 30.

MS. WARD: But the garage sticks out already that far. That was a variance that was approved. We are just re-soliciting the variance.

MR. WEYANT: So we are not dealing with the garage, just with those three.

MS. WARD: No, what I am saying is the garage pokes out further than the porch ever will. I don't know if the fact that you had a variance back when makes a difference or not.

MS. TERHUNE: This is the existing garage, correct?

MS. WARD: Correct. Just so it would not be an issue in the future, it would be on the record that we addressed the fact that there is a 30 foot setback requirement in the front yard even though the garage had an approved variance in the past.

MR. WEYANT: I don't think the garage is a basis here tonight – not as part of this.

MS. WARD: It exceeds the setback already. Does that make sense? I am in violation of the setback in the front yard to begin with.

MS. TERHUNE: You have a pre-existing non-conformity, or you have a variance.

MS. WARD: The person who built it had a variance. Actually, Mr. Galu built the house. See how that corner sticks out.

MR. WEYANT: If you had approval for it, it is not germane to tonight.

MR. JANNARONE: You don't need it.

MS. WARD: I guess. I don't know.

MR. WEYANT: Based on everything I got through the Building Inspector's Office, it was not part of the problem tonight. I think we should stick to the three area variances that we have to do. I would ask if anyone would like to make a motion.

MS. TERHUNE: Do you want to discuss any of the specific findings that the Board wants to make? I don't know if you discussed it at the last meeting.

MR. WEYANT: We did not. She was not here at the last meeting. We closed the Public Hearing at the last meeting. It is up to us to make a decision now or hold her over, one or the other.

MS. TERHUNE: There was one written submission opposed concerned about values.

MR. WEYANT: Correct.

MS. TERHUNE: The Board may want to just bear in mind the standards for the area variance:

- Whether there will be an undesirable change in the character of the neighborhood, if it is granted.
- Whether the benefits sought by the applicant can be accommodated in another way.
- Whether the requested area variance is substantial.

- Whether the proposed variance will impact the physical or environment of the land.
- Whether the difficulty was self created or not.

Always bear in mind the general standard is weighing the benefit to the applicant of granting the variance as opposed to the detriment to the neighborhood. That is the overall balancing that the Board needs to do.

MS. WARD: I would also like to tell the Board about the one-car verses the two-car garage plan. Here is the plan. Looking at the one-car verses the two-car options, where the staircase that accesses the current bedroom, that is not considered a legal bedroom over the current garage. If I have a two-car garage, I can put that staircase that is only a half staircase up to that room, I still have a place to park two cars. If you put a one-car in there, it is the whole back of the one stall garage. Just look at the orientation of the staircase in a one-car verses a two-car arrangement.

MS. TERHUNE: May I just clarify something for my own benefit. You are adding a bedroom but you are not adding an apartment? Is that correct?

MS. WARD: No, I have a bedroom up there. I have a bedroom but there is no hallway or doorway, you have to go through another bedroom to get to that bedroom. It is not considered a legal bedroom.

MS. TERHUNE: I see.

MS. WARD: If you have a staircase that accesses it, that overcomes the hallway requirement. Somehow I have to get a staircase up to it. I think it would look tacky to put like a fire escape that would make it look like an apartment. Inside this garage there will be an added 250 square feet to put an expanded laundry room and a staircase going up to the existing bedroom. That existing bedroom has a very low roof line so you don't get much use out of it because the pitch of the roof is so low over that bedroom. So part of the project is to take the entire roof up to the Cape Cod level. It won't add any square footage; it will make the bedroom a normal size bedroom. Right now it is a gable roof. You lose this area over here because it is so low to the ground. We finished off that area over the garage ten years and contemplated raising the roof and did not do it. It would have cost a lot more money to do that. I need a new roof and it makes sense now to raise the whole roof up and take that roof line all the way out over another garage. The timing of it is my needing a new roof and needing to access that bedroom to preserve a space for the kids while they are in school here.

MR. WEYANT: Gentlemen, where would you like to go with this?

