

D R A F T

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
JANUARY 22, 2013**

A regular meeting of the Zoning Board of Appeals was held in the Highland Falls Library, Highland Falls, New York, on Tuesday, January 22, 2013, at 7:15 P. M.

THERE WERE PRESENT:

Board Members:

Jack Jannarone, Deputy Chairman
Tim Doherty
Tim Donnery
Ray Devereaux
Tony Galu

Absent:

Ralph Montellese

One Vacancy on Board

Alyse Terhune, Attorney (Jacobowitz & Gubits, LLP)

ALSO PRESENT: John Hager, Building Inspector, David Weyant, and Scott Barr.

MR. JANNARONE: I will begin the meeting and note that all Members are present except Mr. Montellese. We have one vacancy. Mr. David Weyant has resigned from the Board.

We will continue with the Reorganization of the Board.

MR. DONNERY: I would like to say that it has been my pleasure and honor to work with Mr. Weyant. I appreciate everything he had done for the Board.

A motion was made to appoint Tim Doherty as Chairman of this Board.

**Motion: Mr. Donnery Seconded: Mr. Galu Approved
With the following Roll Call Vote:**

Mr. Jannarone	-	Aye
Mr. Doherty	-	Aye
Mr. Donnery	-	Aye
Mr. Devereaux	-	Aye
Mr. Galu	-	Aye
Mr. Montellese	-	Absent

A motion was made to appoint Tim Donnery as Chairman of this Board.

**Motion: Mr. Devereaux Seconded: Mr. Jannarone
No Action taken on this motion.**

MR. DONNERY: I defer to Mr. Doherty since he lives in town and has been on the Board for many years.

A motion was made to appoint Jack Jannarone as Deputy Chairman of this Board.

**Motion: Mr. Doherty Seconded: Mr. Donnery Approved
With the following Roll Call Vote:**

Mr. Jannarone	-	Aye
Mr. Doherty	-	Aye
Mr. Donnery	-	Aye
Mr. Devereaux	-	Aye
Mr. Galu	-	Aye
Mr. Montellese	-	Absent

A motion was made to set the meeting dates for this Board to be the third Monday of each month with the exception of January and February because of holidays. Meetings will be held on the third Tuesday in January and February.

Motion: Mr. Doherty Seconded: Mr. Donnery Approved

MR. DEVEREAUX: I guess there is only going to be one Planning Board soon anyway, presumably.

MR. GALU: That is a good idea.

MR. DOHERTY: May I propose that we keep that meeting date on the third Monday of every month until we can set a schedule amongst the other Boards.

MR. DEVEREAUX: Absolutely. It may never happen.

MR. WEYANT: Mr. Chairman, may I speak? We have a problem with Town Hall with Tuesdays because of Court. That is the reason we are here tonight.

MR. DEVEREAUX: We can meet in a closet.

MR. WEYANT: Not for a Public Hearing. We do need the space.

MR. GALU: We can meet at my house.

MR. DOHERTY: We will keep it the third Monday of every month until down the line a change has to be made.

MR. DOHERTY: Next on the list are the newspapers of record.

A motion was made to use the News of the Highlands in Highland Falls, and the Times Herald Record in Middletown as the official publications for this Board.

Motion: Mr. Doherty Seconded: Mr. Donnery Approved

MR. DOHERTY: Attorneys.

MS. TERHUNE: Would you like me to leave? I would be happy to do so.

MR. DOHERTY: Are we nominating you or the firm of Jacobowitz & Gubits, LLP?

MS. TERHUNE: Jacobowitz & Gubits, LLP.

A motion was made to continue the use of the law firm of Jacobowitz & Gubits, LLP to represent this Board.

Motion: Mr. Doherty Seconded: Mr. Donnery Approved

MR. DEVEREAUX: I have a comment. I know the Town Board is talking about cutting us to five (5) members however they are going to work that out, to save money. A discussion of how much this Board is costing the Town and with that in mind, my take is that we don't always need Alyse here. One night she came and it was horrendous outside and she, like a good soldier, was there. We had virtually no business. I think we need to use a little common sense about when we use a lawyer. She is a treasure, but maybe sometimes, like even tonight, I am not sure it is necessary.

MR. DOHERTY: I can agree with that. If there is nothing on the record, or Public Hearings, or any new business, I understand that fully. I think it is important that we have Counsel present when we have new business.

