

APPROVED: 3/17/14

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
FEBRUARY 18, 2014**

A regular meeting of the Zoning Board of Appeals was held in the Town Hall, Highland Falls, New York, on Tuesday, February 18, 2014, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

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

Absent

Tim Donnery

Alyse Terhune, Attorney (Jacobowitz & Gubits, LLP)

ALSO PRESENT: John Hager, Building Inspector, Jim Titolo, and Jack Gafford, (Partner of Old Guard).

MR. DOHERTY: Please rise for the Pledge to the Flag. I will open the meeting of the Consolidated Zoning Board of Appeals for February 18, 2013. As for Roll Call, all members are present with the exception of Tim Donnery.

The first order of business is to approve the Minutes of January 22, 2014. Minutes. Does anyone have any comments?

MR. DEVEREAUX: Were they sent out?

MR. JANNARONE: I did not get them.

MR. DOHERTY: That is my mistake. We will table these until the next meeting. I will make copies and put them in their boxes.

MR. JANNARONE: You were talking about E-mail?

MR. DOHERTY: That is a good question, would you prefer E-mail. Or would you like a hard copy? (Board Members agreed to E-mail copies). That is what we will do.

Development of the Old Guard Hotel at 1610 Route 9W, Highland Falls.

Next on the agenda we have Jim Titolo here to discuss the hotel project on Route 9W. Please state your name for the record.

MR. TITOLO: Jim Titolo, 95 Mountain Avenue, Highland Falls, NY.

MR. GAFFORD: Jack Gafford, resident of Santa Cruz, California.

MR. DOHERTY: Jim, would you give us a description of what you have planned for the project.

MR. TITOLO: Mr. Chairman, should we go by the letter I sent or should I give an overview?

MR. DOHERTY: I think that we had an overview at the last meeting.

MR. JANNARONE: Are there any changes?

MR. TITOLO: No changes, just additional information that was requested.

MR. JANNARONE: Why don't you cover that.

MR. TITOLO: On January 30, 2014 we submitted this application for review by the Zoning Board of Appeals. There was a list of what was presented and Mr. Hager, Building Inspector, signed it in receipt of. Basically, we are here to present to you the request for relief. **Number one** on our list is relief from the maximum height of 35 feet to 48 feet.

Number two, the extension of the B-2 Zone into the R-3 Zone to support the parking requirements. Article II, 240-7 F, reads as follows: "When a district boundary line divides a lot in single ownership at the effective date of this chapter or any subsequent amendment thereto, the Board of Appeals may permit extension into one district of a lawful conforming use existing in the other district, as hereinafter provided by Article XI."

The proposed Old Guard Hotel is a lawful conforming use and all four lots supporting the development, Section 111, Block 1, Lots 15.1, 15.2, 15.3, and 15.4 are in single ownership.

MR. JANNARONE: Meaning that you own them?

MR. TITOLO: Yes, the development will own the lots.

MS. TERHUNE: And you have an application still pending to combine those lots?

MR. TITOLO: Yes. **Number three** is the relief for the rear yard setback requirement of 30.0' to 20.1 feet. The relief is required to provide for the construction of the marketable sized hotel room and maintain the 50.0' setback from the front property line.

Number four is the relief for the maximum required wall height of 8.0' in the B-2 Zone and 6.0' in the R-3 Zone. The relief is required to support the proposed parking area based on the topography of the existing site.

MR. JANNARONE: Where did you come up with the variances you need?

MR. TITOLO: We have that on one of the submissions. If you go to one of three there is a table with wall heights. If you need a bigger set, let me know. One of three on the Lehman Getz PC. Site Plans. It identifies each wall, as requested. Wall A is the wall to the north. I needed to make a correction: Wall A is in the B-2 Zone, I'm sorry. The average height of that wall is 3.5 feet in the B-2 Zone. The maximum height allowance is 8 feet.

MR. DOHERTY: I see you have 6.0 feet listed.

MR. TITOLO: That is incorrect; it has to be 8.0 feet. There is no variance required.

MR. DOHERTY: Are you in agreement with that, John?

MR. HAGER: Retaining Wall A is in the B-2 Zone, so in the B-2 establishes the input so....

MR. TITOLO: The average height is 8.0 feet maximum height, and the average of Wall A is 3.5 feet.

MR. JANNARONE: You are saying that the maximum height is 6.0- feet. Is that allowing for the difference in the two sides?

MR. DOHERTY: Actually, on Wall A, he corrected it on the Site Plans, and the maximum height allowed is 8.0 feet.

