

APPROVED: 3/16/15

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
SEPTEMBER 15, 2014**

A regular meeting of the Zoning Board of Appeals was held in the Highland Falls Library, Highland Falls, New York, on Monday, September 15, 2014, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

Tim Doherty, Chairman
Jack Jannarone, Deputy Chairman
Tony Galu

Absent:

Tim Donnery
Ray Devereaux

Alyse Terhune, Attorney (Jacobowitz & Gubits, LLP)

ALSO PRESENT: David Getz (Lehman & Getz), Jim Titolo (Churchill PWP of Highland Falls, LLC), and John Hager (arrived at 7:17 P. M.).

MR. DOHERTY: Thank you all. I will formally open the Town of Highlands Zoning Board of Appeals Meeting for September 15, 2014. Roll Call: Tony Galu, Jack Jannarone, and Tim Doherty. Tim Donnery and Ray Devereaux are absent. We need to approve the Minutes for July 21, 2014, our last meeting. Are there any comments or questions for these minutes?

A motion was made to adopt the Minutes for July 21, 2014.

Motion: Mr. Jannarone Seconded: Mr. Galu Approved

Old Guard Hotel

At 7:08 P. M., a motion was made to close the Public Hearing for this project.

Motion: Mr. Jannarone Seconded: Mr. Galu Approved

MR. DOHERTY: Gentlemen, if you would like to briefly go over what we are looking to do here this evening, then we will move forward to address the variances that have come our way.

MR. TITOLO: Mr. Chairman and Zoning Board, my name is Jim Titolo representing Churchill Properties, LLC. and David Getz is here from Lehman Getz, our engineer. We are here to present the Old Guard Hotel project on the

former site of the Pointer's Echo Motel. The new hotel will have approximately 120 rooms, conference rooms, restaurant, and health club. The site is zoned B-2 and R-3 and represents approximately four (4) acres. All lots have been combined into a single lot. We are seeking relief from certain variances.

MR. JANNARONE: Before you get into it, could you tell us what has transpired since you were last here?

MR. TITOLO: We have significantly provided the Planning Board with the additional details that they requested, which represents approximately 17 pages of engineer's drawings, manhole sections, and pipe elevations. You have a formal set that has been submitted for the record. There have been a number of architectural drawings that have been done. The Planning Board has reviewed and closed SEQRA and declared a Negative Declaration.

MR. GETZ: I would point out that in those several months since we have been before the ZBA, as Jim mentioned, we have done a lot more detail on certain parts of the site and even off site. There is a whole drawing, the last drawing of the set, is on off site drainage and sewer improvements that we will be doing. In terms of the requested variances, I don't think any of those issues have changed. The building is still the same size, at the same location, and the walls have not changed or the heights or locations. In terms of the ZBA application, none of those changes we made for the Planning Board really affect our application here.

MR. JANNARONE: Just out of curiosity, where do you stand with the Planning Board now at this point?

MR. TITOLO: Two weeks ago they closed SEQRA and said we are now prepared to present to the ZBA.

MR. GETZ: They issued a Negative Declaration.

MR. JANNARONE: So you still have to go back to them.

MR. GETZ: Yes, once you make your decision then we will go back to them for one meeting for final approval.

MS. TERHUNE: The Planning Board cannot issue a site plan if the variances are not granted or their site plan might change based on what this Board does. For that reason, they have to go back to the Planning Board.

MR. JANNARONE: Thanks for the update.

MR. TITOLO: I want to go through the requested variances. You can see them here on paper. The first one is relief for the required maximum height. In the drawings you will see the detail from 35 feet to 48 feet. Our building is actually 45 feet but the detail has not changed. We have not developed that drawing to the fullest extent. We will not go beyond the 48 foot mark.

MR. DOHERTY: So the variance you are looking for still holds true at 13 feet?

MR. TITOLO: Correct. The extension of the B-2 Zone into the R-3 Zone is basically for parking. This identifies each zone.

MS. TERHUNE: Mr. Titolo, just for clarification, about how far in, is it about 80 feet in at the widest point that you would need it?

MR. GETZ: Slightly less, but 80 feet is a safe number to use.

MR. TITOLO: On the southern side it is approximately 80 feet and on the northern side almost zero, about 3 or 4 feet. Relief on the rear yard setback: The requirements are 30 feet. Highlighted in pink we have the 21.1 feet. That is a request based on the need to hold that 50 feet line back from the property line.

