

**APPROVED: 7/20/15**

**MINUTES OF THE  
CONSOLIDATED ZONING BOARD OF APPEALS  
OF THE  
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS  
JUNE 15, 2015**

A Regular meeting of the Zoning Board of Appeals was held in the Town Hall, Highland Falls, New York, on Monday, June 15, 2015, at 7:00 P. M.

**THERE WERE PRESENT:**

**Board Members:**

Tim Doherty, Chairman

Ray Devereaux

Tim Donnery

Tony Galu

**Absent**

Jack Jannarone, Deputy Chairman

**Alyse Terhune, Attorney, (Lewis & McKenna)**

**ALSO PRESENT:** Jack Gafford, Development Director, Old Guard Hotel, and Thomas Musteen, a student of James I. O'Neill High School.

MR. DOHERTY: Today is the 15<sup>th</sup> of June. All members are in attendance with the exception of Jack Jannarone who is celebrating the birth of his grandchild. Mazel tov to Jack and his family. We have one set of Minutes to approve this evening for April 20, 2015. Does anyone have any questions or comments on those?

MR. DONNERY: I read them on the computer and they seemed fine to me.

**A motion was made to approve the April 20, 2015 Minutes.**

**Motion: Mr. Devereaux    Seconded: Mr. Donnery    Approved**

MR. DOHERTY: At tonight's meeting we have Mr. Jack Gafford from the Old Guard Hotel to give us information on the proposed changes to the building. Jack, if you want to give us your information and let us know what you are doing, we will go over it with you.

MR. GAFFORD: When we last left you, we had your approval for 114 rooms. It turned out to be five stories, if you count from the basement, and four stories up, with variances listed on the plans. The building had a total square footage of almost 109,000 square feet. Its footprint was about 22,000 square feet. So figure five floors, 22,000, roughly 110,000 square feet.

The issues that we ran into in going forth with that, we had the project approved through the Planning Board, included: What you have is a very long, long building. It is 458 feet long. In hotel parlance, it is called single loading. All the rooms are on one side of the building and there is one long hallway. It had to be five stories to have the number of rooms that we felt were economic. Early in the planning, before we came for approval, the architect, the engineer, and the head project planner would have done a double loaded building but they did not feel they could get onto the site properly. I will explain what properly means. They did not think it would work because of that residential boundary line that splits the property into two zones. They also felt that they did not have time to go for a re-zoning.

Effectively, you might recall, the zone on highway Route 9W is a B-2 Commercial and there is a line that goes across it and goes to R-3 all the way down to Mearns Avenue. We used the R-3 area up on top for parking. Upon change of ownership, we looked at that concept again and felt that we could put a building that is shorter and fatter that sits in the commercial zone. What that ends up doing, since it is double loaded, same number of rooms, but one floor less, the top floor comes off, and the total square footage of the building drops by about 5,000 to around 104,000.

Finally, the footprint gets a little bit larger because it is a shorter and fatter building. The question is can the building fit in that commercial zone. We believe it can. The only variance we would ask to be expanded would be the building's corner that goes into that south setback. We want to have a larger variance for that and still stay in the setback. We show it a foot away. We would still be in the setback and not in the commercial zone. We would have a much more efficient building, but environmentally, we have improvements all around. We take a floor off, we shorten it, and what appears to the Village of Highland Falls is a much smaller building, if they can see it. What appears from across the river is a smaller and shorter profile. Those are the main issues.

We are giving you a preview of this because we would like to come to the next Planning Board Meeting with a detailed proposal of exactly where this building sits, how the parking would then go around it, and still develop the proper number of parking spaces. That is as simple as I can explain it right now.

MR. DEVEREAUX: You said the next Planning Board Meeting.

MR.GAFFORD: I meant Zoning Board. We want to get the Zoning Board issue straightened out. Once that is done, we can take that redesigned building and go to the Planning Board. There are lots of benefits and I view no deficits on this. I would like to listen to your comments or thoughts on this that we can incorporate on this.

