

APPROVED: 10/17/16

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
SEPTEMBER 19, 2016**

A Regular meeting of the Zoning Board of Appeals was held in the Highland Falls Library, Highland Falls, New York, on Monday, September 19, 2016, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

Jack Jannarone, Chairman

Ray Devereaux

Tony Galu

Joe McCormick

Absent:

Tim Donnery

Alyse Terhune, Attorney, (Lewis & McKenna)

ALSO PRESENT: Tracie DeSpirito and Christopher DeSpirito.

MR. JANNARONE: I will open the Zoning Board of Appeals for September 19, 2016, and note that all members are present except Mr. Donnery. The first item on the agenda is to approve the Minutes for April 18, 2016. Does anyone have any comments or corrections?

A motion was made to approve the Minutes of April 18, 2015.

Motion: Mr. McCormick Seconded: Mr. Devereaux Approved

Christopher and Tracie DeSpirito, 6 Miles Lane, Fort Montgomery, NY.

MR. JANNARONE: Would you like to tell us what you are proposing.

MR. DeSPIRITO: It is a three-room addition off the existing structure, behind the existing home.

MR. JANNARONE: Could I see the picture, Tony? Could you show us on the picture?

MRS. DeSPIRITO: It will be behind the house. The bulk of our property is behind the house.

MR. JANNARONE: On this drawing here?

MR. DeSPIRITO: You are actually looking at the side of the house. There is a deck and sliding glass doors.

MRS. DeSPIRITO: This view is the front of the house and it will run behind the house.

MS. TERHUNE: Is this the only thing that is being added?

MR. AND MRS. DeSPIRITO: Yes.

MR. JANNARONE: You had some questions didn't you Alyse?

MS. TERHUNE: Yes, I do have some questions, if the Board wants me to ask them. I am the Planning Board's Attorney. Generally, what happens is this is a pre-existing non-conforming lot. Everything stays the same, no problem; but if you add to the building, then what this Board has done traditionally in the past, is not only to consider the side yard variance which is what you need here, but also to bring the rest of the building into compliance by granting other variances. In this case, we don't even know how much of the lot area is covered, because it depends on the grade, if you look at the Code Book. It would be prudent for you to give us the additional information that the Board needs so that in addition to granting, if they so choose, the side yard variance, they can then grant other variances that are pre-existing. Do you see what I mean?

MR. DeSPIRITO: With the existing structure or the lot size? As far as what, what do you mean?

MS. TERHUNE: For example, it is a non-conforming lot, so the lot is smaller than what is now required in that zone. So you would need an additional variance to put this house on that lot. So now it is no longer non-conforming. You would have something in the record that says, for example should you ever go to sell your house, you have a document in the record that shows that all of these variances have been granted; therefore, there are no zoning violations at all. So what this does for property owners, especially in a small village like this, is when property owners come in, they think they need one variance, but the house has been there forever, the lot is too small, maybe they are too close on the other side that they are not building on, or maybe the setback is not correct, all of that gets taken care of at once by this Board so that the record is then clear from that point forward. So there is no question. Should you decide to sell the house in the future, when the bank calls, they can say yes, the lot is too small, but they have a variance, and the variance runs with the land. There is no question about it at that point trying to get variances.

Typically, that is what this Board's policy has been. So, in addition to just looking at the one side yard variance that you need, you are building back, so you are not increasing the variance here, but still you are making the house bigger. The other policy that this Board follows, and the reason that you are here in the first place, is to get this side yard variance which would then apply to the entire house.

The only other variances that I can potentially see while you are here, is the size of lot and coverage. In the Code it says "...in this district you need between 40,000 square feet and 80,000 square feet lot." Your lot is 11,000 or 12,000 square feet. It depends on the grade of the property. If there is no grade, kind of flat in 40,000 square feet, then that is the variance that the Board would grant. But this is obviously on a grade. If it is 11%-20% then it would be 60,000 square feet so that is what this Board would consider. You might need 40,000 square feet just to bring it into compliance with the Code. So that is all clear on the record. If it is over 20%, and I have no idea what the grade is here, then you would need a bigger variance. Once we decide that, then the next question is the lot coverage. If it is a certain grade, you are entitled to 25%, if it is another grade it goes down to 20% and then to 15%. So the grade makes a big difference in terms of the variance that would be reviewed for just bringing the lot and the house size into conformance with the Code by granting variances. Do you see what I mean?

