

The minutes of the Zoning Board of Appeals Meeting held on Thursday, April 12th, 2018, beginning at 7:30 PM.

PLEDGE OF ALLEGIANCE

<u>ROLL CALL</u>	Edwin Rivera, Chairman	- Present
	Jose Guareño	- Present
	Deyanira Martinez	- Present
	Richard Santiago	- Present
	Jose Hilario	- Present
	Dennis Michaels, Village Atty.	-Present
	Ruben Berrios, Bldg.Inspector	- Present
	Michelle Ventura, Clerk Typist	- Present

Chairman Edwin Rivera introduced the first informal on the agenda, 115 Maple Avenue, Haverstraw, NY 10927. **27.62-2-19**

Delana Bennett, 115 Maple Avenue: I had submitted a letter and brought pictures if you want to look at, I live in a 3 floor 5 bedroom house on Maple Avenue close to Maple Terrace apartments. I would like to convert it to two smaller residents.

Edwin Rivera: You want to convert your one single family dwelling home into a two family but you're in the R-1 zone.

Delana Bennett: Yes.

Edwin Rivera: By law that is not permitted.

Dennis Michaels: Correct it would require a use variance. A use variance is a very difficult application to get approved but not because of this board. Under the state law the statutory mandate that a Zoning Board of Appeals throughout the State must apply when reviewing an application for a use variance are extremely stringent and very strict. I haven't reviewed the merits of your application but being a Land Use and Zoning Attorney for over 21 years, it's extremely rare that an application meets all 4 criteria's. You have to meet every single one and they're almost impossible to meet. We can't stop you from proceeding with your application; you do have a right to proceed. But for example, the kinds of proof you need to submit would be income tax returns for whoever owns the property. Assuming you're the owner, we would need your income tax returns, evidence establishing that the property cannot be used as a single family home and still be maintained as a single family home. If you marketed it for sale, you would need to bring in a licensed real estate agent and real license property appraisers. I've seen applications that have done those steps properly and they still are denied even after they bring in all these hired professionals. The license property appraiser and the real estate broker would have to prove under oath that if they listed your home for sale today with what the fair market value would be, so how much you'd get for a price

through a real estate agent, that price would have to be less than what you paid for the house. I'm assuming you've been living in that house a long time. This is very complicated and you would need to consult with a Land Use Zoning attorney that understands this. What I'm trying to say is, the proof you would need to submit to establish the statutory grounds to be entitled to a use variance are extremely difficult. You'd have to bring financial records, license real estate brokers, property appraisers, accountants, and a lawyer. I'm not saying you have to but if you wanted to present a proper application that is what you would need to do. That doesn't mean it would get approved. We had an application not too long ago who came with all those professionals and they were still denied.

Delana Bennett: Who denied it?

Dennis Michaels: This board, properly so. The applicant did not meet the criteria, which again is very difficult and almost impossible to get.

Delana Bennett: Could I get the list of criteria's?

Dennis Michaels: I could give you the section of law and you could look it up. Just reading it alone, it's very esoteric.

Delana Bennett: So this has nothing to do with other land uses in the area? I'm surrounded by businesses, schools and other apartments.

Dennis Michaels: Yes that's one of the criteria's, there are 4 in total. One of the criteria is that, the requested use variance if granted will not alter the essential character of the neighborhood. I'll be honest with you, that's the easiest one. The other three are almost impossible to meet. But I can write down the section of Law and you can review it.

Delana Bennett: So a hardship doesn't help? Don't you care about the tax payers anymore and the hardships you will put them through? I've been paying taxes for years. I'm in a sea of multiuse homes.

Dennis Michaels: I could read you the whole thing. It has to be unnecessary hardship. No use variance shall be granted by a Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulation for the particular zoning district where your property is located,

1. The applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence,
2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the rest of the zoning district or neighborhood,
3. The requested use variance if granted will not alter the essential character of the neighborhood,
4. The alleged hardship has not been self created.