MS. TERHUNE: If I may, so you are asking to modify one of the variances and that would be the transitional yard variance?

MR. GAFFORD: I believe it is the building encroachment on the south variance going to the south boundary, the river side. We are just going deeper into that setback area. The setback area is 30 feet. We went into it before.

MS. TERHUNE: A 9.9 foot variance back there.

MR. GAFFORD: We would be asking for a 29 foot variance. We would like to move the building as far back into the setback as we could, given that we own both sides of it and we don't see any meaningful effect or change in the concept or bothering the R-3 area of Mearns which was the original intent for that to be R-3.

MS. TERHUNE: And you are confident that you can replace the parking that you will be losing?

MR. GAFFORD: Yes.

MS. TERHUNE: I would just note to the Board that an Applicant can come directly to the ZBA for an area variance, a lot line setback variance. He does not have to go to the Planning Board. When you are starting out, it makes a lot of sense to go to the Planning Board first because there might be other things that you miss. Here, the Applicant has gone through the Planning Board process and apparently feels very confident that, if he gets this variance, he is not going to run into something else. But, he does that at his own risk. I just want to make the Board aware of that.

The process, from this Board's perspective, has to be the same process that you went through the first time. There has to be a public hearing and an official application that has to go to the County. That process has to be done. The Board would get the application, refer it to the County, set a public hearing, and then make a decision.

MR. DONNERY: Sounds fine with me.

MR. DOHERTY: That was the impression I was under when this came to us. There would be a new application that would have to go back to the County. That is the process that has to take place.

MR. DONNERY: Is all this going to get done by our next meeting?

MS. TERHUNE: Well, you don't have an application yet.

MR. GAFFORD: I think it is going to take two meetings.

MR. DOHERTY: Nothing is going to get triggered until the application is submitted.

MS. TERHUNE: Assuming everything goes fairly quickly, you would get your application. At the next Board meeting you would review the application, set a public hearing and immediately refer it to the County. Then there would be that 30-day timeframe when you have to wait to hear back from the County. So, if you can get all that done and referred that night, then I think you have a least a two-month window here.

MR. DOHERTY: I think it is going back to the County because of the square footage, is that correct?

MS. TERHUNE: Every time you make a decision, it goes back to the County, if it is on a State highway.

MR. DOHERTY: Right on Route 9W.

MS. TERHUNE: So that is why it has to go back to the County

MR. GAFFORD: The other reason I wanted to come here first is if this is approved, while it is going through the process, we are going to redo our 20 pages of drawings. All it is is moving lines around and I don't want to trivialize it. There is a lot of engineering work that goes into where everything sits on the property. So before we were to do that, which would be a lengthy process, we can start it and be ready, but I want to make sure this part can be approved and passed. I am not asking you to tell me that. But we can go through this process first.

MR. DOHERTY: We can always go through the process.

MR. DONNERY: In my opinion, if it would help the Applicant, we could set a Special Meeting to do that.

MR. DOHERTY: I have no objection to that either. It would have to be posted and put in the papers. But again nothing happens until we get an application.

MS. TERHUNE: I would posit that if you can get an application to the Board, if you have an idea of when you could do that, this Board could tonight set a Special Meeting contingent upon getting the application. Is it 10 days before?

MR. DOHERTY: Yes, 10 days, for a public hearing.

MS. TERHUNE: You need 10 days to review the application. It is also 10 days for a public hearing, I believe. So you could set, looking at the calendar, let's have a Special Meeting in 2 1/2 or 3 weeks. At that meeting, you would have the application and reviewed it. You can then send it to the County which gives you a

little bit more time for them to get their review back. You can set a public hearing for the next regular meeting. You still have that 30 day window.

MR. DONNERY: If he can get the application to us within the next two weeks.

