

The minutes of the Zoning Board of Appeals Meeting held on Thursday, June 14, 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	- Excused
	Jose Hilario	- Present
	Dennis Michaels, Village Atty.	- Present
	Ruben Berrios, Bldg. Inspector	- Present
	Michelle Ventura, Clerk Typist	- Present

Chairman Rivera opened up the meeting by introducing the first item on the agenda, James R Connell Jr., 51, Hudson Avenue. **26.52-2-70**

James Connell Jr., 51 Hudson: I'm trying to replace the back porch on my house. I'm making it a little bit bigger so I can make stairs go down from it. It's basically the same as it was.

Ruben Berrios: He has an existing deck in the back that he took down. He's rebuilding it expect he's extending it and doesn't have the required side yards and that's why he's here.

James Connell Jr.: The yards are 25 feet wide so it doesn't give a lot of room to build anything.

Ruben Berrios: If you look at the survey you'll have a better understanding. I would say he's extending it approximately 3 feet, more or less 4 feet where the steps are.

James Connell Jr.: Yes half of it 3 feet.

Edwin Rivera: They're staying the same in width correct?

James Connell Jr.: Yes.

Edwin Rivera: Were there steps before?

James Connell Jr.: There were originally stairs running straight down the back.

Jose Guareño: Is that concrete or is that part of the steps?

Ruben Berrios: It's all wood.

Jose Guareño: It used to be just straight up and now you made it go to the side.

James Connell Jr.: Yes.

Ruben Berrios: He's making it go back further and the steps where the platform is will take.

Edwin Rivera: You have your garage all the way in the back?

James Connell Jr.: Yes.

Edwin Rivera: I don't see a problem.

Deyanira Martinez: So this is included with the variance that he needs?

Ruben Berrios: The variance is for the steps.

Edwin Rivera entertained a motion to send 51 Hudson Avenue to a Public Hearing for next month.

**RESOLUTION 29-2018**

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

Edwin Rivera: Mr. Connell, just call the Building Department and they will guide you with the appropriate steps needed to move forward.

Dennis Michaels, Village Attorney: For anyone here that's interested in the application PAG Investments, 217 North Route 9W, proposing to build an approximately 100,580 square foot self storage facility, that Public Hearing will remain open and will continue to a future meeting which will be heard at the July 12, 2018, 7:30pm here in the Village. Thank you.

Man 1: So we are not talking about it at all today?

Dennis Michaels: No, correct.

Man 2: You rescheduled to the 12th but we're not going to be in town.

Man 3: Yes what happens if we can't make it?

Dennis Michaels: You could submit something in writing certainly or hire an attorney to represent you and speak for you.

Man 3: Well I'm here now. Why is it being postponed?

Dennis Michaels: The application cannot be heard by the board until the Planning Board completes its environmental review. They have not completed that, therefore under the State Environmental Quality Review Act (SEQRA), the application is not deemed complete. This means no other board that has approval until the Planning Board completes SEQRA and they have not yet done that. It was anticipated that it would've been completed a couple of nights ago but the Planning Board was not comfortable to proceed in completing the environmental review so therefore this application cannot proceed this evening.

Man 2: So a letter could be written?

Dennis Michaels: Absolutely. You can submit a letter and address it to the Zoning Board of Appeals.

Ruben Berrios: You could are welcome to come to the Planning Board.

Dennis Michaels: You're more than welcome to come to the Planning Board meeting.

Man 2: Well that's what we're saying, we won't be around.

Dennis Michaels: June 25th is the Planning Board and this is the Zoning Board of Appeals.

Man 2: Oh ok so you could state your case then?

Dennis Michaels: Sure.

Man 2: June 25, what time?

Dennis Michaels: It's normally at 7:00 pm but it's 8:00 pm. So the Planning Board meets here June 25, at 8:00 pm. We have every expectation that PAG Investments will be on the Agenda. It is on the agenda now and we expect it to be reviewed that evening. This Zoning Board will meet again on July 12th as I announced earlier at 7:30pm and we have every expectation that this application will be reviewed then. But it will all depend on what happens at the Planning Board meeting on June 25th.

Ruben Berrios: You'll probably get more information at the Planning Board as well.

Man 4: Quick question, why weren't we notified for the Planning Board that they were going to do that.

Dennis Michaels: I don't believe the local law of the Village of Haverstraw requires neighbor notices for Site Plan applications.

Man 3: You believe so or is that accurate?

Dennis Michaels: Firstly I'm not your attorney but I am for this board. So I give you this information gratuitously with the understanding that I'm not your attorney so I may be giving you wrong advice unintentionally. I may be making a mistake but I'm 90% certain that a budding property owner notices or nearby neighbor notices are not required for Site Plan applications being reviewed by the Planning Board here in the Village.

Ruben Berrios: For the Zoning Board, the variances you are required to get notified not the Planning Board.