So it sounds simple but there's a lot in there about the financial proof and not being able to realize a reasonable return. There are many

pages devoted to explaining what that means. Just because you can bring in more money using it in a way that's not permitted in the Zoning district, doesn't mean you're entitled to a use variance. Just to show that this will bring in more money and you're a person that's on limited income perhaps and by having this additional dwelling unit you're able to supplement your income, that's not what it's speaking to. If you really want to pursue this you should consult with an attorney who's well versed in Zoning Law.

Delana Bennett: So I can't pursue this any further unless I get more criteria.

Dennis Michaels: You can submit an application but you will not get passed the first meeting if you don't present adequate proof that you meet all 4 criteria for a use variance. You can proceed if you want but I caution you.

Delana Bennett: It's a fool's errand.

Dennis Michaels: I didn't want to say that myself but, here's the Law that you can find online and read through all criteria's needed to pursue any further.

Delana Bennett: Thank you all for your time.

Dennis Michaels: Good luck.

Chairman Rivera introduces the next informal of the night on the agenda, 46 Hudson Avenue, Haverstraw, NY 10927. **26.52-1-21**

Luis Tallandier, 46 Hudson Avenue: My name is Luis Tallandier, and I reside at 46 Hudson Avenue in Haverstraw NY. Last year I put up a pool and now my wife and I want to put a deck around it. I have not even half an acre of property. It's very small but we would just like to add a deck around the pool.

Ruben Berrios: With this application, Luis has submitted two scenarios that he's presenting to you in case you don't go with the first one. The first one is 2.5 feet off the property line for the side yard. I told him to look at it a different way just in case it wasn't approved so that's why you have two options in front of you.

Edwin Rivera: So you have option one that's 2.5 feet off the property line and another that's 5 feet.

Ruben Berrios: Yes so I filled out the sheet for both options. If you look at the sheet it will tell you exactly what's needed. Either way, he will need a rear yard and side yard variance it's just a matter of how much. So he will either wrap the pool around the deck or not.

Jose Hilario: Do you have any idea which one you'd prefer?

Luis Tallandier: I would personally prefer option one.

Edwin Rivera: So this is Hudson Avenue correct?

Luis Tallandier: Yes correct.

Edwin Rivera: So to get to the house you have an alley way?

Kimberly Tallandier, 46 Hudson Avenue: There's a big driveway, an easement that's shared by two properties.

Jose Guareño: Is there any difficulty unwrapping the pool on this side?

Kimberly Tallandier: Well there are two ac units that are located on the side of the house so we wouldn't be able to because they go above the pool.

Luis Tallandier: It would be in the way.

Edwin Rivera: How far from the property line is it?

Kimberly Tallandier: Option number 2 is 5 feet here and 7 feet there.

Edwin Rivera: I like the second one better.

Kimberly Tallandier: Yes it's tight; we have a really small property so whatever is the better option we will go with because there's really no other way to put a deck up. Those are the only two options given the size of the space that we have.

Jose Guareño: So you' still have access to the porch from this side of the deck, its just that it looks nicer.

Kimberly Tallandier: Exactly.

Chairman Rivera entertained a motion to send the application to next month's Public Hearing.

Motion by: Jose Hilario
Seconded by: Deyanira Martinez
Carried by: All

Kimberly Tallandier: Ok no problem thank you and have a good night.

Chairman Rivera introduced the next informal on the agenda, 17 Warren Avenue, Haverstraw, NY 10927. **27.37-1-40**

Clement Asemota, 17 Warren: We just purchased this home in January of 2018 and I have my mother who lives with us. It's a single family home that has a walking basement. We wanted to add a room in the basement for my mother because she recently had a stroke and she can't really walk. We are having difficulties transporting her from the upstairs bedroom. My kids and I run late for school and work trying to get her downstairs in the morning. So we wanted to make a room and add a bathroom. On the first floor we have the living room and the kitchen there. In the living room and the kitchen there's a deck on the side with no stair case. So we wanted to add a stair case from the deck to the floor. The architect designed a diagram and that's what we're looking to do.