MS. TERHUNE: So 9.9?

MR. TITOLO: Relief for the maximum required wall height of 8 feet in the B-2 Zone and 6 feet in the R-3 Zone. That is identified here on this drawing. Wall A, which is the northern wall requires no variance. Wall B, which is the inside wall requires a 4.5 foot variance. Wall C, which is the outside wall requires a 5.75 foot variance. Wall D requires no variance.

MS. TERHUNE: Did we discuss the possible variance from Section 240.39A, which says “required minimum transitional yards within non-residential districts across zone district boundaries residential shall be at least 20 feet in B-1 and 30 feet in B-2.” My recommendation would be to seek a variance for that as well, just in case. It is a little bit odd in this situation where you are asking for it to be pushed back, but there is still residential behind you.

MR. TITOLO: I think, Alyse that John Hager opined on that and identified that one setback was the..... I can't remember how he put it.

MS. TERHUNE: You mean that he opined that you would not need that?

MR. TITOLO: Yes.

MS. TERHUNE: If you can find that. The way I read it I would be somewhat concerned that someone might read it that even though you pushed it back you still have a constructive commercial to residential zone change.

MR. JANNARONE: Can we address that tonight since it was not on the Public Hearing?

MS. TERHUNE: We had talked about it.

MR. JANNARONE: I just wanted to make sure we were safe.

MR. TITOLO: If you could give me a second, I think I can find it.

MS. TERHUNE: A letter dated January 17, 2014. This is from Mr. Hager to you. Point 3: “Rear yard set back Section 248.G requires rear yard setback to be measured from the district boundary.” Additionally Section 240.39A “requires a minimum 30 foot transitional yard across district boundaries.” I think it would be safer to address that while you are here. That way there is no question.

MR. JANNARONE: Can one of you who understands what you just said, point that out on the map.

MR. TITOLO: A transitional yard from this point in should be 30 feet. It would be the same setback adjustment from 30 feet to the 20 feet.

MS. TERHUNE: We are pushing this back almost 80 feet. You are getting your 20 foot variance here but there is still no transition from here to there. My suggestion is that the Board will grant a variance for that particular regulation so that there is no question if someone comes back and says well you are okay here because you have a 30 foot setback waiver but you have not offered any transition between what’s left of residential zone. It is kind of an odd requirement in this situation. Normally, I would understand exactly why you need it because you want some transition. But here, because the lot is bifurcated between two districts and one is commercial and one is residential, it is probably safer to grant that variance. It doesn’t really plot.

MR. JANNARONE: Can you write up the variance?

MS. TERHUNE: Yes.

MR. GETZ: Is it Section 240.39.1?

MS. TERHUNE: It is Section 240.39A. The minimum screening, which is B “requiring transitional side and rear yards shall be a 6 foot high stockade type”, but they are planting extensively, so you would not be right to waive this because then they could go back and say they don’t have to plant.

MR. JANNARONE: Do you want to act on that first?

MS. TERHUNE: I think the Board could go ahead and address each of them right down the line. We can do that one last as a note. Also, I know in the past, we have done one at a time, but here since they are all area variances, although there is some question about pushing back the use, in my opinion it is still an area variance. In fact, you may want to condition your approval with a note in the resolution that says “none of that residential area will be developed.” Let’s just go through the area variances.

John, we were just discussing Section 240.39.A that transitional yard. You had written something in January. I had brought it up that they have not requested a variance for that, but it is probably a good idea to grant one anyway.

MR. HAGER: I think so, just so the Planning Board does not question it later and they would have to come back here asking for it.

MR. DOHERTY: Shall we do this one by one? Gentlemen, you all have a copy of the Negative Declaration from the Planning Board. We need to accept it because the Planning Board is the Lead Agency.

MS. TERHUNE: You would want to accept it as yours, as binding from this Board that you agree with it, unless you don't. It was pretty extensive. It then would be incorporated into your resolution by reference. I will do that in the resolution.

A motion was made to accept the Planning Board's Negative Declaration as binding on this Board and that the Board agrees with it.

Motion: Mr. Galu Seconded: Mr. Jannarone Approved

MR. DOHERTY: We have accepted the Negative Declaration. Now we will continue with the rest.

MS. TERHUNE: You will discuss each one. Unless there is an issue, you could do them all. Why don't you collectively do it and discuss each one amongst yourselves.