MR. JANNARONE: Yes, how are you measuring? When you are saying the height of the wall, remember we had this discussion about one side of the wall and the other?

MR. TITOLO: Yes. I asked for clarification from Mr. Hager on how that wall is measured.

MR. DOHERTY: A question to John, are you in agreement with Mr. Titolo's statements that in the B-2 Zone is an 8 foot height allowance. Is that correct?

MR. HAGER: He had corresponded with me after your last meeting asking for clarification on that interpretation. He offered the opinion that had been discussed at the last month's Board Meeting: "that it was possible that average could mean along the length of the wall, rather than one side to the other." I had offered him the response: "that I don't agree with that interpretation." I will read my response: "I feel that if language stated each end of the wall, it would be fair to interpret it the way it has been described. We have been interpreting (we, meaning the Building Department), that since the wall is only standing above ground on one side, the height is measured as an average of the two sides. I feel it is written this way purposely because Highland Falls is primarily on steep slopes in this community." I also will note (I did not write it here) that if the intent was to measure the average height along the length, I think it would carry over to fences as well as walls. We don't have anything in here about fences.

MR. TITOLO: So that is basically exactly the way we did it. From one side to the top, the average height, the bottom is 0, the top is 12 feet, the average height is 6 feet.

MR. HAGER: That is the way we have interpreted it. Is it reasonable? I think so in this community.

MR. JANNARONE: So the numbers you put in the average height is this number (referred to Site Plans). A foot on the top and 10 feet on the bottom?

MR. TITOLO: If the top is 12 feet and the bottom is 0, the average height is 6 feet. The grade at the top is a foot below that, then that is what we measured.

MR. DOHERTY: We discussed Wall A.

MR. TITOLO: Yes. I will go to Wall B. For the record, Wall A is in a B-2 Zone, the average height is 3.5 feet; the maximum height allowed is 8 feet. No variances required there.

For Walls B and C, I have a handout coming to you, and I apologize about this, it was an engineer that transferred some information improperly. Walls B and C are on the Mearns Avenue Side and are in the R-3 Zone.

MR. DOHERTY: Both B and C.

MR. TITOLO: Yes, both B and C Walls are in the R-3 Zone. So Wall B is in the R-3 Zone, average height 11 feet. Maximum height allowed is 6 feet. We are seeking a variance of 5 feet. Wall C is also in the R-3 Zone.

MR. DOHERTY: That also has to be corrected, as well.

MR. GAFFORD: I have a correction sheet that I will pass out.

MR. TITOLO: Retaining Wall C is in the R-3 Zone. The average height is 12.75 feet. The maximum height allowed is 6 feet, not 8 feet. So we will be looking for a 7 foot variance.

MR. DOHERTY: Anybody have any questions at this point?

MR. TITOLO: Retaining Wall D is on the south end of the property. 95% of it is in the B-2 Zone.

MR. DOHERTY: Excuse me. John, the fact that 95% of that is, in fact, in the B-2 Zone, we are good with the fact that we will apply the B-2 regulations on that?

MR. HAGER: The Code for the residential district in R-3 in a side lot line outside of the rear yard, 4 feet maximum. Is that far enough back that it is in the rear yard? That is behind the building. The zone boundary is behind the building. If you look at the definition of a rear yard: "A space on the same lot with a building, situated between the nearest roofed portion of the building and the rear lot line of the lot, and extending from side lot line to side lot line." This has frontage on two streets, I think the Applicant gets to choose.

MS. TERHUNE: Yes.

MR. HAGER: So I think you are ok because that is back far enough that it is considered in the rear yard. If it were out closer to the street, it would be a different issue.

MR. DOHERTY: Thank you.

MR. TITOLO: Retaining Wall D is in the B-2 Zone. Average height is 9 feet, maximum height allowable is 8 feet and we are seeking a variance of 1.0 feet.

MR. HAGER: Which one is the one that needed the 7 foot variance?

MR. DOHERTY: Wall C.

MR. HAGER: It says 5 feet on the plan, but it needs 7 feet.

MR. JANNARONE: 6.25 feet, but he is asking for 7 feet.

MS. TERHUNE: 6.75 feet.

MR. JANNARONE: Just out of curiosity, are you going to pull it all the way up to the top of your wall, or is there going to be a bit of a lip there?

MR. TITOLO: We have asked the Consulting Engineer and Architect how they want to treat that area. I think there is going to be a top block which basically

extends 6-8 inches above the grade. They will treat it with landscaping, a guide rail, and a 6 foot fence.