MR. DEVEREAUX: What does Tony think?

MS. WARD: He built the house. He knows the unique features that I am talking about.

A motion was made to approve the three area variances.

MR. WEYANT: Any further discussion?

MR. JANNARONE: Should we review the criteria?

MR. WEYANT: Sure.

MR. JANNARONE: As to how they apply. Can it be achieved my other means? Possibly, but maybe not. Undesirable change in the neighborhood? I don't, based on the other houses in the neighborhood, and even though the neighbor objects, I don't think that is an issue here.

MR. WEYANT: I think it would improve. I think if anything, the values would improve.

MR. DEVEREAUX: I think if the neighbor were so adverse, he would be here.

MS. WARD: They are my best friend neighbors. I walk dogs with his wife all the time.

MR. JANNARONE: I want to fill the squares here. Is it substantial? That is kind of iffy. Based on the neighborhood. Environmental effects? I don't see any. Self created, well yes. Everything is. I don't see that as overwhelming. We have discussed it.

**Motion: Mr. Devereaux Seconded: Mr. Donnery Approved,
With a Roll Call Vote:**

Mr. Galu	-	Aye
Mr. Montellese	-	Aye
Mr. Donnery	-	Aye
Mr. Devereaux	-	Aye
Mr. Jannarone	-	Aye
Mr. Weyant	-	Aye

MR. WEYANT: The motion is passed. The area variances are granted. You will get that to you in writing eventually. With the Building Inspector here knowing that they have been granted you may go ahead and work with him to get your building permit.

MS. WARD: Okay.

MR. WEYANT: Mr. Vallejos, please come forward with your architect. Before I get too far, I want to note for the record that I have an Affidavit of Publication from the News of the Highlands for tonight's Public Hearing. I am looking from you the Affidavit of Mailings and Posting. I need the Affidavit of Mailings and Posting of Signage.

MR. VALLEJOS: I do not have it here. I did have it notarized.

MR. WEYANT: You should have the Posting Affidavit and Mailings Affidavit.

MS. TERHUNE: I think you can open the Public Hearing but not close it. He needs to get them to you.

MR. WEYANT: They are not there, sir.

MR. VELLEJOS: They are not here, sir.

MR. WEYANT: Let me note for the record that I have proof of mailings of certified mail to the residents surrounding 4 West Street. I will need an Affidavit of Mailing and an Affidavit of Posting of Sign. I will ask you to have that at our next meeting which will be July 18, 2011. I will still conduct the public hearing tonight. You are not going to receive a decision from this Board tonight until I have those things.

MR. WEYANT: Mr. Vallejos and Mr. Canteros, please hold up your right hands. Do you solemnly swear that the information provided herein to be accurate and true to the best of your ability?

MR. VALLEJOS AND MR. CANTEROS: I do.

At 7:21 P. M., the Public Hearing was opened.

MR. WEYANT: This is regarding 4 West Street in Highland Falls, a former tavern and one-family apartment. We are looking at two variances here. We are looking a use variance to change this to a three-family residence and an area variance for a required square foot per dwelling unit.

MS. TERHUNE: Minimum lot not for the size of the dwelling unit but the size of the lot. You need 3,000 square feet per dwelling unit. That is the area variance.

MR. WEYANT: Correct. They seek a lot area variance that requires 3,000 square feet per unit. The existing lot area is 8,658 square feet, requiring a variance of 342 square feet.

MS. TERHUNE: Sorry, I did not hear you say that.

MR. WEYANT: I will ask you again to review for the Board what you intend to do. After that, we will open it up for any public comment.