MR. DOHERTY: Today is the 15<sup>th</sup>. The 30<sup>th</sup> of June is a Tuesday. That kills the month there. These are business days or calendar days?

MS. TERHUNE: Calendar days.

MR. DOHERTY: If the application is set and applied, with the Board's approval, we could possibly set a special meeting. Does it have to be held on a Monday?

MS. TERHUNE: No, any day that the Board can get together.

MR. DOHERTY: It could possibly be for July 10. That gives us the 10 days for the review.

MR. DONNERY: I will be in California. Could it be done before July 4?

MR. DOHERTY: No, that is not going to happen. When will you be back?

MR. DONNERY: The 16<sup>th</sup>.

MS. TERHUNE: Could you set it for June 29?

MR. DOHERTY: Where are you in the application process?

MR GAFFORD: In getting it ready? We can get it ready in a week.

MR. DOHERTY: So today is Monday, so you mean by next Monday. That would be July 3 for the 10 days.

MS. TERHUNE: If the Board feels that 7 days is adequate to review the plans.

MR. DOHERTY: That is not set in stone.

MS. TERHUNE: Right, that is not set in stone. It is the public hearing notice requirements that are set in stone. So if you could set a special meeting for the 29<sup>th</sup>, publish it so that people know to review the application, then on the 29<sup>th</sup> you could refer it to the County. Your next meeting is July 20. The County still has until the end of July to get back to you. So you could have a public hearing on the 20<sup>th</sup> and then if you wanted, you could set another special meeting for approval, if the County doesn't get back to you.

MR. DOHERTY: Let me just follow this through. These are just hypothetical. We could set our meeting for June 29 to review the application and to set the

public hearing. Then the public hearing would have to be at least 10 days after that, to August 10. Again, these are ten calendar days?

MS. TERHUNE: Yes.

MR. DOHERTY: It could be Friday, the 7<sup>th</sup>.

MR. DONNERY: If he gets the application, we could put everything back to our regular meeting.

MS. TERHUNE: You could have a special meeting on July 29, a regular meeting the 20<sup>th</sup> with a public hearing, and then the following month to make a decision.

MR. GAFFORD: I like that, that way you stay with your normal calendar except for the one meeting. You are not making too many changes.

MR. DONNERY: If you don't do it that way, then you are three months out.

MR. DEVEREAUX: Wherever possible, I think we should try to accelerate or at least hold it as tight as we can to assist the Applicant.

MR. GAFFORD: Believe me, the mood on our team is, we want to do it right. I know you are not concerned about financing, but the feedback we got from people about the previous design was that they weren't happy. It goes to the fact that you have a bowling alley in that basement. You have lots of square footage, but it is very narrow. So we are going to take the right amount of time to do this correctly. I have one more item for thought: If we plan to acquire the south lot, which is Frank Lilos' property, which is on Route 9W, we would like to wrap that into this process along this schedule rather than come back later for more iteration. The reason we want that property is for more parking.

MR. DOHERTY: That is really the Planning Board, right?

MS. TERHUNE: Yes, that is the Planning Board, unless you are moving into that R-3 Zone.

MR. GAFFORD: If we put parking in the R-3 Zone, we would need....

MS. TERHUNE: Right now, the only variance you have is to move the parking in here (shown on the map). That is not really a variance. It's allowed under the Code, but this Board makes that decision which it has allowed it to do.

MR. GAFFORD: We would be asking for some of that with the other property because it has the same issues. We are not building any structure but are moving parking into the R-3 Zone.

MS. TERHUNE: You would be back before this Board for the same type of adjustment.

MR. GAFFORD: When we come in with the application, it will include the additional lot with a proviso that we have it under contract, subject to approval, and we want to bring that lot into the parking so there is no doubt that we are no longer marginal on parking. Now we have lots of parking.

MR. DOHERTY: To the best of my knowledge, the Lilos property fronts Route 9W and is in the Business Zone.

MR. GAFFORD: It is B-2, but it does have that split in the back with a little bit of usable R-3. The line just continues.