Ruben Berrios: You could do the stairs to the deck but you're not here for that. You're just here for the habitable space in the basement.

Clement Asemota: Everyone is telling me I can't change it and I can't do anything on the house until I get a permit. I lived in the Bronx for 10 years and this is my first time in this area.

Ruben Berrios: Let me just clear that up for you. Whenever you want to do anything to your house just call our office and I will be more than glad to tell you what you can and can't do. Like I was telling you before, you can't put another apartment in there but you can finish the basement. You can put stairs off your deck that is not a problem.

Clement Asemota: I'm not a technician and I called a registered plumber that I found online and it said before I can put a bathroom in there I would need a permit and that I needed to get an architect that I paid \$6,000.00 for. The architect stopped by the house and said the two big windows in the back make it a working basement. I'm very new to this so I'm trying to make this process quicker to make it easier for everyone and to help my mother.

Ruben Berrios: Again like I explained to you, I can give you a permit to finish all the exterior walls and the bathroom. You are here in front of the board to get approved for habitable space in the basement, in other words to build a room. If you want to take out a permit to do the outside walls and the bathroom, you can start that as long as you bring me all the requirements. Once you go through this application process and if it gets approved you can start the process of making the bedroom. This way you can start what's allowed without this board's approval and move forward. You don't need their approval to finish a basement but you do need approval to add the bedroom.

Clement Asemota: So you're saying if I want to put stairs off the deck you don't need a permit?

Ruben Berrios: No, everything does need a permit. But if you want to put stairs off of your deck you just need a permit and not this board's approval because you don't need a variance for that.

Chairman Rivera entertained a motion to send this application to next month's Public Hearing.

RESOLUTION **18-2018** Motion by: Deyanira Martinez
Seconded by: Jose Hilario
Carried by: All

Chairman Rivera introduced the next informal on the agenda, 144 Clove Avenue, Haverstraw, NY 10927. **27.62-1-30**

For the record, this applicant did not show up for this evenings meeting.

Chairman Rivera introduced the next item on the agenda, Zoning Board of Appeals of the Village of Haverstraw Decision/Resolution for Jorge Lopez, 33 Division, Haverstraw, NY 10927. **27.46-1-40**

For the record Chairman Rivera, Mr. Santiago, Ms. Martinez, and Mr. Hilario have questions regarding this application and have asked to speak to the Village Attorney privately as his clients have confidential questions.

The members stepped out to a private room.

Attorney Dennis Michaels asked if Ruben Berrios, our Village Building Inspector could clear up a technical question that needed answering in the private room.

All members returned.

Dennis Michaels: You asked me some legal questions and I gave you my legal counsel and now we're back in the public meeting. You're now deliberating over the decision for Jorge Lopez, 33 Division Street; the Public Hearing has been closed. This is just your deliberations discussing whether to approve or deny all the variances or some variances. Let me ask Richard Santiago some questions to start off. So the lot variances we have here are lot area, lot width, front yard, right and left side yards, total width of both side yards, parking and third story addition. Let me ask you Richard about all the variances except for the third story for the moment. In reference to the variances needed for minimum lot area, minimum lot width, front yard, right and left side yards, total width of both side yards, and no off street parking, do you feel that an undesirable change will or will not be produced in the character of the neighborhood?

Richard Santiago: No.

Dennis Michaels: So you feel that undesirable change will not be produced in the character of the neighborhood if this board grants those variances that I just mentioned?

Richard Santiago: Correct.

Dennis Michaels: Do you feel that a detriment to nearby properties will or will not be created by granting of the area variances?

Richard Santiago: Of the ones you mentioned no.