Chairman Rivera introduced the next item on the agenda, Kimberly Tallandier, 46 Hudson Avenue, Haverstraw, NY 10927. **26.52-1-21**

Kimberly Tallandier, 46 Hudson Avenue: To refresh the board, I was building a deck and needed a variance. There was a neighbor that opposed at the Public Hearing stating that it might affect water flow in his property. An engineer did stop by on site to review his concerns.

Ruben Berrios: Yes I went by with the Village Engineer and we looked at the property. She stated there is no issue of drainage.

Dennis Michaels: Do we need a Rockland County GML override on this? Maybe I misread but is there a Rockland County GML report on this?

Michelle Ventura: No there isn't.

Jose Guareño: We were pretty much leaning towards the approval for this application considering she already relocated the portion of the deck from her original suggestion. There was a neighbor who was concerned in regards to the drainage. Dennis Michaels recommended sending Eve Mancuso the Village Engineer to check and to see if in fact the proposed deck surrounding the pool would increase the neighbors existing drainage issue. So they went and agreed there would be no impact on the drainage concern.

Edwin Rivera asked the public if anyone had questions or concerns regarding 46 Hudson Avenue.

Rafael Vargas, 48 Hudson Avenue: I don't see any problem with building the deck around the pool. I'm in favor of this project.

Ruben Berrios: Mr. Vargas is the immediate neighbor of 46 Hudson Avenue.

Edwin Rivera asked the public if anyone had questions or concerns regarding 46 Hudson Avenue. With no comments from the public or the board members, Chairman Rivera entertained a motion to close the Public Hearing.

**RESOLUTION 30-2018**

Motion by: Jose Guareño  
Seconded by: Jose Hilario  
Carried by: All

Dennis Michaels: Application to approve the 46 Hudson Avenue area or bulk area variance applications which are seeking a 3 foot variance on the required side yard setback, 10 feet is required and 7 feet is being proposed as well as a 20 foot variance for the required rear yard depth setback, 25 feet is required and they're proposing 5 feet so therefore a 20 foot variance is required for the rear yard depth. The application would be to approve those variances with an acknowledgment that the Village Engineer has reported back to the Building Department that there would be no potential adverse impacts cause or as a result of the project when completed involving drainage or surface water runoff. That would be a suggested motion.

Edwin Rivera adopted the motion as recited by council for 46 Hudson Avenue.

**RESOLUTION 31-2018**

Motion by: Edwin Rivera  
Seconded by: Jose Guareño

<b>Roll Call:</b>	Edwin Rivera, Chairman	Yes
	Jose Guareño	Yes
	Deyanira Martinez	Yes
	Jose Hilario	Yes

Edwin Rivera: Mrs. Tallandier, call the Building Department and they will guide you with the appropriate steps needed to move forward.

Chairman Rivera introduced the next item on the agenda, Jorge Pesantez, 144 Clove Avenue, Haverstraw, NY 10927. **27.62.1-30**

The applicant was a no show.

Chairman Rivera introduced the next item on the agenda, Gary & Yvette Martino, 150 New Main Street and 11 Hillside Avenue. **26.20-1-21& 20**

Amy Mele, 4 Laurel Road: Good evening everyone. My name is Amy Mele and I'm the attorney for the applicant. With me is Mr. John Atzel from Aztel Nasher and Zigler. This particular property you granted the necessary area variances for the applicant to do what they wanted to do back in July of 2016. The glitch was, when we went back to the Planning Board, we discovered that the variance application was never referred out for a General Municipal Law (GML) review. So we set a Public Hearing at your attorney's advice solely for the purpose of reaffirming the variances after receiving the GML review. We got the GML review and you might recall last month or the month before that the GML review came back and we're fine with most of it and I could go through all of the comments. But in comment number 4, they're interpreting your Mountain Protection overlay district requirements as basically requiring the 70% open space on lots in the Mountain Protection Overlay District. I believe what was discussed from Mr. Berrios was he doesn't apply that to preexisting uses. There relatively small lots and if somebody wanted to put 3 feet on the response would be, if that interpretation is correct we will take down everything on your lot and leave 70% open and then you could do what you want to do which I don't think was intended for. I don't believe they're reading it right. We came back last month and we were requesting an override of that one GML provision and we didn't have a super majority but tonight we do. We are hoping that you'll reaffirm the variances that you granted back in July of 2016 and I'll go through the GML comments really quickly.

Dennis Michaels: I'll save you the trouble. You are ok with 1, 2, 3 and 5.

Amy Mele: Well 5 is actually not applicable because we're not installing any pavers at all. We're rebuilding a retaining wall.

Dennis Michaels: "Reduce the extent of the maximum development coverage variance, pervious pavers must be used." Do you need a variance for that?

Amy Mele: I think we got it back in 2014 but we are not installing any pavers.

John Atzel: We're not building anything except for the retaining wall. There's no development on this. Both lots are developed.

Dennis Michaels: To be cautious you should override 5. But you're ok with 1-3?

Amy Mele: Yes and overrides on 4 and 5 if that's your pleasure.