MS. TERHUNE: I would just caution the Applicant that, if you do not own that lot, and you are asking for approvals, you would need an Affidavit from the owner.

MR. GAFFORD: I am aware of that, thank you.

MS. TERHUNE: So what you might be looking for from this Board is not only a variance for this to go right up to the transitional yard, but also if you are looking at this lot, that extension. This would be brand new, separate.

MR. GAFFORD: But if we can get that considered at the same process, I think it would be very efficient. We do not plan to put any structures on it.

MR. DOHERTY: My question is can that be lumped into the whole application process with the Affidavit from the property owner?

MS. TERHUNE: Yes, it can be as long as there is an Affidavit. What happens is if the sale does not take place, then it affects everything, because if you are going to be showing that you are replacing this parking over here, then you can't do that, that will effect everything.

MR. GAFFORD: We figured out a way to rearrange the parking on the current lot.

MR. DOHERTY: To fit your requirements?

MR. GAFFORD: Yes, but it is a jigsaw puzzle, looking at that south wall, the boundary, the high part of the wall at 22 feet. Obviously if we had more parking room, not only would we have more parking for the project, we would be able to alter that wall so that it now comes more inward, more towards Route 9W, lower, safer, the whole bit. There is some real benefit to that, from our point of view.

MS. TERHUNE: So you would really be, if this Board grants those variances based on the new plan, this old application goes away. How it would be addressed, it might be incorporated. I would have to look at what exactly you are asking for and then it would be drafted to either incorporate or supersede, etc. But since you don't have an application before you, it is hard to determine.

MR. GAFFORD: But it could be one of those two paths.

MR. DEVEREAUX: Jack, a question about sub-paragraph 3.

MR. GAFFORD: In other words, the variance that you gave us is way too much. So I did not know if it was proper to ask for a lowering of the variance. We are fine with that.

MS. TERHUNE: We would have to recalculate that, because what you don't want is to have two approvals that are both operative at the same time. Which means that they could theoretically put in a smaller building.

MR. DONNERY: Basically, the first application is moot.

MS. TERHUNE: You would have to revise your determination. You would have to basically say this is no longer operative but now the new one is this.

MR. GAFFORD: So whatever variance should be adjusted either more or less can be adjusted.

MS. TERHUNE: Yes, and you would do that and it should be shown on the new application.

MR. DONNERY: That is what I was saying, everything is gone and you will start new with a new application.

MR. GAFFORD: That's if it is approved, because if it is not approved, we still have the old one.

MS. TERHUNE: That is correct. It would supersede the first application and we would have to have that language in here so it is clear.

MR. DOHERTY: It would all be worded properly to handle all that.

MR. GAFFORD: You see my intent in this? It is to make a much better project. More parking which the Village has always been worried about, lower height, both fire departments now can serve that building which is better. Another thing that we will change has nothing to do with this, it will be an all stone exterior, non reflective.

MS. TERHUNE: Will you be submitting to the Planning Board at the same time?

MR. GAFFORD: Yes, once this gets into the cycle, unless we have a show stopper, we will start the process with the Planning Board with the same set of new drawings.

MS. TERHUNE: Because the question then becomes a SEQRA question, which remember the last time the Planning Board was Lead Agency it was a Type I Action because of the size, and they coordinated with the ZBA which meant this whole sort of waiting. In this case, I have to give that a little bit of thought, because typically, if you are just granting a single area variance, it is a Type II Action which means this Board could act without consideration of the Planning Board. I really need to think about that. If it was just the area variance, back here, the lot line, there would be no question that it is a Type II Action. But if you are adding this parcel here, and now you are asking again to extend in here, I have to look at the old SEQRA Determination to see how we handled that.

MR. GAFFORD: What if in the second parcel, we just stay completely in the Commercial Zone?

MS. TERHUNE: Then there is no problem. You don't need a variance or anything else. If that is going to mess up your plans, I could look it over.