MR. DEVEREAUX: The Village Board never has an attorney at their meetings. They consult with the attorney. When Tim gave up the Board head and I took over a few years ago, not once in the three plus whatever years I served as Chair, did I have the lawyer there. But when I had something that looked as though it could be a sticky wicket, I called a lawyer that day and discussed it with him so that I had a reading as to how I should continue. It is something that is before the Town Board and I think we should be sensitive to that.

MR. DONNERY: In all fairness, it is whatever you feel comfortable with. You will know ahead of time what is coming up. When I was Chairman, I think if we had five (5) cases in a year, it was a lot. Lately, we have had something every month. Which is good, progress is picking up with the Village and the Town. It is whatever you feel comfortable with.

MR. DOHERTY: I would like to play it by ear for a while.

MR. DEVEREAUX: Good point. I think we need to be sensitive to the Board.

MR. DOHERTY: Last, we have Secretary.

A motion was made to appoint Fran DeWitt as Recording Secretary for this Board.

Motion: Mr. Doherty Seconded: Mr. Jannarone Approved

MR. DOHERTY: Next is to approve the Minutes for December 17, 2012. Are there any comments on them?

A motion was made to adopt the Minutes for December 17, 2012.

Motion: Mr. Jannarone Seconded: Mr. Devereaux Approved

MR. DOHERTY: Next on the agenda is **Mr. Barr, 215 Main Street, Highland Falls, NY for conversion of office space to a residential apartment.** I would like to remind you that you are still under oath and we are continuing the Public Hearing.

MR. BARR: Understood.

MR. DOHERTY: The reason we have you back is because we were waiting on the Orange County Department of Planning and whether they had any issues with your request and they responded that they have no concerns whatsoever. Does anyone have anything else?

MR. DEVEREAUX: Financials.

MR. BARR: I did some financials for you. There are some zeros in some months and those equate to vacancies. Apartment 1 especially is the vacancy that I am requesting to have converted over from commercial to residential.

MR. DOHERTY: Apartment 1 was the unit that was used as the professional space?

MR. BARR: Correct. That was the one that was vacated at the end of July. I have been trying to rent it as an office space. In previous meetings I have stated that I have yet to receive a call to even see how much the space is renting for. There are still currently 12 empty store fronts on Main Street. Due to the type of building that it is without an all glass frontage as most commercial spaces; that is why I was hoping to convert it back to a residential space.

MR. JANNARONE: How do you come up with the water and sewer, do you just divide?

MR. BARR: It is an average of the past couple of years.

MR. JANNARONE: The property maintenance?

MR. BARR: That is a number that includes snow removal and landscaping. That number does fluctuate. Obviously, the building itself has expenses, i.e., if the boiler goes down or there is an issue with the electric. It is kind of a round

about number. Some months I am lucky enough to go a while without really having an expense. There is fall clean up, spring clean up. The property there is really small, it is not much to have the grass cut. Most landscapers have a \$30 minimum.

MR. DOHERTY: Do any Board members have any comments?

MR. JANNARONE: To refresh my memory, there was no comment from the public at the last meeting, correct?

MS. TERHUNE: No, there was no comment.

MR. DONNERY: This is a use variance, right?

MS. TERHUNE: A use variance and an area variance.

MR. DONNERY: The criteria on the use variance you have to go through four questions. You take them one by one.

MR. DOHERTY: I would like to close the Public Hearing before that.

At 7:17 P. M., a motion was made to close the Public Hearing.

Motion: Mr. Jannarone Seconded: Mr. Donnery Approved

MR. DOHERTY: **Criteria for the Area Variance:**

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

MR. DOHERTY: You have tried to rent this out as?

MR. BARR: As an office space.

MR. DOHERTY: To no avail, correct?

MR. BARR: Yes. I have a sign out front and have done multiple postings on Craig's List. I have kept it updated on Craig's List, which normally I have had very good luck with. I had done a post up at West Point on their AHRC website, but it was taken down because you are not supposed to post commercial up there. Maureen from Rand is also aware of it as well. She has brought folks by when I have had other rentals available. She is actually pretty good in town and she has not received one request for office space.

MR. DONNERY: So what is the timeline that we are talking about?

MR. BARR: He alerted me in June that he was going to be moving out. Since the beginning of June I have had it posted on Craig's List. I did not want to have a big sign up in front while he was trying to run a business that there was office space to rent.