MR. CANTEROS: Good evening, Board Members. My name is Mario Canteros. I am here on behalf of my client, Mr. Vallejos, who recently purchased a property that is located at the intersection of Route 218 and West Street, Number 4. The previous Certificate of Occupancy originally had this structure listed, as mentioned before, a one-family apartment with a bar at the ground level. Since then it was put up for sale and Mr. Vallejos ended up purchasing it. We did a really thorough inspection of the structure which seems to be in good sound structure. We felt that it was worth going forward with the structure and renovating it. The surrounding neighborhood and adjacent properties are zoned for one-and two-family, which is the R-4. In evaluating the structure itself the parking lot which provides eight parking spaces currently, and the structure itself in terms of its size which means a total square footage for the residents we have it at 3,900 square feet and change. There is a commercial business at this corner here off Route 218, and looking around in the neighborhood, this is a little bit of a mixture. Some buildings seem to want to be more than two family and some are one and two family as the zoning is dictating them.

We went through an analysis of having a three family and a two family structure, breaking it up and taking the majority of the ground space where the current bar is now and breaking it up and we ended up coming up with two apartments on the first floor. The first one being 1,100 square feet and the second one being 900, which is approximately what a two or three bedroom apartment should be. Then, we went to the upstairs and that is where it got a little bit complicated. We have 1,240 square feet for the whole second floor given the way that it is laid out, without changing the structure, keeping the structure intact. The building is a non-conforming structure right now. We realized that the second floor would yield another apartment with 1,240 square feet, with three bedrooms. Then we went through the exercise for a two family, leaving the second floor the way it is with three bedrooms. When we got to the first floor, we ended up with an apartment with possibly seven bedrooms, three bathrooms, full kitchen, dining area, all the amenities that you need, but it has seven bedrooms. It did not make sense.

We are trying to make this project very efficient and to follow the standard. If you follow any of the one-and two-family, you don't have any apartment with seven bedrooms. One-family has to be four bedrooms. The way that the structure is non-conforming it kind of lends itself to trying to be organized more efficiently by making three apartments and not trying to generate a one-family which again if you say the number of bedrooms.

In terms of parking, you have more than enough parking. You are required to have two parking spaces per family. You have three, it would be six. We will have eight.

One of Mr. Vallejos' intentions is to clean up the side, repave it and re-do all the landscaping and clean it up. He is trying to show to the community and the Board that he wants to use it appropriately. One of the things stated on the variance request ends up being a use variance and we know that you set a high standard for that. That is why we are at the crossroads. Even though the project is not financially a hardship but it lends itself to technically being a structure with the right number of apartments and bedrooms. The other end of the variance would be in terms of the square footage per family. You are required to have 3,000 per family. We need 9,000. We have 8,658, which is a little bit less than 10%. That variance itself is not a substantial variance. We are concentrating on the use variance and the practicality that if we do implement this design, it actually will fit into the neighborhood. We don't feel that it will be a detriment. A detriment would be for him to say I just want to clean it up and put the apartment above, and put the commercial space below, which is a non-conforming use. We are trying to bring it into the conforming use but not 100% in terms of the number of families.

MR. WEYANT. Okay. Thank you. Does anyone in the audience wish to speak towards this application?

MR. HARVEY GREEN, 23 Fostoria Street, HF, a member of the Planning Board: We have seen this property at the Planning Board. The original owner came to us requesting that they convert it to a two-family house so they could sell it. They already had a buyer for it is what they told us. After consideration that it was a non-conforming use we allowed them the two-family.

MR. WEYANT: I am familiar with that.

MR. GREEN: The location of the property on West Street – it is a blind corner, on a curve, there are no sidewalks. There is a lot of traffic in that area. I am concerned about the density of it. I would almost like this gentleman to come to us to show us the plans and let us look at it from a Planning Board point of view. It has nothing to do with the Zoning Board.

MR. WEYANT: Is it a requirement, Counsel, that they have to go before the Planning Board?

MR. HAGER: Before I can issue a building permit.

MS. TERHUNE: Before this is approved, yes, they would have to go before the Planning Board for site plan approval. The issue here is: are they going to be showing a two-family or a three-family house?

MR. GREEN: We approved a two-family originally.

MR. WEYANT: I do know that. I was not aware they had to go back before you. Obviously, they want to make this a three-family and that is why they are here. If this Board should approve that concept, that is what your Board would have to deal with.