Dennis Michaels: If you're ok with 1-3, we will just make them conditions of the approval as we are required to under the NYS General Municipal Law. We talked about the GML last time so you all know what that's about but I'll summarize. The NYS GML Review Section 239 L and M, certain types of application that are within 500 feet from certain landmarks such as County and State roads or parks, drainage streams and channels and in this case Route 9W are required to the Rockland County Planning Department for their review and report. If the report comes back with an approval with modifications as this one did, if the applicant doesn't accept all of the modifications literally, verbatim as conditions of the approval, then you need to override those modifications that the applicant doesn't accept as the conditions of the approval. IF you agree with the applicant, you need to override that modification or 2 or 3 by a super majority vote. So you would need all 4 of you to vote unanimously to override modifications 4 and 5. You may ask well what happens if there's a 3 vote favor of an application and one votes no, is the application approved? Well by default no. It's basically denied by default. So that's how it works. It also works if the county gives disapproval. This is an approval with modifications but they could also give an outright disapproval and the same principal applies. There's often a long list of comments why they're disapproving it. Most boards like to override if they want to approve an application the general disapproval and they'll ask the applicant, well how many of these comments are you ok with? The ones they're ok with will be made conditions of the approval. The ones that they aren't ok with if the board agrees they will override. One very important thing and Amy will help us here. The Rockland County Planning Department is very stringent about giving reasons for your override. Amy already gave you reasons that she'll summarize if you'd like one more time. It's very important you get that in your decision because there can be issues with the County in terms of getting approvals.

John Atzl: We don't need any other County approvals but we do want to do it the proper way.

Dennis Michaels: So if you're inclined to re-approve this application for the variances that you already approved back in 2016 as Amy pointed out, a simple motion to re-approve the variances that were previously approved unchanged back in 2016 and you'd need to override if again the board is inclined to override modifications to number 4 and 5 of the Rockland County Planning Department of the Planning Departments GML report of May 2, 2018. Give reasons and if you want to ask questions or have Amy reiterate her reasons you can adopt her reasoning's if you feel her reasons are valid. You can also add your own or modify those reasons. It's your discretion.

Jose Guareño: So 1-3 you are not against. Just 4 and 5 correct?

Amy Mele: Correct.

Deyanira Martinez: If you could just briefly repeat your reasoning's.

Amy Mele: Just to recap, 4 we believe and your Building Inspector articulated at the last meeting that he disagrees with not only the way they're interpreting this clause, because to require the 70% open space but he also disagrees that it's applicable in this case we're not adding any structures. We're simply moving a retaining wall and everything else is preexisting. It's a lot line shift. So nothing to the naked eye is going to change

except the retaining wall will go back a couple of feet and the lot lines on the tax map will be different.

Dennis Michaels: So to summarize it's the Building Inspectors interpretation of Section 245.21.D(2)(a) and 245.21.D(2)(b) of the Village Zoning code that those provisions are not applicable to this application because 1, it's an existing structure already and it doesn't apply and number 2 it's just a lot line change and shifting a retaining wall. Does that summarize your reasons?

Ruben Berrios: There's no development it's just a lot line change.

Amy Mele: Number 5 is really simple. They're telling us pervious pavers must be used but we're not planning on using any pavers.

Dennis Michaels: Before you make a motion it's a Public Hearing.

Chairman Rivera asked the public if anyone had any questions, concerns or comments for the project at 150 New Main Street and 11 Hillside Avenue.

With no comments from the public or board members, Chairman Rivera entertained a motion to close the Public Hearing.

**RESOLUTION 32-2018** Motion by: Deyanira Martinez  
Seconded by: Jose Hilario  
Carried by: All

Dennis Michaels: If your inclination is to vote to approve or re-approve the variances as proposed this evening that were approved in same substance a couple of years ago, that would be the motion, all the variances requested and as part of that you're overriding modifications number 4 and 5 of the Rockland County Planning Department GML letter of May 2, 2018 for the reasons as explained by the attorney for the applicant Amy Mele, is that correct?

All board members agreed.

Dennis Michaels: You're also imposing conditions of your approval will be modifications number 1,2,3 of the Rockland County Planning Department GML letter of May 2, 2018, is that correct?

All board members agreed.

Jose Guareño entertained a motion as recited by council.

**RESOLUTION 33-2018** Motion by: Jose Guareño  
Seconded by: Deyanira Martinez

**ROLL CALL:**

Edwin Rivera, Chairman	Yes
Jose Guareño	Yes
Deyanira Martinez	Yes
Jose Hilario	Yes

Amy Mele: Thank you everyone.

Dennis Michaels: For the record, there's one in attendance, this application for the Public Hearing for Jorge Pesantez, 144 Clove Avenue, needs a lot coverage variance of 25% will continue and the Public Hearing will remain open into the July 12, 2018, 7:30 pm, Zoning Board of Appeals here in the Village Hall. No new publication will be needed.

Chairman Rivera entertained a motion to approve last month's minutes.

**RESOLUTION 34-2018**

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

With no further business to be conducted by the Zoning Board of Appeals, Chairman River entertained a motion to adjourn the meeting.

**RESOLUTION 35-2018**

Motion by: Jose Hilario  
Seconded by: Jose Guareño  
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