So the question that you have to come back to the Board with is "what is this grade?" Once we have this information, we can modify that application, or you can modify your application, to figure out lot area, etc. Then the other question is, how tall is this? What is the height? Height is 35 feet, so if it is less than 35 feet that should be stated in here. If it is more than 35 feet, you need a height variance.

MRS. DeSPIRITO: If the addition height is more than 35 feet, you're saying?

MS. TERHUNE: Yes. If the addition height is more than 35 feet, and it is the same height as this, then when you get the height variance, it will apply to that as well.

MRS. DeSPIRITO: Is there a reason that it wasn't stated in that original letter? Because all it mentioned was the side yard lot. It didn't say grade, and it didn't mention all these other items.

MS. TERHUNE: I don't have a copy of the original letter.

MR. JANNARONE: That is from the Building Inspector.

MR. DeSPIRITO: The only thing he said was that the issue was the side lot setback.

MRS. DeSPIRITO: I am feeling a little unprepared. The original letter was just addressing the side yard.

MR. JANNARONE: You absolutely need that. She is saying that it makes sense to get everything cleared up.

MS. TERHUNE: Here is the choice, you can ask the Board to go forward and only grant the side yard variance or only consider it, which might be fine. But this Board's policy is to look at all non-conformities at the same time to clear the record so that any questions in the future will be covered. When was your home built?

MRS. DeSPIRITO: 1987. It was started in 1987 and completed in 1989.

MR. DeSPIRITO: It depends who you ask.

MS. TERHUNE: This Code was adopted in 1980. That is odd. Is there anything in your file that says there were already variances granted?

MR. DeSPIRITO: I have no idea.

MR. JANNARONE: You are not the original owners?

MR. DeSPIRITO: No.

MS. TERHUNE: I will call the Building Inspector and ask him about that. If this house was built after the Code, it would have required variances to build it.

MRS. DeSPIRITO: What if they didn't have them? What happens then?

MS. TERHUNE: At this point nothing is going to happen. I am sure they are not going to make you tear your house down.

MRS. DeSPIRITO: That's good.

MS. TERHUNE: That's one more reason to get it all taken care of now and not to wait. Not all building inspectors tell you that. This is at least a two (2) month process. A lot of times it gets before the Board and we have this discussion. That is not unusual. What the Board does now is they set a public hearing, so you haven't really lost any time. But between now and the public hearing it would be important to get this additional information to us. What is the grade and the height?

MR. DeSPIRITO: So we need all that information for the side yard setback? She said you don't have to get everything now.

MRS. DeSPIRITO: But to be in compliance, we might as well.

MR. DeSPIRITO: So what happens in 25 or 30 years when I go to sell the house?

MS. TERHUNE: Well, let's say you don't get all the other variances.

MR. DeSPIRITO: Which may not even exist on the one we have, which we have already purchased. Let's think about that for a second.

MRS. DeSPIRITO: Yes, how does that work? How did we buy it?

MR. DEVEREAUX: You bought the house, you didn't build it?

MR. JANNARONE: When did you buy it?

MR. DeSPIRITO: 1999.

MR. JANNARONE: There is probably a Title Search and insurance.

MS. TERHUNE: They probably called and said “are there any violations?” and the building inspector said “no.” The next time someone called they could say “are there any violations?” and the building inspector could say “well, you know they really don’t have any variances for the lot size.” Is that really going to happen, I don’t know? You are here, you’ve paid your application fee.

MR. DeSPIRITO: This can all be covered?

MS. TERHUNE: This can all be covered at this point. All you need to tell us is what the grade and height are. If you get that to this Board fairly soon, then I will simply calculate what the other variances are that you need. We will revise your application, and this Board will consider that. It is not like they are going to say, “oh, it’s too high, you will have to knock off half of your house.” That is probably not going to happen. This gives the Board and the town an opportunity to bring everything into compliance just in case something else happens. Let’s say you want to add something else to the house in a couple of years.

MR. DeSPIRITO: We won’t, trust me.