MS. TERHUNE: There is a whole standard in the Code that applies to multi-family that the Planning Board would have to review as part of any of their review.

MR. GREEN: From my perspective: the density in the area, the traffic - it is highly travelled road, Mountain Avenue - Route 218. West Street - it is almost a blind corner on that curve, and to put the kind of density being asked for leaves a question in my mind as to safety.

MR. CANTEROS: To clarify the density. The density is not going to be increased because you will have the same number of bedrooms. You will end up having three families but you still have the same number of bedrooms. The parking is not changing. It will end up being the same number of cars. It will not increase that drastically in terms of footage. It is still the same footage and still the same parking.

MR. WEYANT: We understand that. It is the same number of cars, whether it sits today or when this job is done. I guess from my personal perspective, when it was a tavern you had a probably a lot of cars. Now we are not going to have a tavern situation.

MR. GREEN: It hasn't been a tavern for how many years.

MR. WEYANT: True.

MR. GREEN: If I am correct, it will have lost the non-conforming commercial use of it by leaving it fallow for x amount of years.

MS. TERHUNE: That's true.

MR. GREEN: So therefore when they came to us and wanted to go for a two-family structure, and he laid out the plans, showed a two-family structure. Based on that, we approved it even though it was a non-conforming use.

MR. HAGER: That is not correct.

MS. TERHUNE: Two-family is conforming.

MR. GREEN: We approved it to go from a non-conforming tavern to a two-family which is what it is zoned for in that area.

MR. CANTEROS: They made it into conforming.

MR. GREEN: We made it into a conforming use. Now they are asking to back to non-conforming again, going to a three-family.

MR. CANTEROS: The technical end of that approval was granted to convert it to a two-family. A permit was issued out to execute that. As far as I am concerned, I did not find any records of that being changed to a two-family. The current certificate of occupancy for this building is a one-family and a bar because a permit was not issued for that use.

MS. TERHUNE: If I might interrupt you, pardon me. If you have a non-conforming use that is abandoned or lies fallow and unused for one year, then the legal non-conforming status expires. Here, you clearly have a special use permit that was granted for a two-family which shows clearly that the use of a tavern was abandoned.

MR. CANTEROS: I agree with that. It did lapse. A permit was not issued from the Planning Board.

MS. TERHUNE: Even granting that, if the tavern has not been opened for a year, then it has lost its non-conforming status.

MR. CANTEROS: I would agree. Right now I am trying to define what the current standing of that structure is since it is no longer a tavern and a one-family residence. What is it now?

MR. GREEN: It is a two-family structure because of the approval of the Planning Board.

MR. CANTEROS: It still needs a permit to execute that work.

MR. HAGER: No physical work has been performed. The Planning Board approved the two family use for the prior owner, but that prior owner chose to sell the property as is rather than coming to the Building Department with that approval to procure a building permit to do the physical change of the space and create two dwellings. Instead, what is there now when I did an inspection recently, is the upstairs is a vacant residential space and the downstairs is a vacant tavern space. So the physical work has not been done yet and a building permit has not been issued yet for the changes necessary. Basically, they have the approval from the Planning Board so when they come to me for that permit, I am authorized to issue it. It has not been issued yet. I don't know where that puts everything.

MS. TERHUNE: It means simply that they can without any further approvals from the Planning Board or the ZBA come to you for a permit that allows them to construct a two-family dwelling. If they want to construct a three-family, then they need the use variance and they need to go to the Planning Board for site plan approval.

MR. CANTEROS: I agree with the whole concept. Right now it is a little bit difficult to figure out why we are asking for what we are.

MS. TERHUNE: Right now, I would consider that building approved for a two-family based on that special use permit.

MR. CANTEROS: We are asking for a non-conforming building it is a use non-conforming that we are requesting. But non-conforming in severity is not based from commercial mixed use residential it is from residential to a residential. It is in the same category not from commercial to residential. We are not asking for that right now.

MS. TERHUNE: It is from two-family to three-family. I would agree with that statement.