MR. JANNARONE: Have you accounted for this top block in your variance?

MR. TITOLO: I actually did not account for the grade if it was below. I identified the top of the wall and the bottom of the wall. So we are greater than the actual average.

MR. JANNARONE: I mean if you drop down on the building side, then you have to add on a little more to your height.

MR. TITOLO: You would have to reduce it.

MR. JANNARONE: Let's say the wall on the outside is 10 feet, you come up to the top and then you drop down a foot, that would be an 11 foot total.

MR. TITOLO: That's right, so we went to the maximum 12 foot.

MR. JANNARONE: No, the wall is only 10 feet tall in my example. But there was a 1 foot drop on the other side, because in my example, we did not fill it all the way up to the top. That makes a total of 11 feet as the average height.

MR. TITOLO: No, that does not make the average height.

MR. JANNARONE: No, not the average, the total height is 11 feet. I am just saying when you ask for your variances, are you accounting for not filling it all the way to the top; in other words, ask for what you really going to need.

MR. HAGER: Does the table on the plan, when it says minimum wall height and maximum wall height on the top table, is that indicating how high the wall is on one side verses the other side or is that one wall.

MR. TITOLO: No, that is the maximum wall height from 0 to the maximum wall height. When you see Wall A, the minimum is 1 foot because 1 foot of the wall is buried on the bottom side and the top of the wall is 6 foot.

MS. TERHUNE: The one foot is buried?

MR. TERHUNE: When you build these retaining walls, it's under.

MR. JANNARONE: We don't care about that.

MR. GAFFORD: We care about what you are seeing.

MR. JANNARONE: Yes. On one side you have a wall facing Mearns Avenue and it is going to be pretty high. On the other side of it is a parking lot. You are

telling me there is a going to be a cap and it is going to drop down and it is going to be a little bit below where the grade is. You have to account for that. The way we come up with the average height of the wall, remember it said to add the two sides.

MR. TITOLO: Yes, but what we are adding, is we are going beyond that. We are saying that worse case scenario we are going to fill up to the top of that block. If I fill below that, then my average height goes down.

MR. HAGER: The one side stays the same and the other side gets less if you have less fill in it.

MR. JANNARONE: The height of the wall on the hotel side is, instead of being 0 feet, is going to be 6 inches or a foot.

MR. TITOLO: What's the average if it is 6 foot and 0? The average is 3.

MR. JANNARONE: No, it is now 6 foot on one side.

MR. GAFFORD: You are taking an average at the same spot of the wall on both sides. Is that what you are doing?

MR. JANNARONE: Yes, that is what I am doing.

MR. HAGER: Yes. That is how it needs to be presented to work with the Code. The Code is going to allow the retaining wall to be much higher than a free standing fence wall because it's got very little of the wall exposed on one side and a lot of the wall exposed on the other. There may be credit for that.

MR. JANNARONE: You can engineer into the fill.

MR. HAGER: What Jack is getting at is if a portion of that wall is free standing at the top, then that is more like the fence, the regular fence requirement. The way that they define the measurement system for these types of walls is you need to use the average of the two sides. If you are going to have a foot of exposure on the other side, you need to figure that foot of exposure on one side and then if you have his example of 10 feet on the other side, now you have 11 feet you have to average.

MR. GAFFORD: Suppose we filter and then put landscaping so that there is nothing exposed?

MR. JANNARONE: That's fine. I am just saying make sure you ask for enough variance. That is my whole point is that you correctly calculate the height of the wall.

MR. GAFFORD: What we are doing is assuming that one side is covered up by some manner, soil, plans, etc.

MR. JANNARONE: That's what I am getting at.

MR. GAFFORD: That's a good point. We will do that.

MR. JANNARONE: You don't have to, you can just ask for more variance.

MR. DOHERTY: He just does not want you to sell yourself short, that's all.

MR. TITOLO: I will look at the numbers that I am requesting the variances on. If there needs to be any adjustment, I will do that.

MR. HAGER: Everyone is in agreement about how the walls are measured? We don't have an interpretation issue there? That might be part of the reason why it is not presented exact, because there was a question of how it would be interpreted. So it seems like for clarity sake, Jim, if that table could be amended so that you could show (where you have minimum and maximum in that first table), you could indicate the height of the wall on one side and the height of the wall on the other and then give the average.

MR. TITOLO: I can do that, John. When you say the height of the wall on one side and the other, at what point?

MR. HAGER: Wherever you are the most out of compliance, wherever you need the most relief.