Dennis Michaels: Do you feel that the benefits sought by the applicant can or cannot be achieved by some method, feasible for the applicant to pursue, other than by obtaining the area variances, again, area variances other than the third story addition. To reword that, can Mr. Lopez do something else that's feasible for him to do and not need these area variances excluding the third story variance addition.

Richard Santiago: Excluding the third story, no.

Dennis Michaels: So he would need the area variances other than the third story?

Richard Santiago: Correct.

Dennis Michaels: So just talking about those area variances except the third story addition, do you feel those area variances are substantial? Or, do you feel that those area variances excluding the third story are substantial however their substantiality alone does not warrant your denying of the application?

Richard Santiago: No.

Dennis Michaels: So you feel they may be substantial but the substantiality alone is not enough for you to deny the application for the area variances correct?

Richard Santiago: Correct.

Dennis Michaels: Do you feel that the area variances for minimum lot area, minimum lot width, front yard, right and left side yards, total width of both side yards, and no off street parking excluding the third story, do you feel those variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Richard Santiago: It will not.

Dennis Michaels: Do you feel whether or not Mr. Lopez's difficulties are self created, and 99.9% of the time with all applications the difficulties are self created. The applicant doesn't need to improve his building. When you seek to improve your building, that's a self created difficulty because you're taking steps to improve and it's triggering variances. So knowing that it's self created, is that consideration alone enough for you to deny the application for the area variances I mentioned excluding the third story addition?

Richard Santiago: No.

Dennis Michaels: So it sounds like you would be in favor of all of those variances excluding the third story.

Richard Santiago: So far yes.

Dennis Michaels: Now let's talk about the third story. With regards to the variance seeking the third story addition, do you feel that an undesirable change will or will not be produced in the character of the neighborhood?

Richard Santiago: Yes it will.

Dennis Michaels: So you feel that there will be an undesirable change produced in the character of the neighborhood if this board grants the third story variance.

Richard Santiago: Correct.

Dennis Michaels: Do you feel that the third story addition variance will produce a detriment to nearby properties?

Richard Santiago: Yes.

Dennis Michaels: Do you feel that the benefits sought by Mr. Lopez can or cannot be achieved by some method, feasible for Mr. Lopez to pursue, other than by obtaining the area variance for the third story? Again is there something feasible that he could have done or do to achieve what he's seeking to achieve other than by obtaining the third story variance?

Richard Santiago: Yes.

Dennis Michaels: Do you feel that the third story variance is substantial or not substantial?

Richard Santiago: Substantial.

Dennis Michaels: Do you feel that the area variance for the third story will or will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Richard Santiago: It will.

Dennis Michaels: Lastly, do you feel Mr. Lopez's self created difficulties with respect to the third story addition variance, is that consideration relevant to you and how do you feel about it? Is that a factor for you in favor or against the third story addition?

Richard Santiago: Unfavorable granting of the third story addition variance.

Dennis Michaels: So it sounds to me like Richard you are formulating a motion to approve all of the variances requested except for the third story addition variance?

Richard Santiago: That is correct.

Dennis Michaels: Is that your motion and are there any conditions that we should be aware of?

Richard Santiago: That is my motion.

Jose Hilario: The parking is a condition.

Dennis Michaels: Well he has no off street parking at all right?

Ruben Berrios: No.

Deyanira Martinez: He would go buy the Village parking pass for the municipal lots.

Dennis Michaels: Is there a procedure for that?

Ruben Berrios: You get the off street parking permits downstairs for the parking lots.

Dennis Michaels: So there is a procedure because I would not want this board to impose a condition that Mr. Lopez would not be able to meet because there's no such procedural mechanism.

Ruben Berrios: The reality is they'll have to get them because they have no parking to begin with.

Dennis Michaels: So how many will he need for two families?

Ruben Berrios: Well you only need two because he already has an existing one family dwelling that was grandfather in. What he only needs now is 2 parking spaces for the second dwelling addition.