MS. TERHUNE: Not all boards do that. Some boards just think about what is in front of it. This Board takes a more holistic approach. They like to bring the building into compliance so that there is no question going forward.

MR. JANNARONE: So you will check with Bruce to see what variances there are on this property?

MS. TERHUNE: I am going to see if there are any already.

MR. JANNARONE: If they are there, then they are fine. We don’t know. And you are going to get the grade and the height.

MRS. DeSPIRITO: Yes.

MR. JANNARONE: Does anyone else have any comments?

MR. DEVEREAUX: It is perfectly logical that you resolve all the issues right now, in my mind.

MR. DeSPIRITO: Speaking with the Building Inspector and him telling me one thing, and then hearing about potentially two or three other things is a little unsettling.

MR. JANNARONE: I understand that.

MS. TERHUNE: If he had referred this to me, I would have told him that.

MR. JANNARONE: He has to deny your building permit.

MR. DeSPIRITO: He said that based on the side yard setback, not on everything else.

MS. TERHUNE: That is all he is looking at. In his mind, if I was the building inspector, I would have said “well the house is built, I’m not going to go digging around to see if there are other problems with it. They want to put this addition on, I see that they need a side yard setback, so I’m going to send them to the Zoning Board of Appeals.” It gets to this Board and they always take a broader view of the application in front of them. It has just been their policy, that’s the way they work.

MR. JANNARONE: Don’t let this worry you too much.

MR. DeSPIRITO: It has taken me back a little bit. I have made multiple trips to the Building Inspector and had many conversations with him, and now I am hearing “well this isn’t right and that’s not right and you need to take care of this, and take care of that.”

MS. TERHUNE: It’s not that it isn’t right. What you are asking for is right, it is just that while you are here, you might as well ask for everything that you might possibly need. That is how this Board has always looked at an application before it.

MR. DeSPIRITO: So actually what do we really need, beside the side yard setback?

MR. DEVEREAUX: Alyse, why don’t you talk to Bruce. Then have him come in to talk to Bruce about what you advise.

MS. TERHUNE: You may not need any other variances. Everything hinges on the grade. That is then going to set the size of the lot. You will need a lot size variance because your lot is not big enough. I just don’t know which lot size you are supposed to have in that district. The second thing you may need is a lot coverage. That again depends on the grade because, let’s say it is 11%-20% natural grade, let’s just assume that. It kind of looks like it might be, it might be greater. I can’t tell I am not an engineer.

MRS. DeSPIRITO: You can’t see it at all from that picture.

MS. TERHUNE: Then you would only be allowed a 20% lot coverage. So that means that this building, anything that is on the ground is considered lot coverage. So if it is more than 20% of the entire lot area, then you would need a variance for that. You might need those two variances in addition to the side yard. The height, is it higher than 35 feet, I don’t know? It doesn’t look like it to me.

MR. DeSPIRITO: It doesn’t bother me. This is what the architect came up with.

MS. TERHUNE: He will be able to tell you what the height is, I would think.

MR. JANNARONE: Is there a side dimension?

MS. TERHUNE: There is a side.

MR. JANNARONE: There is no side dimension on that one.

MS. TERHUNE: He should show the height.

MR. JANNARONE: That raises an interesting question. The height, is that for the existing part of the building? This addition over here – what do you consider the height?

MRS. DeSPIRITO: What do you consider the height?

MR. DeSPIRITO: It's a lot less.

MS. TERHUNE: It depends on how it is calculated. You have to look at the Code. Your architect probably needs to look at the definition of height and how it is calculated. I don't know how it is calculated. It's in here.

MRS. DeSPIRITO: I would wager a guess that it would be from the ground because I am thinking it is probably more of visual as opposed to a structural height.

MR. JANNARONE: It's more of a fire fighter issue than anything.

MRS. DeSPIRITO: Our house is pretty high.

MS. TERHUNE: Code definition of Height: The vertical distance measured from the average elevation of the finished grade along the side of the structure fronting on the nearest street to the highest point of such structure.”

MR. JANNARONE: The average height. It seems like you get a break

MR. DeSPIRITO: Have you driven down Miles Lane?

MS. TERHUNE: Frankly, the Building Inspector or your architect can probably help you determine what the height is.

MR. JANNARONE: It seems like you get a break because it is the average height.