MR. DOHERTY: We will discuss each one and collectively do the Balance Test. Does anyone have any issues with that?

MR. JANNARONE: No.

MR. DOHERTY: The first variance that they are looking to achieve is the building height. The Zoning Code requires 35 feet. The existing conditions are 25 feet and the proposed construction is 48 feet. They are looking for a variance of 13 feet all together.

MR. JANNARONE: This was the biggest concern to me, but the fire department came here and nobody voiced any objection to that. Instead, they presented information as to how they could support it with additional resources from the community. The builders pointed out that this is not a framed structure. It is a masonry/concrete structure and there are extensive fire codes as well. That allayed my concerns as far as fire protection goes.

MR. DOHERTY: New York State has some very extensive fire code regulations and should anything happen, they would take care of the majority of it. West Point and Fort Montgomery both have ladder trucks to assist the local fire department in such an incident.

The next one down the list is the rear yard setback. The Zoning Code requirement is 30 feet. There are no existing conditions at the moment. The proposed construction is 20.1 feet. The variance would be 9.9 feet.

MR. JANNARONE: Is that the pink line on the map?

MR. TITOLO: Yes.

MR. JANNARONE: That is only from the zoned line that we are measuring?

MS. TERHUNE: That is from the nearest point of the building to the southeast corner.

MR. JANNARONE: The lot line up on Mearns?

MR. TITOLO: This is from this lot.

MS. TERHUNE: From the zoned boundary.

MR. JANNARONE: The zone line is arbitrary to begin with.

MR. GETZ: Yes. It is a paper thing.

MR. JANNARONE: I don't have a problem with that.

MR. DOHERTY: The next on the list is retaining wall heights. We have had some extensive discussions about that at earlier meetings.

MR. JANNARONE: That was as to what to ask for. You asked for enough, nothing has changed on that, right?

MR. DOHERTY: Nothing has changed when you went to the Planning Board?

MR. GETZ: We provided more detail as to construction. The actual heights have not changed.

MR. JANNARONE: The fact that this is an engineered wall, not something that a homeowner is putting up with Home Depot pavers.

MR. GETZ: Not by any stretch of the imagination.

MR. JANNARONE: I don't have a concern with the wall heights for that reason.

MR. DOHERTY: Neither do I. I think they went to great lengths to make sure that it will hold what it is supposed to.

MR. HAGER: Was the application straightened out as far as your variance request reflects the maximum height of the wall?

MS. TERHUNE: We accepted your interpretation of how to measure that and that is what they did. Also, didn't you add another wall to make them lower than they would have been?

MR. TITOLO: I think that we added this wall to reduce the heights of all of them.

MR. GETZ: We broke it down and moved it back.

MR. TITOLO: That was early on.

MR. JANNARONE: We made sure that they asked for enough.

MR. HAGER: That was my only concern. I was afraid if they asked for the average height, and the wall is this high at the maximum, they did not ask for enough variance.

MR. GETZ: The way it is worded, I think we are asking for the average.

MR. TITOLO: We accepted your interpretation.

MS. TERHUNE: It was each end and then we did the average and that is what they asked for.

MR. HAGER: That is from one side to the other?

MS. TERHUNE: Right. The front and the back and then the average.

MR. HAGER: You have a 20 foot wall on one end of the site and it tapers to 5 feet at the other, you want to make sure that you are asking for is at the high end.

MR. GETZ: That is different from what we are showing.

MR. TITOLO: I think that if you go back to John's interpretation, it clearly identifies how we were to figure these walls.

MR. GETZ: We do have a case where the maximum is 20, but we are showing an average of 10 with a requirement of 6. The way it is worded here is 10 versus 6.

MR. TITOLO: What we did is take your explanation, John.

MS. TERHUNE: This is from Jim to John: "Just to confirm our discussion, at the maximum height of the walls we will take an average of the ground elevation on each side of the wall and identify it as the average wall height X. This dimension will be compared to the maximum allowable wall heights, 8 and 6. And we will ask for a variance from the ZBA for the average height of the wall above these allowable dimensions." You write back: "Correct, but refer to the Table 240.38 which is the 8 and the 6 of the Zoning Code for the maximum height." If they did not interpret it correctly, let's fix it now.