MR. DONNERY: So we are saying for the last six months.

MR. BARR: Plus.

MR. DOHERTY: Are there any other questions on this topic?

MR. DONNERY: I would say that it was a reasonable amount of time. I would not want him to wait too much longer than that. Does anyone on the Board feel it should be longer?

MR. DOHERTY: I think that is a fair amount of time.

MR. DEVEREAUX: Are we going to go down each question?

MR. DONNERY: That is the proper way to do it.

MR. DOHERTY: Next on the list:

- **Undesirable change in neighborhood character or to nearby properties.**

MR. DOHERTY: I personally don't see an undesirable change in the neighborhood should that be rented as an apartment as opposed to a commercial office.

MR. DEVEREAUX: Agreed.

MR. JANNARONE: Clearly in that neighborhood.

MS. TERHUNE: Are there a lot of apartments?

MR. JANNARONE: No, there is a gas station.

MR. DEVEREAUX: And a church.

MR. DOHERTY: A church on one side and a gas station on the other. My other question would be do you have ample parking should you rent that unit out?

MR. BARR: Yes, we do. John, I believe you looked at the property? It actually, I would imagine, be a better situation for the church if it was a residence, because then there would be some stability in who is parking where. With a commercial space it always seemed like someone would pull in and someone from the church may pull in to run in for a moment and then they would come out and they would be blocked in. I think that it may work out a little bit better and vice versa the folks from the commercial space were parking over in front of the church so the church had to come over and knock.

MR. DOHERTY: I don't have an issue with that. I don't see it to be a detriment to the neighborhood.

MR. HAGER: Also, Tim, keep in mind that the project will have to go to the Planning Board after this Board.

MR. DOHERTY: Correct. Next on the list:

- **Whether request is substantial.**

MR. DEVEREAUX: Yes, it is. That is something we have to ponder.

MR. JANNARONE: It is within the existing footprint, I think. Nothing externally is going to change.

MR. DOHERTY: We are doing the area variance.

MS. TERHUNE: When you weigh a detriment to the neighbors and the village compared to the benefit of the applicant, many of these tests overlap. It is important to go through them. The area variance is he is looking at a request for a variance for the residential floor area and then the lot area.

MR. BARR: 187 feet.

MR. DOHERTY: The lot area is much more substantial in square footage. Next on the area variance:

- **Whether request will have adverse physical or environmental effects.**

MR. DEVEREAUX: We already discussed it.

MS. TERHUNE: It would probably reduce parking traffic and it would reduce intensity of use since it is no longer going to be commercial.

MR. DOHERTY: The lot would be empty during the day most days and in the evening cars would be back in. It would reduce the traffic.

MR. DEVEREAUX: The Planning Board would deal with the parking, too, will they not?

MR. HAGER: Yes.

MS. TERHUNE: He has enough parking, he is not asking for parking.

MR. DOHERTY: The last on the list:

- **Whether alleged difficulty is self-created.**

MR. DEVEREAUX: Tim, I have a couple thoughts. Number one is buyer beware, caveat emptor. But the fact that you have not been able to rent that space for six months is not self created, it is just a problem, a difficult one; probably a common threat throughout the commercial portion of the village. I just throw those two thoughts out.

MR. DOHERTY: Good points.

MR. DONNERY: How long have you owned the building?

MR. BARR: I believe, and I am under oath, it is January and the holidays made me a little foggy. I believe that we purchased the building around 2002 or 2003.

MR. DONNERY: He did not purchase it with the intent of breaking it up.

MR. DOHERTY: Give or take nine or ten years you've owned the property.

MR. BARR: Correct.

MR. DEVEREAUX: So you have done pretty well in the building at that spot.

MR. BARR: Yes.

MR. DEVEREAUX: I did not realize. That was a good question.

MR. DONNERY: Well you brought it up. That eliminates the self created part of it.

MR. DOHERTY: We need to vote on the area variance.

MS. TERHUNE: Generally, you vote on the area and you vote separately. It is up to you if you want to consider everything together you can do that.

MR. DEVEREAUX: Which would you normally take up first?

MS. TERHUNE: The area variance. Actually, having said that, it really makes no difference.

MR. DOHERTY: It is six of one and half dozen of another.

MS. TERHUNE: It is. It is unlikely that a Board would grant one without the other. Typically, a Board does not do that.

A motion was made to approve a 2,280 square foot lot variance and a 187 square foot residential floor area variance for this project.