MS. TERHUNE: The highest point.

MR. HAGER: Pick whatever point is the worse scenario. Is the Board in agreement with that?

MR. DOHERTY/MS. TERHUNE: Yes.

MR. HAGER: Everything that is less than that is covered under the same variance.

MR. JANNARONE: Don't sell yourself short.

MR. TITOLO: Yes. I will amend this table to identify what Mr. Hager has requested. If we could go to Appendix A which is two sheets in. This is just a summary of the building height. There is a 13 foot variance required. The rear yard setback is a 9.9 foot variance required. Then we have the two, one is the retaining wall summary which we spoke about and, the last one is the extension of the B-2 Zone into the R-3

MR. DEVEREAUX: Jim, it is kind of an academic, but under the Zoning Code Requirements, lot width is 75 feet and what you are proposing is 584.0 feet. It doesn't affect the world, but.

MR. TITOLO: That should move over.

MR. DOHERTY: Good pickup.

MR. TITOLO: Lot width is 75 feet?

MR. HAGER: Lot width in the B-2 is 75 feet. There was no square footage deficiency for the Special Exception.

MR. TITOLO: The Planning Board is allowed to use the total area of the lot.

MS. TERHUNE: There is plenty of square footage.

MR. DOHERTY: All the way down to Mearns Avenue.

MS. TERHUNE: We did not look at the per unit. Does that apply to hotels and motels?

MR. HAGER: It is not included in Special Exceptions. I am pretty sure Jim looked at that.

MR. TITOLO: Yes, I did.

MR. GAFFORD: The total on the lots is about 4 acres.

MR. TITOLO: 4.4 acres and the total of our footprint is less than 20,000 feet.

MS. TERHUNE: Total gross area is?

MR. TITOLO: Total gross area is 98,000 square feet.

MR. HAGER: Is this considered a hotel or motel?

MR. DOHERTY: Hotel.

MR. HAGER: "...there shall be at least 1,000 square feet of lot area per guest room."

MR. JANNARONE: Minor point, Alyse, to extend into the residential zone, into the four lots back there, do we need one variance or four?

MS. TERHUNE: No, it is a variance to allow to extend back. First of all, it is really not so much the lot as it is the extension into the zone because they are consolidating the lots.

MR. JANNARONE: Just want to make sure we don't have to do it four times.

MR. DEVEREAUX: So you are going to assemble these lots, Jim?

MR. TITOLO: Yes, we are in the process.

MS. TERHUNE: When do you think you will have that done, any idea?

MR. TITOLO: The paperwork is either in California or at the village office. Lot 1 from the original submission represents the majority of this lot.

MR. DOHERTY: That is the "L" shaped lot. The majority of the other three lots are in the R-3 Zone, right?

MR. TITOLO: Yes.

MR. HAGER: Even the "L" shaped lot without including those other lots, probably meets the minimum.

MR. TITOLO: You are 100% right.

MS. TERHUNE: What is the total gross square footage area, whether it was 98,000 or 82,000 square feet?

MR. TITOLO: You are looking at an old drawing.

MS. TERHUNE: You might want to update that when you submit it to the Planning Board and make a note on the Zoning Board copies.

MR. TITOLO: Confirmed 98,000 square feet. We have updated for the Planning Board submission.

MR. GAFFORD: These are the updated copies that have been submitted to the Planning Board.

MR. DEVEREAUX: It is 98,000 square feet, including the basement?

MR. TITOLO: Yes, total.

MR. DEVEREAUX: So that's five floors, four plus one?

MR. TITOLO: Yes.

MR. GAFFORD: Four in the front, five in the back.

MS. TERHUNE: So there is no signage variance needed:

MR. TITOLO: No.

MR. DOHERTY: We touched on the building height, the rear yard setback, the retaining wall heights, and the extension from the B-2 Zone into the R-3 Zone. Any other points of discussion that you would like to bring up?

MR. DEVEREAUX: Are we voting this evening?

MR. DOHERTY: No.

MR. DEVEREAUX: This is our second meeting.

MR. DOHERTY: Last meeting was an information meeting.

MS. TERHUNE: We have to set a Public Hearing and we have to submit to the County, which I will prepare so that can be sent off.

MR. HAGER: On the rear yard setback, it goes from a 30 to a 21.1, right, so Section 240-8 requires a rear setback to be measured from the district boundary line. Section 240-39 A requires a minimum 30 yards from a transitional road.

MS. TERHUNE: John, you had opined on that, correct, whether or not 30 foot transition was required?