MS. TERHUNE: If this is not more than 35 feet that is not going to be more than 35 feet. If you can figure out what that is. What is that two stories?

MR. DeSPIRITO: Yes. Coming through the garage at the basement, up to the main floor, and then another staircase up to the master and second floor.

MS. TERHUNE: It may be considered three stories. Again, your architect can tell you that. Are you on septic?

MRS. DeSPIRITO: Yes.

MS. TERHUNE: The Building Inspector, before he gives you a building permit, he will probably want septic information.

MR. McCORMICK: The sewer line didn't get that far over. The waste water did not get that far over. They were supposed to.

MRS. DeSPIRITO: We are supposed to get water.

MS. TERHUNE: You don't have water yet? You are on well?

MRS. DeSPIRITO: Yes. It's been about 15 years. So we just need to get you that information.

MR. DeSPIRITO: The height of the structure and the grade of the property.

MS. TERHUNE: And the lot coverage.

MRS. DeSPIRITO: Three things.

MS. TERHUNE: Again, your architect should be able to help you with that.

MRS. DeSPIRITO: We can just bring it here?

MS. TERHUNE: As soon as you get it, get it to the Board.

MR. DeSPIRITO: We can just bring it to the office?

MS. TERHUNE: Yes. They will give it to the Board and the Board will get it to me and I will look at it.

MR. JANNARONE: Shared his email with Mr. DeSpirito.

MRS. DeSPIRITO: It will be interesting to see if there are any existing variances.

MS. TERHUNE: I will ask Bruce about that. Maybe this was part of a subdivision.

MR. DeSPIRITO: I think it was the Miles family that owned the whole ball of wax.

MS. TERHUNE: It may be these were granted as part of the subdivision approvals and so you already have them. We will check the building file. It may be that you are fine.

MR. DeSPIRITO: So, we get the information and then do we need to meet again before a public hearing is set?

MR. JANNARONE: I don't think so. We will make a motion shortly to set the public hearing for next month. What you will need to do is go to the Building Inspector and he will tell you that you have to do certified mailings to your neighbors and you have to post on your property. He will tell you how to do that. Then you bring in the receipts from the certified mailings showing that you have actually made the mailings. Anyone else have anything? The next meeting is October 17, 2016. There are no holidays. We will be back in Town Hall.

MR. DeSPIRITO: What is going on there tonight?

MR. JANNARONE: Budgeting meetings, and the Village wanted the room.

A motion was made to set a Public Hearing for Monday, October 17, 2016 for this project.

Motion: Mr. McCormick Seconded: Mr. Devereaux Approved

MR. JANNARONE: The publication in the newspaper, that is what I was asking?

MS. TERHUNE: I will draft a notice of hearing, the town will publish it in the newspaper, within a certain amount of time, and I will also send you that notice of hearing because that is what you will mail to your neighbors.

MR. JANNARONE: What about the parks and highways?

MS. TERHUNE: I don't think they are within the area. I can count almost 495 feet from this point to 9W. I don't think they need to go to the County.

MR. JANNARONE: And Palisades Interstate Park?

MR. DeSPIRITO: We are the right hand side of Canterbury Road.

MS. TERHUNE: They are Type II SEQR. They don't have to do an environmental review.

MR. JANNARONE: Anything else. You have to see the Building Inspector to get that information back to us. If you will email me once you have done that. We will meet again on October 17, 2016.

MR. DeSPIRITO: I was a little taken back. I did ask questions.

MR. JANNARONE: Things will work out.

MS. TERHUNE: I don't think this Building Inspector has even referred anything to this Board before.

MR. DeSPIRITO: He said there were a lot of violations that he dealt with and not new construction.

MS. TERHUNE: I will talk to him tomorrow. Maybe next time he might want to notify applicants that there may be more variances needed than they think.

MR. JANNARONE: One more thing, do you mind if any of us come and walk around your property to look at things?

MR. DeSPIRITO: Knock yourself out. We have a dog, oh, and bear, too.

MR. JANNARONE: Do we have any other business? Do I have a motion to adjourn?

At 7:31 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Devereaux Seconded: Mr. Galu Approved

Respectfully submitted,

Fran DeWitt
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is
Monday, October 17, 2016**