MR. HAGER: That is the only reason I am bringing it up. You calculated the wall height based on the highest point of the wall. You measured the height of the low

side where you have the face of the wall and you figured the average wall height is there. It is at the highest point.

MR. GETZ: Yes.

MR. HAGER: It could be interpreted to say the average was along the horizontal plane.

MR. TITOLO: No, we did vertical.

MS. TERHUNE: So it is correct.

MR. JANNARONE: As long as you asked for enough.

MR. DOHERTY: Finally, we have the extension of the B-2 Zone, moving it into the R-3 Zone.

MS. TERHUNE: By about 80 feet at the biggest point.

MR. DOHERTY: As we previously discussed, Counsel will add the caveat in the variance that nothing can be developed behind the retaining walls and no more extension of the construction to encroach further onto the residential zone.

MR. JANNARONE: As far as this going into the R-3 Zone, the parking lot, in 200 years or so, people around here have never built in that area. Again, I don't have a problem with extending the parking lot into the R-3 Zone.

MS. TERHUNE: I will make a note for the Board that this variance is from Section 240.39A.

MR. DOHERTY: Collectively, we will do the Balance Test.

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

I think that with the exception of the height, due to the topography of the area, it is the only way to achieve this with the retaining walls and all the measures they are going to take to meet these variances.

MR. JANNARONE: Other than making a much smaller project, which would not be economically feasible, I can't see a problem.

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

MR. DOHERTY: I can't see taking down a very run down motel and putting up something that is state of the art, much more pleasing to the eye, and would benefit the community as a whole would be an undesirable change.

MR. JANNARONE: Agreed.

- **Whether request is substantial.**

MR. DOHERTY: I don't know how you gentlemen feel, but I don't see it.

MR. JANNARONE: The height one was substantial, but we have discussed the mitigating factors for that. As far as the other ones again, this is property that has gone undeveloped for decades.

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

MR. DOHERTY: That was address at great length.

MS. TERHUNE: Yes, I would agree. The biggest concern with the site seemed to be storm water runoff which was addressed ad nauseam, actually. The applicant has modified their plans substantially as a result of the Planning Board diving into that in great detail. The Planning Board, as Lead Agency, is satisfied that they have mitigated any additional storm water runoff.

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

MR. DOHERTY: The retaining walls and such are not self-created. It is just topography again. As Jack had mentioned, the building height, going back to mitigating factors such as safety issues, have been addressed thoroughly. I don't see an issue with that.

MR. JANNARONE: Agreed.

A motion was made to approve the variances that have been brought before the Board for this project.

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

Mr. Galu	-	Aye
Mr. Jannarone	-	Aye
Mr. Doherty	-	Aye

MS. TERHUNE: I will draft this resolution and we will get it filed.

MR. TITOLO: I have one question: did we address the transitional?

MR. JANNARONE: Yes, that was part of what we just approved.

MR. DOHERTY: Good luck to you gentlemen.

MR. JANNARONE: Will you break ground this year?

MR. TITOLO: We will do some site work, clearing and walls. We will see what winter provides and make a decision.

MR. DOHERTY: I have not been up there, is the old structure down?

MR. TITOLO: No. I will go in to see John for the demolition of the structure.

MS. TERHUNE: The Planning Board meets on the 28th.

MR. TITOLO: Thank you very much.

MR. DOHERTY: Any other discussion, gentlemen?

MR. JANNARONE: Do we have any other business coming up?

MR. DOHERTY: John, do you have anything?

MR. HAGER: It's pretty quiet. I have had a few phone inquiries, but no applications.

MS. TERHUNE: Any word on the cell tower?

MR. HAGER: From what I read in the Town Board meeting minutes there are two proposals to put two smaller towers on town property. One was approved by the Board and one was not. The response by the cell tower company was if we can't have both sites, then we need the one at the Holiday Inn. They will be going back to the Planning Board. That is what I read in the minutes.

MR. DOHERTY: Good Luck.

MR. HAGER: I think the village site up by the highway garage is the one that the Town Board voted to go into a rental agreement with, and the one in Fort Montgomery by the Post Office they did not. That is all I know at this point.

MR. DOHERTY: A motion to adjourn?

7:41 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Jannarone Seconded: Mr. Galu Approved

Respectfully submitted,

Fran DeWitt, Recording Secretary

**The next scheduled Consolidated Zoning Board of Appeals
meeting is Monday, October 20, 2014**