MR. FRED BRENNAN, Lake Street, Highland Falls: I just want to bring up one point that David I think you made, in that there will be no decisions made tonight. I think that is great. I can't speak for the entire Planning Board, but I think that is fine. The number of cars in this community has increased amazingly over the two to three years. This place has an unfortunate series of approaches, I think you all recognize where West Street and Mountain Avenue come together. You come across West Street, you make a right hand turn, you follow it up a hill. On the right hand side there is a driveway coming from another little development and there is no vision whatsoever for the cars. Meanwhile, you are climbing up the grade and then you go down the grade to Mountain Avenue. If you are coming up that grade, there is again no vision. I have no objection to the construction. My suggestion would be for the Zoning Board of Appeals perhaps to point this out in whatever considerations are going to be that the town of Highland Fall should do something about that dangerous condition. You could get killed up there easily. On my way down here tonight just trying it out, I went up the hill on one side started to go down the hill on the other side and ran into another car. I did not run into it. But here came a car right into my windshield. That happens much more frequently than you can think. I think that this is something that the Zoning Board as well as the Planning Board has to consider before it grants just plain carte blanche to any development in that particular area.

Just changing the route of the streets would probably help. Making it one way this way or one way that way. I think those things could be done without any hassle over is it multiple dwelling or what. Cars are the biggest problem that the village has as far as housing goes today in my estimation. The other night on my street on Lake Street and on half of Cozzens Avenue there were 53 cars down the curbs and around the corner and that does not include the ones that were parked in driveways. I think that is what is going to be the biggest problem this village is going to have to contend with in the next five years. Thank you for allowing me to speak.

MR. WEYANT: Okay. Anyone else?

MR. KONSTANTINOS FATSIS, Member of the Planning Board, Highland Falls: What I would like to address the Board regarding is to remember to take into consideration the very strict nature of a use variance, and to remember that the current application stands in the shoes of the former owner. When that former owner came to the Village Planning Board and sought to have the classification changed from a non-conforming pre-existing use to a two-family, the current owner knows and knew full well prior to purchasing it that it was a two-family. At this point now coming to the Board and asking for a use variance and trying to demonstrate a need from some specific hardship that they had nothing to do with I find hardly plausible to approve in light of the fact that he knew that it was a two-family. So now it's let's purchase it as a two-family let's turn around and see if we can make it a three-family. Where is the hardship that was not caused by you? You knew what it was prior to purchasing it. So I do not believe that that problem can be satisfied.

Now, regarding the seven potential bedrooms – I am not sure what the dimensions are of each particular bedroom or the square footage. There is a Building Code that requires a certain square footage. There is also a New York State Fire Code. So for a three-family for example, the code is different than a two-family or a single-family. So the bedrooms would have to meet the requirements of a three family under the New York State Fire Code in terms of the square footage of the bedrooms. With that in mind, it is not that you have a hardship because you would have an apartment on the first floor that has seven bedrooms, it could be four bedrooms and a larger living room or a larger kitchen or a larger dining room, or whatever have you. So if you choose to make the argument that it is seven bedrooms and it would be unduly burdensome for you to rent an apartment with seven bedrooms, you don't have to have seven bedrooms. You don't have to have a bedroom that is 10 by 8 feet or whatever would get you as a minimum bedroom. So again, this is a hardship that your client would bring on to their own and not necessarily oh, woe is me, I am in a situation now that I find it would be more economically benefitting to myself to have a three-family and to take what is now finally a conforming property and then turn around and make it what is essentially a non-conforming even though you needed a permitted use variance. So now we finally have a property that has made it into the Code and it is a proper place for the area. So let's go out of that Code now and go back to a three-family. So maybe the next owner can ask for a four-family. Maybe you could do that - ask for a little bit of a variance for more square footage for units and more square footage for the area variance as well.