MR. HAGER: Right.

MS. TERHUNE: That was in #2 of you E-mail.

MR. HAGER: The Applicant had asked about whether they needed to add the 30 and 30 together for a 60 yard setback, which I disagreed with. My question is if they are going to be granted a variance, does the variance need to be worded so they get relief from the 30 yard setback requirement, as well as the 30 yard transitional yard requirement?

MS. TERHUNE: What is the section?

MR. HAGER: Section 240-8 G.

MS. TERHUNE: I don't have my book with me, because I think it's in my snowed-in car.

MR. HAGER: It talks about whether the Planning Board considers the total area of the lot. It also states that the rear yard setback shall be measured from the district boundary line.

MS. TERHUNE: We did that.

MR. HAGER: The other one I reference is 240-39A. “Minimum required transitional yards within nonresidential districts across zone district boundaries from residential districts shall be at least 20 feet in B-1 Districts and 30 feet in B-2 Districts.”

MR. GAFFORD: The way our counsel read that is that it represents the same yard whether it is a setback or from a transitional yard.

MR. HAGER: That I would agree with. I just wanted to be sure the language is proper. We should probably reference both sections.

MS. TERHUNE: I think that to be on the safe side, we should probably reference both sections. That way there will be absolutely no question if a third attorney looks at it. I would recommend that you add from Section 240-39A, a variance.

MR. HAGER: On Appendix A, in the Rear Yard setback column, where you have 30.0 yard requirement and proposed as 20.1, add Section 240-39A on there, as well on the application?

MS. TERHUNE: Yes, I would.

MR. TITOLO: Identify that as a?

MS. TERHUNE: As a transitional yard requirement. It is the same thing, but that way there won't be any question.

MR. TITOLO: That is another 30 feet.

MS. TERHUNE: It is the same. It is just that you are referencing two sections of the Code.

MR. DOHERTY: On the sign requirements referenced in John's letter, that is non-existent now?

MR. HAGER: From what I am hearing from the Applicant, they are happy with the signs.

MR. TITOLO: The sign requirement was 16 or 18 foot high and it was 40 square feet. We don't plan on making something that is going to be 40 square feet. The sign will be 40 square feet and we are not going to put it up 18 feet in the air.

MS. TERHUNE: And it will be set back 20 feet?

MR. TITOLO: Yes. You actually can see that on one of the drawings.

MR. HAGER: I had just brought up the sign so that if there were a question on the application that the Planning Board might address.

MR. DOHERTY: The issue of screening. Section 240-39B requires certain types of screening; however the ZBA may waive or modify the requirement where the same screening effect is accomplished by the natural terrain or foliage. Is this speaking mostly of the rear of all this, towards Mearns,

MR. HAGER: Yes, the Code requires a stockade fence along the district boundary. It also mentions that an alternative may be considered. I am not sure if the Planning Board or the Zoning Board considers.

MS. TERHUNE: That is Section 240-39B? Let me look at that.

MR. DOHERTY: The majority of that natural foliage that is there now will be untouched during construction?

MR. TITOLO: That will stay. We have no intention of doing anything on that slope. It probably represents from Mearns Avenue at least 80 feet and in some places, it is almost 100 feet of natural existing trees and screening.

MS. TERHUNE: That is a Zoning Board of Appeals that this Board may waive or vary, so that should also be addressed if you want to do that. Do you want to waive or vary the stockyard-type fence?

MR. TITOLO: The wall to some extent represents a screening or foliage. On top of this wall we have a chain link fence with slots in it to prevent anyone from going down. That's 6 foot.

MR. DOHERTY: I am in agreement with Alyse that we should cover everything with no questions.

MS. TERHUNE: Let's say that The Board considered it, the Applicant is doing XYZ and therefore, The Board considers that sufficient to satisfy Section 240-39B.

MR. JANNARONE: That will be at the next meeting?

MS. TERHUNE: If you decide to grant these variances, then when we write the resolution, we should include reference to that.

MR. DOHERTY: Should that be included in the application should be adjusted to reflect that?

MS. TERHUNE: Yes, I would explain what you are going to do and ask for a waiver or consideration of Section 240-39B.

MR. TITOLO: Based on the proposed construction and natural foliage.

MS. TERHUNE: Yes, just like you just explained it.

MR. JANNARONE: What is a stockyard fence?

MR. DOHERTY: It's screening like the pine fencing, 6 foot high.

MR. JANNARONE: You are going to have slats in the chain link fence. That is pretty much the same thing.