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

Mr. Jannarone	-	Aye
Mr. Doherty	-	Aye
Mr. Donnery	-	Aye
Mr. Devereaux	-	Aye
Mr. Galu	-	Aye
Mr. Montellese	-	Absent

MR. DOHERTY: We will move on to the **use variance** part of the application:

- **Cannot realize a reasonable return – substantial as shown by competent financial evidence.**

MR. DONNERY: I have one comment on the use variance. This is actually a form that has to be filled out?

MS. TERHUNE: A form, no. The reason we go through this in detail is so when I write the resolution, I have the benefit of the Board's thinking on each and every point. Under a use variance, it is a very high bar. The applicant has to prove each and every point. It is a higher bar than an area variance. Did that answer your question?

MR. DONNERY: Yes. I knew it was a higher bar, but remembered every time going by each question.

MS. TERHUNE: I sometimes have a form with me that I fill out. That is only for my benefit to get everybody's points down.

MR. DEVEREAUX: There is a form which is used in real estate. It is called an APOD. That goes down in rhyme and verse, all details of your income and expenses specifically down to the bottom line. This is certainly not that. Maybe you have used one of those.

MS. TERHUNE: That is for real estate purposes, correct?

MR. DEVEREAUX: It is, but it can be used here.

MS. TERHUNE: You could use it here if you required that. The standard is competent evidence. So if you believe that the evidence is competent, that is this Board's decision. The more you have the better.

MR. DEVEREAUX: We know that Mr. Barr is competent, but whether this document is a competent document is another matter. I will leave it at that.

MS. TERHUNE: I understand.

MR. DONNERY: My point is a use variance is, like you said, has a much higher bar and standards. My training is that you don't give out use variances lightly. That is the whole purpose. These questions have to be answered so that our attorney can back us up. Believe me, it happens.

MR. BARR: Understood.

MS. TERHUNE: Does the Board accept this as competent evidence that he can't get a return on his investment without the use variance?

MR. DONNERY: This would go hand in hand with him not being able to rent it for the last six months. Between the two of them, it goes hand in hand. So I would say yes.

MR. JANNARONE: I am comfortable with that.

MR. DOHERTY: As for this being a financial document, and I have said this before at previous meetings, and Mr. Barr is under oath, I can only assume this is true and legal.

MR. DEVEREAUX: Tim, a comment. If you look at the numbers even to include the apartment downstairs, you are looking at a \$9,000 loss.

MR. JANNARONE: That is only 6 months, in 12 months, it would be twice that.

MR. BARR: If the top one was rented, and then I had a two month window, then the woman who took apartment #2 came towards the end of October. I was obviously very anxious to rent it. She was not able to move in until December first. She agreed to pay for half of November's rent.

MR. DEVEREAUX: Even if you took double the \$6,370, that is \$12,740, and you are still only arriving at \$34,000 thereabouts. It is still a \$2,000 loss.

MR. BARR: If you take out a few of the \$200's it is right around breaking even. I have had a couple conversations with Nick Podias about maybe trying to figure out how I can work to lower the taxes.

MR. DEVEREAUX: You have to go to the Board of Assessment Review and have to present a case. You have to provide a valid appraisal. Otherwise, they won't talk to you.

MR. BARR: They won't take you. When I purchased the property, the total taxes were \$4,800 and now they are \$10,600.

MR. DONNERY: On this, do we vote on each one of these.

MR. DOHERTY: We vote as a whole. Next on the list:

- **Alleged hardship is unique and does not apply to substantial portion of district or neighborhood.**

MR. JANNARONE: I don't see how it really does.

MR. DONNERY: That is the same answer as the previous one. We are all okay with that.

MR. DOHERTY: I imagine Number 3 falls under that as well:

- **Requested variance will not alter essential character of the neighborhood.**

MR. DOHERTY: I personally don't see that.

MR. DEVEREAUX/MR. JANNARONE: I agree.

MR. DOHERTY: And the last one:

- **Alleged hardship has not been self-created.**

MR. DOHERTY: I will go back to what Ray had said, "That you tried to rent this unit."

MR. DONNERY: I would go back to the fact that he bought the property back in 2002. That is over ten years ago so definitely I would say that is not self-created. It's not like he bought it six months ago.

MR. DOHERTY: When the market was hot.