So I believe that, in addition to the arguments that were raised by Mr. Green and Mr. Brennan, the parking may be there, and I grant you that, but if you look at the yellow highlighted area on that map, you are talking about a lot that is right on the property line. There is no sidewalk. So whether you are going to tell me now that it is the same amount of people in a legal three-family verses the same amount of people in a two-family. There are also occupancy limitations which are going to go for the bedrooms. So maybe you could get away with having a ground floor apartment with seven bedrooms and therefore be able to have seven, eight, nine, or ten people living in a unit. I don't know that would be up to the Building Department to determine whether or not that is a permissible amount of people. No matter how you look at it, though there is a great propensity, a great chance, to have more people living in a legal three-family than there is for a legal two-family. At that point, you have a

property that abuts on West Street with no sidewalk whatsoever. You open up that door and you are right there right on the street where a car can pass by. There is no sidewalk there is no buffer.

What the Planning Board thought would be a wise move is that you have a legal non-conforming use meaning a one apartment and one business which lost its ability. At that point it made the most sense to just make it a two-family and have some use and get a piece of property back onto the market and the contributing tax base. Now they want to make it a three-family. As a member of the Planning Board I vehemently oppose this plan because I believe that the owner the current owner the applicant before your Board knew well in advance what it was and he could have walked away from the project if he did not want a two-family. That was always a decision that could have been made and should have been made prior to the closing. I can only respectfully ask that you take our viewpoints into consideration. You are your own Board and you will do as you see fit which is the proper thing to do. Just to know that your brethren on the other side of the street (the Village Planning Board) has a possible issue with this and if that could be taken into consideration.

MR. WEYANT: Thank you, Mr. Fatsis. Again, this Board now knows that if we should act and approve this, it will come back to you. Another point I want to make, besides that. You and I have lived in this village for many, many years. My point is this, that when that Hilltop bar was open I think that you had a heck of a lot more cars on that street than there would be with a three-family residence or a two-family residence. The streets up there have been the same for as long as I have lived here. Yes, Fred, you are absolutely right, there are more cars today than ever, but I consider what it used to be and the number of cars that were up there at the time. I certainly think it is going to be to the better to the village if a residential structure is there and not a bar.

MR. FATSIS: It can't go back to being a bar.

MR. WEYANT: I realize that. But you had an eyesore here for a long, long time, and I am glad to see that someone is stepping up to do something with the building. I am editorializing, I realize that.

MR. GREEN: We agree with you, the Village Planning Board agrees with you that getting an eyesore out of there and getting a useful property in there the Planning Board, after a lot of consideration, based on the request of the former owner, and with the assurance of the former owner that this would be a two-family structure, we approved it. The deal was in place before we approved it. What we were told was that there was a buyer for it but they needed a two-family designation to consummate the sale, as I remember correctly. Now we are getting the sale is consummated and now the gentleman is looking for a three-family.

MR. WEYANT: I respect your point and I understand it. Is there anyone else in the audience that wishes to speak on this?

MR. HAGER: It is my observation in the Building Department there are many buildings that are languishing in this Village. We are trying to keep a tab on it. There are over 30 unoccupied buildings that no one seems to be interested in investing in. We think it is rare that you find somebody that comes in that has the enthusiasm and has the financing to take on a project like this. I just feel that from

the Building Department's perspective it is a benefit if you have someone that can get a return on their property to a point where they can afford to maintain it at a higher level than what we are seeing in a lot of properties in this village. I understand it is poor economic times and a lot of people can't afford to do what they want to do. Here, I think we have someone that may be interested in investing greater than what we have seen in the past. We have gotten the very bare minimum out of the previous owners. We got them to put on siding that turned something that was a blight into something that is barely acceptable. My perspective is that if there is any ability to work with the applicant, I feel that it would be beneficial to the village.

MR. WEYANT: Mr. Vallejos, you want to say something.