MR. GAFFORD: No, it won't.

MS. TERHUNE: It may be that we considered this not a use variance. I think we want to try to keep it a Type II Action. Otherwise we get into SEQRA Coordination and that is a problem.

MR. GAFFORD: I got that loud and clear.

MS. TERHUNE: Let the Board know if that is going to be an issue and then I will do a little more research into whether or not that extension into R-3 can be granted without opening up SEQRA.

MR. GAFFORD: Would you mind just checking on it?

MS. TERHUNE: Yes, I don't mind that. Do you have an attorney?

MR. GAFFORD: We have multiple attorneys.

MS. TERHUNE: If your attorney checks on it and then I have to check on his checking, then you are paying everybody twice. If you want me to check on it so that I can advise the Board, then I will do that.

MR. GAFFORD: I know there is enough commercial in the Lilos' lot to not only nicely solve the parking issue, but to give us even more and leave that R-3 area as a vacant zone could be addressed later down the road.

MS. TERHUNE: The other thing that you could do, depending on how we handled that in the past, is you could ask this Board for an interpretation as to whether that would be considered a use variance or an area variance.

MR. DOHERTY: The parking issue? Extending into Frank's property?

MS. TERHUNE: That's not a problem, unless they have to push B-2 into R-3 like they did here to get this parking. I just don't remember whether we considered that an area variance or a use variance. Let me check. It doesn't look like we considered it a use variance; it looks like we considered it just another area variance based on how the Code is worded. Let me check on that and advise the Board on my findings and then you can tell the Applicant. If it is better for the Applicant to push that back and there is a way we can accommodate that without opening SEQRA, and the Board wants to do that, I will see if I can find a way to do that.

MR. DOHERTY: I just want to clarify this. You had requested that Alyse do the research on this aspect of it, or are you going to have your attorney do it.

MR. GAFFORD: We will have our attorney do it.

MS. TERHUNE: Why don't you do that and then have the results sent to me and I will check it out. But do that quickly, because it affects your whole plans.

MR. GAFFORD: Like I said, we might just make it easy on ourselves for timing and stay in the commercial zone. I know there is enough room.

MR. DOHERTY: That is your option. I just want to go over the dates: Today is the 15<sup>th</sup> and you are going to try to submit your application by the beginning of next week, that puts us at the 22<sup>nd</sup>. We have up to 10 days is that correct?

MS. TERHUNE: Your Code or application maybe says up to 10 days but if the Board thinks they can review this in 7 days, as long as you get it by the 22<sup>nd</sup> then you can have a special meeting on the 29<sup>th</sup>. I don't think there is any reason why you can't do that, especially since you have had an Informal Review already.

MR. DOHERTY: Does anybody have an issue with meeting on June 29 and do you feel comfortable with the review of that application if we have it in hand by June 22? Jack, you will have those downstairs submitted to John by the 22<sup>nd</sup>, so these gentlemen can stop by that afternoon?

MR. GAFFORD: Yes. What that means is a revised layout, one of these prints, that shows: the new layout, the new parking, the setbacks, and the modifications of the variances up and down. Also, an Affidavit from the owner will be provided.

**A motion was made to hold a Special Meeting for Monday, June 29, 2015 concerning this project.**

**Motion: Mr. Devereaux   Seconded: Mr. Donnery   Approved**

MR. DOHERTY: I will be sure to send this to Jack Jannarone via E-mail to let him know that we are going to do this. If necessary, I will figure out how to scan it so he will have a chance to review it. Then the Public Hearing will be set for July 20, 2015 at our Regular Meeting. Is anybody traveling? Any other questions or concerns from the Board?

**At 7:35 P. M., a motion was made to adjourn the meeting.**

**Motion: Mr. Donnery   Seconded: Mr. Devereaux   Approved**

Respectfully submitted,

Fran DeWitt  
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is  
Monday, July 20, 2015**