MR. GALU: To have an apartment empty for six months, that is not a long time. There are a lot of them empty in Highland Falls empty for more than six months.

MR. DONNERY: Store fronts?

MR. GALU: Not store fronts, but apartments. There are store fronts, too.

MR. DEVEREAUX: Is it better to have it occupied or not?

MR. DOHERTY: I would say yes, in my personal opinion.

MR. DONNERY: Obviously he is thinking of investing more money into the property if he is going to switch from one to the other. I would image that will take an investment to do.

MR. BARR: We actually went in and did a full paint job, did all crown molding, replaced the counter tops with granite, and replaced the refrigerator that is in there.

MR. DONNERY: So this is basically pretty much set up as an apartment already? I thought you had to go in and put in a new kitchen and bathroom.

MR. BARR: Really the only thing that it needs is an oven, a stove. It has a full bath. He kind of used it, not as an apartment obviously, but the way it was set up when they moved in it was originally an apartment. They really did not do much to it.

MR. DOHERTY: This was a counseling center.

MR. BARR: Correct.

MR. DOHERTY: Anyone else have any other questions or comments?

MR. DEVEREAUX: I am ready to make a motion.

MR. DOHERTY: We will vote on this combined.

MS. TERHUNE: No, you can vote on the use variance.

A motion was made to approve a use variance allowing a residential unit on the first floor for this project.

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

Mr. Jannarone	-	Aye
Mr. Doherty	-	Aye
Mr. Donnery	-	Aye
Mr. Devereaux	-	Aye
Mr. Galu	-	Aye
Mr. Montellese	-	Absent

MR. BARR: Thank you very much. I really appreciate it.

MR. DONNERY: Is there anything else with that?

MR. DOHERTY: No, this now goes to the Planning Board. Is that correct, John?

MR. HAGER: Yes. They need to apply for a site plan.

MR. DOHERTY: You will guide Mr. Barr through that whole process.

MR. HAGER: Yes, he has already made an application.

MR. BARR: I would shake everyone's hand, but with the flu season.

MR. DOHERTY: Good luck to you, sir.

MR. BARR: Thank you very much. I really appreciate it. Congratulations on the new appointments.

MR. DEVEREAUX: It is almost like putting him through a drill, but I don't think we should not squeeze a little bit.

MR. HAGER: Can I make one comment from the perspective of the Building Department? You had mentioned whether it being occupied or not being occupied being a positive or a negative. I noticed on the paperwork that he provided he indicates about \$200 a month being spent on the maintenance on the property. Personally, I feel that buildings that are occupied are buildings that are profitable, and an owner has more ability to continue maintain their property.

I think that many of the properties that you see in this village, and the town as well, that are not being maintained properly are perhaps unoccupied or partially unoccupied for various reasons. I do think it is a consideration that you should take whenever an applicant appears. Sometimes they need to apply for that kind of relief in order to keep this thing going. From the Building Department I see it as a positive. Because once these buildings deteriorate, it is worse. I think that anything that the Board can do to make the process available to the applicants, and I feel the same way about the Planning Boards, that they should

do what is reasonable to allow an applicant to get through the process in a reasonable time and cost. I think it is a positive.

MR. DEVEREAUX: Agree to your point, John. But I think that there is a level to follow.

MR. DOHERTY: Certainly.

MR. HAGER: It should not be a rubber stamp.

MR DOHERTY: I think John made a good point, by Ray is right, it is not a free for all. Any other discussion?

MR. DEVEREAUX: One point, something that I discussed with David before. Training, which Tim and I have done back years ago. Jack is the newest member on Board, and one of us is going to be out soon, probably. I just think training it is a good idea. The problem is that I tried to work with the Planning Department. When you have just Zoning Board training, which they have done in the past, we went. Perhaps we should be closer to our Planning Boards. Maybe one of us could attend one of their meetings. I have an interest in the water district. With that said, you may or not agree, I think it is always good to hear the pundits talk about certain narrow views people may have living in a small village. Something to think about.

MR. DOHERTY: I agree. When I was Code Enforcement Officer, I went to as many of those training meetings that they had. You do learn a lot. Like you say when you go from a village the size of Highland Falls to a city like White Plains or Newburgh, they have a bigger perspective and they give you a different outlook. They are definitely worthwhile. Any kind of training is worthwhile.

MS. TERHUNE: Thank you, gentlemen for your reappointment.

At 7:40 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, February 19, 2013**