MS. TERHUNE: We will just explain that. Clarify it that you believe it meets the requirements of 240-39A. If the Board finds that it does not, then you will request the Board to waive that requirement. Then the Board will address it. I don't know if you want a detail of that in the drawings, John?

MR. JANNARONE: He has a chain link fence on the drawing and he says he is going to put slats in it.

MR. HAGER: Whatever the Board feels the Planning Board will have to approve the Site Plan, not me. They will want to see details of that fence, I am sure. It would be helpful to put it on the Plan before the Public Hearing.

MS. TERHUNE: I think that would be a good idea. It is the Zoning Board of Appeals that waives it. They will want to see the detail so there is no question at the Planning Board level of what was discussed and shown to the Zoning Board of Appeals. These plans would have to be modified and submitted at least 10 days before the Public Hearing. Otherwise, the public would not have an opportunity to review the plans. I guess you would want to ask the Applicant if you can get that done or do you want to wait and schedule the Public Hearing later.

MR. TITOLO: No, we will get that done and submit it to the Planning Board early next week.

MR. DOHERTY: And you will provide copies for this Board?

MR. TITOLO: Yes.

MS. TERHUNE: You will revise the application for the variance and the notes that have been discussed here on these plans, the variance tables, etc.

MR. TITOLO: Yes.

MR. GAFFORD: When are you thinking of setting the Public Hearing?

MR. DOHERTY: It would be March 17, 2014.

MR. GAFFORD: That would be by March 7, 2014 that we submit the plans.

MS. TERHUNE: We would need to prepare the notices and work with John to get the notices published and out and mailed. Just for the Board's benefit and the Applicant's benefit, we have a little bit of a Catch 22 with SEQRA. In other words, the Applicant has submitted a short form Environmental Assessment Review to this Board as well as the Planning Board. Each Board will have to make a determination before it makes its decision.

Because you both have authority and you both must grant approvals. The Planning Board has to approve the Site Plan and this Board has to approve the variances. You are really both involved agencies. Either one of you could be Lead Agency in a Coordinated SEQRA Review. If it is an Unlisted Action, you could proceed with SEQRA in an uncoordinated way.

The problem here is that if the Planning Board decides, after it reviews everything, that it is going to Positive Declaration this and it is a Type I action and require an EIS. Or, it is an Unlisted Action, but there might be at least one significant environmental impact and, therefore, they want an Environmental Impact Statement to be prepared.

In the meantime, this Board is proceeding with your review. Before you grant variances or deny variances, you have to make a SEQRA Determination. In order to complete SEQRA, you have to either require an EIS finding and a Negative Declaration, or you just say we have looked at the review and don't think that our actions are going to result in any significant environmental impact, and therefore, we are issuing a Negative Declaration.

Under the SEQRA Regulations, I don't believe this clearly falls into a Type I or a Type II Action. It is likely an Unlisted Action. As long as you are satisfied that you are reviewing the variances only, and that you don't think the variances will result in a significant impact, you can go ahead and review the EAF and issue, let's say for example, a Negative Determination. That's fine.

MR. DOHERTY: Negative meaning we find no environmental impact?

MS. TERHUNE: You find that the variances that if approved will not result in a negative environmental impact. If the Planning Board on their side also decides that it is an Unlisted Action they go through their analysis and come to the same conclusion that there is not going to be a significant environment impact then they, too, will Negative Declaration it and everything may be fine.

The little glitch is that if the Planning Board decides that there could be significant environmental impacts, they Pos Dec it, and require an EIS, it throws your approval into sort of a loop. I am just trying to explain that to everybody. It is a little bit of a Cache 22 with the SEQRA Regulations.

My recommendation in this instance would be, at the point where you are ready; you would declare an Unlisted Action and make a Negative Declaration, unless in your own minds you think that one of these variances could result in a significant environmental impact. Then the Planning Board will go through the detailed analysis of storm water, traffic, etc. which they will do on their own. You can do that also but, it is probably better placed with the Planning Board. Did that make sense?

MR. JANNARONE: Yes. When do we do this, now or next month, or in between?

MS. TERHUNE: If you are not Coordinating, and because the Planning Board has not taken any SEQRA action, then at this point, you are it for this particular decision. You are Lead Agency for this particular decision. In other words, this Board is Lead Agency for reviewing the variances. You don't really need to do anything. We will do it at the next meeting. There will be the Public Hearing, and then you will make a decision, assuming you have all the information that you need. Then as part of the resolution we will address the SEQRA issue.