Dennis Michaels: So your condition to Richard's motion is that he procure two off street parking permits from the Village Clerks office downstairs.

Richard Santiago: Correct.

Dennis Michaels: So you have the Rockland County General Municipal Law. So Richard, In order to grant this approval for most of the variances except for one, you would still need to override the County's letter of January 22, 2018 perusing to NYS GML section §239.nn states a disapproval. In order to approve the variances that you made a motion to approve, you would have to override this disapproval. There are two

comments associated with that disapproval. Number 1 is a standard philosophical statement that the County department puts in pretty much every GML letter for every application in every municipality that's subject to GML. For example in comment one, it states, the ability for infrastructure to accommodate increased residential density and undersized parcels is a county wide concern and must be evaluated. This evaluation must consider whether local roads will become more congested in the sewer systems, storm water management systems and the public water supplies will be overburdened. The Village must consider the cumulative regional impacts of permitting such. Well number one, the criteria that you're mandated by state law to consider when reviewing an application for area variances are the NYS Village Law §7-712-b (3) that I just went over with Richard. None of them in my legal opinion concern themselves with cumulative and regional impacts outside of the mediate neighborhood and that's where this statement number one from the county's GML letter addresses mainly. Secondly, they're talking about impacts on the infrastructure but this home is in an R-3 Zone and allows up to three families and he's proposing a two family so it's actually less burdensome than what would be permitted in a three family zone if the property met all the other criteria that you would need to have a three family dwelling. The county's comment one would be appropriate for those reasons and what Richard stated in his motion. Comment two's reasoning are it's not a subdivision and the site is not within 500 feet from the threshold mandated by NYS GML §239-m. Those would be your reasons to override the county's disapproval. You can adopt my legal opinion if you wish Richard.

Richard Santiago: Mr. Santiago agrees to adopt Dennis Michael's legal counsel as my motion.

RESOLUTION : **19-2018**

Motion by: Richard Santiago
Seconded by: Edwin Rivera

ROLL CALL:	Edwin Rivera, Chairman	- Yes
	Jose Guareño	- Yes
	Deyanira Martinez	- Yes
	Richard Santiago	- Yes
	Jose Hilario	- Yes

Dennis Michaels: So that concludes 33 Division Street, Haverstraw, NY 10927.

Pastor Caliman: Is there any time to make comments?

Dennis Michaels: The public hearing is closed, it was closed last month.

Pastor Caliman: No not so.

Dennis Michaels: It was closed.

Pastor Caliman: The minutes were never adopted, that's my question they're not posted.

Dennis Michaels: The minutes wouldn't have to be adopted until the decision is made. The decision was just made now. This decision will be drafted up along with the minutes for these meetings minutes and will be approved next month. How can you adopt minutes for a decision that wasn't made yet?

Pastor Caliman: In the last meeting you said in 60 days they would adopt the minutes.

Dennis Michaels: No they would have to render a decision within 62 days of closing the public hearing and if they didn't render a decision which they just did, within the 62 days the application would be deemed denied by default.

Pastor Caliman: Ok I understand. Mr. Berrios are you available sometime this week?

Ruben Berrios: I'm off tomorrow but I will be in Monday.

Pastor Caliman: Ok I will call to schedule an appointment. Thank you have a great evening.

Chairman Rivera entertained a motion to approve the March minutes.

RESOLUTION: **20-2018**

Motion by: Deyanira Martinez
Seconded by: Jose Guareño
Carried by: Majority Vote
Abstained by: Richard Santiago

With no further business to be discussed by the board, Chairman Rivera entertained a motion to adjourn the meeting.

RESOLUTION **21-2018**

Motion by: Richard Santiago
Seconded by: Deyanira Martinez
Carried by: All

The Clerk Typist to the Zoning Board is hereby authorized, directed and empowered to sign these Minutes, and file a copy thereof in the office of the Village Clerk:

Michelle Ventura, Clerk Typist