MR. VALLEJOS: Ladies and gentlemen, I have not been talking much and letting my architect do the talking because he is a professional in regards to these things. Just some background, I am not a big rich investor coming into Highland Falls. I am a small town guy, I work on the base. I am a captain in the Army, I graduated from West Point. I felt a connection with Highland Falls as a cadet. I stop by Andy's for breakfast and go to Richie's wings in Fort Montgomery. Yes, when I spoke to the owner, I knew for a fact that it was a two family and I was like it was a big property it is great and we can do something with it. That corner just sits there. I have friends that live right down the block and we were like it would be really nice if there was something going on with it. I have a little bit of money not that much enough to buy the property. I have some other relatives that are going to help me invest and try to move in and do something. We are not doing this because we think that we are trying to make so much more money. I don't think that we are going to make that much more money with it personally.

We went over the efficiency of the space. If this property was smaller and it was a two-family home we would not try to squeeze three families. If we could easily put it square footage wise we thought why not ask. We are not trying to claim that this is some big hardship saving and cry for the third family. We are throwing it out to the Board and let everybody see what makes sense and work with us. Like the Building Inspector said, there are a lot of abandoned buildings here that I would love to maybe invest in later. If I get a little bit more return because we are adding an apartment and it does not affect the town because it used to be a bar. A lot of people that I talk to I hear it all the time there used to be a lot of cars there and that it used to be packed. I think adding one more family instead of two would not be a big detriment to that corner. That is why the Board is here to hear both sides of the story. They have some good insight. I am not going to say they are coming from nowhere, especially with the street, I think that is a good point. If the town later could work and make that street one way to help facilitate cars getting out, I think that is a great idea. I am open to hearing different things. This is my perspective coming in not some big investor trying to make a lot of money. I want to do something and I would like to just use the space for what I think it could be used for. I think three families fits pretty comfortably. If it didn't, we would not try to squeeze it. That is my only argument. You are right I did know it was a two family. I thought we would present it for maybe three, if they say no; the town makes the decision, that's fine.

MR. WEYANT: Thank you. Is there anyone else in the audience who wishes to comment on this application? Hearing none, I am going to ask that the Public Hearing be closed.

At 7:55 P. M., a motion was made to close the Public Hearing.

Motion: Mr. Jannarone Seconded: Mr. Devereaux Approved

MR. WEYANT: Where are we now? We will let Mr. Vallejos know we are waiting on the Orange County Planning Board to get back to us. There is a requirement because you are next to the county maintained road, meaning Route 218. The County Planning Board has to weigh in on this. We have not received it yet. We will continue this application at our meeting on July 18, 2011.

MR. CANTEROS: I will provide the necessary information. I apologize.

MR. WEYANT: I will need from you the two Affidavits for Mailing and Signage. We should have the County Planning Board recommendations at that time.

MR. CANTEROS: You say you should have the County decision by the 18th?

MR. WEYANT: Yes, I should have.

MS. TERHUNE: Do you want to ask the Board if they have any comments or questions at this point?

MR. WEYANT: I would be happy to if there is any discussion, otherwise we can take it up at our next meeting.

MR. DONNERY: I have one. What Fred was saying about coming out onto West Street walking out. Do you have any plans to put any main entrances facing towards your parking lot? I know there was one back door.

MR. CANTEROS: There was one back door. We utilized it for this unit, one from the front and one from the back. This other unit also has one from the back. We have the main entrance to the second floor here to the front. We can always rearrange it and make that the main entrance for the issue of safety. Right now we are just in the preliminary layout and design. To clarify the gentleman's comment which were very detailed and I am very impressed by his knowledge of the New York State Building and Fire codes. Yes, we do by law have to follow those codes. But more importantly we see ourselves using the existing building code because it is an existing structure. The New York Building and Fire Code will interject into what we do for safety for size of bedrooms. Every time my office takes on a project those are paramount. Otherwise we would not issue our sketches. At that point of the process is reviewed by the inspector for the building code. Which ever use we end up we will sit down and go through the code and make sure that is followed. Yes, we can change those layouts and minimize some of the safety issues.