MR. DOHERTY: What information do you feel we will need other than what has been presented before us at this point in time, if anything at all?

MS. TERHUNE: I really don't see anything.

MR. DEVEREAUX: My question is what knowledgeable person on SEQRA is going to advise us, so that we may make a reasonable decision? Is it you, John or none of the above?

MS. TERHUNE: Generally what happens when you are looking at EAF's, is that if you identify something that you think is going to be an impact, then you would ask for a consulting engineer, for example, to give you an opinion. That analysis, I can tell you, is already being done by the Planning. They are looking at a traffic generation report that has been prepared or is being prepared. They will certainly be looking to see if there is any impact to endangered species. It would be all the general things that you are looking for when you look at environmental impact, including how much water, and how much sewer. But this is going to be public water and sewer, so it is kind of a moot point. Putting in wells or septic would be a big issue. Likely, the Planning Board would probably move to coordinate the review. If they did that, then you could not make a decision until the Planning Board issued a Negative Declaration.

MR. HAGER: Is it a factor that this Board's decision really can't be taken anywhere until the Planning Board gives the Site Plan approval?

MS. TERHUNE: That's correct. The only problem is if the Planning Board types it as a Type I Action, issues a Positive Declaration, and then requires an EIS. That could invalidate your Negative Declaration. The fact is, no matter what you decide here, if you grant the variances and the Planning Board decides, for whatever reason, that they require modifications to mitigate environmental impact, or they say no because of environmental impact, that is the end of the line. You are not going to bind the Planning Board by any decision that you make here. I am telling you that so you understand how SEQRA will likely operate in this case.

MR. JANNARONE: This is the first time that SEQRA ever come up before us. What is different here?

MS. TERHUNE: Typically, individual variances for things like setbacks. Some of these variances are Type II Actions in the first place, so they do not require any SEQRA action except to say that it is a Type II Action and so it is a Neg Dec. But because there are so many of them, and there are some extensions of use, I think it is more prudent to type it as an Unlisted Action than to address SEQRA issues in the resolution. I will go through and for each variance that is a Type II Action I will identify that for you. Those that I think may not fall into Type II, and are definitely not Type I, would probably be Unlisted. Like the Extension of the Use. That is the most obvious, does not fall into a clean category.

MR. DEVEREAUX: Do you have any idea how soon the Planning Board may take action?

MS. TERHUNE: No. I think there is a fair amount of work to be done at the Planning Board level.

MR. DEVEREAUX: So, therefore, should we act prior to them or not. I have some doubt in my mind.

MS. TERHUNE: I think that it is fine for you to act in this case prior to the Planning Board. First of all, if the Planning Board had declared Lead Agency, and that they were going to coordinate, you would not have been able to act, or do a final action. But here the Applicant has come to you. He is asking you for variances. In some way, he is sort of at his own risk. You can come to your SEQRA conclusion, but it is up to the Planning Board ultimately to investigate any rule definitively on the SEQRA issues.

Your SEQRA is limited to only the variances, not the site plan. So that is why you can proceed in this manner here, and why most Zoning Boards can proceed in this type of manner. Sometimes if there is a real huge project, the Applicant may

want to go much further with the Planning Board and the SEQRA Review before they actually come for a variance. Again, they don't have to.

MR. TITOLO: Yes, we are fine with it.

MR. GAFFORD: Part of our thinking was, if we followed that other route, then we would not know if the variances would even be acceptable. We would assume, but we would not know.

MS. TERHUNE: It is tough for Applicants because they do kind of get into this conundrum of where do they go first.

MR. GAFFORD: That is why we have short haircuts.

MS. TERHUNE: I think with this it is fine the way it is proceeding.

MR. DOHERTY: Come the Public Hearing, we will have to address this as well. Is that correct?

MS. TERHUNE: I think after you close the Public Hearing, you will make your decision, and in that decision we will discuss on the Record SEQRA.

MR. JANNARONE: Remind us to make sure we do that.

MS. TERHUNE: I will.

MR. GAFFORD: Are you Counsel for the Planning Board?

MS. TERHUNE: I am.

MR. GAFFORD: That helps.

MS. TERHUNE: Sometimes it helps, yes.

MR. TITOLO: As I understand it, I have to pick up some information from John.

MR. DOHERTY: Affidavit of Mailing and Affidavit of Posting. Is that correct, John?

MR. HAGER: Alyse, you are going to write a Notice of Hearing? First we need a Resolution to set a Public Hearing.