This is not a new building. It is an existing structure. We cannot alter it. We have to deal with what we have. We don't have that luxury or that latitude to say that I can move the sidewalk here or I can do this. We are stuck with the building the way it is and we must work within that envelope. We will try to do that as safely as possible. It is obvious that some of the requirements from the existing building code we will not be able to meet but those are the things that the code allows some latitude in. In

an existing building you attempt to do the best you can and that is what you attempt to do with the building official and make sure that the safety is followed.

MR. JANNARONE: To get a use variance you have to meet a number of hurdles. The number one thing on the list is: Cannot realize a reasonable return substantially as shown by competent financial evidence. If you want to get a use variance you have to show that. So far you have not presented that part of the puzzle.

MR. VALLEJOS: We talked about that. We made an attempt to try to get that. We could not get it in time for tonight's meeting.

MR. WEYANT: Can you get it in time for our July 18, meeting?

MR. VALLEJOS: We can. We are at the point where we really want to move this project. We understand that the battle might get too tough for us to try to push forward and time is kind of the key. I would like to get a feel of where this Board is leaning toward with this.

MR. WEYANT: You are not going to get that.

MR. VALLEJOS: I might just stay with the two-family and withdraw the application.

MR. CANTEROS: We will adjourn on that. We will let you know before the next meeting by an official letter from my office. That is an option.

MR. WEYANT: That is fine. You can discuss that outside of tonight's meeting. Should you decide to withdraw, please send a formal letter to Building Inspector's office care of me.

MR. CANTEROS: My client is very enthusiastic. Since he purchased it, he wants to move forward.

MR. WEYANT: I understand that but we are tied down by New York State Regulations, as a lot of things are in this State.

MS. TERHUNE: You should have that 239 by the next meeting.

MR. WEYANT: We definitely should. My intention was to make a decision at our next meeting, but we need the financial information.

MR. CANTEROS: We will provide all that information at the next meeting. If we get a positive result from your end, what next?

MR. WEYANT: If you should get a positive result, you will have to go back to the Planning Board which will be another delay which you will have to deal with.

MR. VALLEJOS: And they could say no.

MS. TERHUNE: If this Board grants a use variance, then a multi-family would be a permitted use. It would be permitted. With the Planning Board you would have to go through site plan review and they would address for example issues of safety, and

fire safety. Even if you get this approval, you are not going to go right to the Building Inspector.

MR. CANTEROS: I understand completely. The scrutiny when you get past the site plan review is in more detail. It takes more time and it is more cost because you have to do more work on the site. It is something that I need to have a conference with my client and then address it.

MR. WEYANT: Yes. Correct me if I am wrong, but if you go ahead and do the two-family that has already been approved by the Planning Board. It would seem to me that you could get a permit immediately should they withdraw, correct John?

MR. HAGER: Right now I am authorized to issue a building permit for a two-family use. If you choose to withdraw, you will not have a need to go back to the Planning Board you can come to us.

MR. CANTEROS: I knew that from the beginning. The other option was given to him to explore those avenues and to try to do that. Thank you so much.

MR. DONNERY: Right now it is in a postponed state.

MR. WEYANT: We are holding their application over to the July 18 meeting. Should they decide to withdraw it, I would get notification, and it would be over and done.

MR. WEYANT: I know the Fort Montgomery people are here to listen. But what you want to hear about is not going to get brought up. To bring the Board Members up to date on the cell tower status to this point. I have been told that the Town Planning Board has gone back to Homeland Towers and suggested that they check out some alternative sites for the cell tower. Therefore, the Homeowners Association has decided not to appear tonight because they want to see where this is going to go. Am I right so far?

MR. MOYER: As I far as I know, yes.

MR. WEYANT: Maybe we will have it at our July 18 meeting, maybe not. Let's just see where that goes. We are prepared to listen to the Homeowners Association's request to question John's Building Department decision not to require a use variance. It was on the agenda originally but all parties agreed that until such time in the future that it is decided where this tower will be, that we will wait.

At 8:05 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Devereaux Seconded: Mr. Jannarone Approved

Respectfully submitted,

Fran DeWitt
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is
Monday, July 18, 2011**