A motion was made to set the Public Hearing for March 17, 2014 for this project.

Motion: Mr. Jannarone Seconded: Mr. Devereaux Approved

MS. TERHUNE: I will write the Notice. I typically do. I will also prepare the 239 Referral to the County, which if we don't get it back within 30 days, then you can't make a decision next time, anyway. But we will see if we can get that back.

MR. GAFFORD: Thank you.

MR. HAGER: Once I have the Notice of Hearing in hand, you need to get with me so that you can get a copy of that. The Applicant is responsible for mailing them out to neighboring properties within a certain distance. We will work together on a list of those. There are Affidavits that you need to submit on that. You will have to get Proof of Mailing. The Board is going to take care of the Newspaper Notice, is that correct?

MS. TERHUNE: Typically, they always did, as I recall.

MR. HAGER: The only other thing is I would remind you that you did collect an escrow for Consulting Fees on this project. This is out of the ordinary, so I don't know if there needs to be an estimating done of what the cost would be and if you need any additional escrow funds deposited.

MS. TERHUNE: What was it \$750?

MR DOHERTY: Yes.

MS. TERHUNE: Probably you need a little more than that. Because any time that I am here gets billed to you, at least for the meeting and the Notice.

MR. TITOLO: We will put in another \$1,000.

MS. TERHUNE: I would do that. If there is any left over fees required, that is always a condition of the approval, as I am sure you are aware.

MR. TITOLO: Alyse, you said the 239 goes to the County, you will be sending that to David Church?

MS. TERHUNE: It goes to the County Planning Board, yes.

MR. TITOLO: When will that go out?

MS. TERHUNE: I will prepare that tomorrow and I will E-mail it to John in the Building Department. The Chairman will have to sign it.

MR. DOHERTY: John, you will contact me when you receive it?

MS. TERHUNE: I can E-mail it to you, too.

MR. HAGER: Is the Application that goes to the County need to have these modifications that we talked about, or is it close enough?

MS. TERHUNE: I think it is close enough. You might want to send this one with it and usually what I do, as well, is E-mail the material to the County and State that following will be a signature, and sometimes that speeds it up.

MR. DOHERTY: So if I come in to sign it, John, you'll know how to forward it through your office to the County at that point?

MR. HAGER: Yes, we can mail it or even deliver it.

MS. TERHUNE: If I have PDF's to attach to the EAF, the plans and whatever, I can E-mail it in advance and you can sign it, and send a physical copy. Sometimes it speeds things up.

MR. TITOLO: Alyse, what do you need in PDF form, the three drawings with the revisions?

MS. TERHUNE: Yes, if you can do that.

MR. TITOLO: Do you need the environmental?

MS. TERHUNE: I have that. Yes, I would send the plan, the EAF, the application, and all the modifications that we discussed, to the extent that you can get done on those plans. That would be really good.

MR. HAGER: And this will get referred by the Planning Board as well?

MS. TERHUNE: It will, but they are not ready for that yet.

MR. DEVEREAUX: John, when does the Planning Board next meet?

MR. HAGER: It would be February 27, 2014.

MR. JANNARONE: Just out of curiosity, I think you reference that you are putting in a new water line in.

MR. TITOLO: New water line, new sewer line, new everything.

MR. JANNARONE: It doesn't have anything to do with us, but are you running the new water line from the water plant? How does that hook up?

MR. TITOLO: From Mearns Avenue. We will have to put some pumps on top in the building to pull water. There is not enough pressure, I don't think.

MR. GAFFORD: Thank you for your diligence.

MR. JANNARONE: Anything else?

MR. DOHERTY: Are there any other points that anyone would like to touch on? Did we set the Public Hearing?

MS. TERHUNE: Yes. It is always good to have John at these meeting.

MR.DOHERTY: Yes, thank you, John, we appreciate that.

MR.TITOLO: Thank you everybody. I appreciate your time.

MR. JANNARONE: We need a motion to adjourn?

MR. DOHERTY: Actually, we have one other item. A Board Member had asked me to look into getting photo ID's for Board Members since we go onto people's property and they should know who we are. I have spoken to the Clerk downstairs. She referred me to Officer Bailey who I reached out to three times and have yet to hear anything back. I am still on it. I will make a few more phone calls. I think it is a good idea and it is a good point that we should have picture ID's. Hopefully, I can get that resolved for our next meeting.

At 8:08 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Jannarone Seconded: Mr. Devereaux Approved

Respectfully submitted,

Fran DeWitt
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is
Monday, March 17, 2014**