

Town of Red Hook

**Agriculture and Open Space Committee**

**Minutes of April 10, 2014**

**Special Meeting with Zoning Review Committee's Meeting**

**Attendance:** Co-chairperson Norman Greig, Co-chairperson Pete Hubbell, Richard Biezynski, John Hardeman, Ken Migliorelli, Town Board Councilman William O'Neill (liaison) and Linda Keeling, secretary.

**Absent:** Michael Robertson and Marina Michahelles

**Guests:** ZRC: Chairman Susan Simon, Steve Cole (ZEO), Brent Kovalchik, John Douglas, Chuck Simmons and Town Board Councilman William O'Neill (liaison) Absent: 3 members: Chris Klose, Sam Phelan and Ann Rubin

**Meeting Opened:** The AOSC and the ZRC met jointly to discuss the Ag fencing issue. AOSC members were assembled at 7:04 pm.

**Minutes:** There was a quorum but no direct AOSC minutes were addressed.

1. *John Douglas* felt that Norman Greig owes the ZRC an apology for complaining in public before the town board about the ZRC's recent determination to not change the zoning regarding Ag fencing.
2. *Co-chairman Norman Greig* felt the ZRC owes the AOSC an apology for not addressing the fencing issue as two memos were sent three years ago. Fences are used for the berries and keeping deer out. Last year, he had a lawyer draw up a resolution which Bill O'Neill was to present to the ZRC.
3. *John Douglas* felt that the issue could have been ironed out if the AOSC representative or other members had been in attendance. He stated he did not see any written statement.
4. *Norman Greig* felt there has been a lack of communication between the two groups.
5. *Chairman Sue Simon* acknowledged the heated discussion between the men's positions and felt the two groups are here to come to a mutual agreement. She opened her meeting at 7:12 pm.
6. *Co-chairman Pete Hubbell* presented and read the two memos: March 28, 2011 for which the AOSC recommends farms in the Red Hook Ag District be exempted from all town fence laws including farms not in the Ag District should also be exempt and Memo dated May 13, 2011

whereby the farmer's felt the \$50 permit fee should be waived. The town's definition of Ag fence and the Ag department's definition differ substantially.

7. *Rich Biezynski* described the 1997 law and the recent neighbor's spite fence dispute. There needs to be an interpretation as a pole in the ground is defined as a structure and needs a permit. The definition of an Ag fence could be more than 48 inches but that doesn't work for his cattle. He puts plywood up near the road rather than having a see through fence so he can keep his cattle in. It could be 10 ft plus 2 additional strands of wire. Harry Colgan's interpretation is that a fence is a tool. Possibly the law as written would not be Ag friendly and a fee charged in the future in adherence to the law. Our concerns are for the future.

8. *Sue Simon* indicated we are pro farmers. She felt any change could come back to haunt a future ZRC. Another concern is for no spite fences.

9. *Steve Cole* gave a Webster's dictionary definition of a spite fence: *an unsightly fence or wall that serves no useful purpose, is so constructed as to be an injury to adjoining property, and is erected and maintained maliciously for the purpose of injuring a neighbor (as by obstructing unreasonably his air, light, or view)*

10. *Pete Hubbell* noted that a farm is dynamic and always changing.

11. *John Hardeman* said the fencing law as it applies to farms is on the books but not enforced. It should be removed as many are unaware of the law. We have been promoting farming especially during the last 15 to 20 years. Norman Greig's definition is good, could include spite fence which does not have a use.

12. *Norman Greig* noted he has 76 non-farm neighbors. He had phone calls from two neighbors when he planted 50 street trees, one wanted to know why he didn't plant down the road and the other complained about the trees interfering with their viewshed. He put fence posts along Rockefeller Lane on the curve as drivers were turning around in his field and causing crop damage.

13. *Sue Simon* reviewed the farmer's stance as not wanting to get or pay for a permit when involved with their agricultural pursuits. She asked Steve Cole what he might see as a future problem. He recommends leaving the law as is but add in spite fence. He has no problem with removing the fee and permit for Ag fencing.

14. *Ken Migliorelli* noted that he keeps his fences about 10 ft. off the border line so his tractors can travel. John Hardeman stated he keeps 6 inches to a foot away from the property line so he can keep ownership and repair as needed.

15. *Rich Biezynski* noted that complaints about view interference are a problem. He doesn't want view in the definition. He also questioned air and light.

16. *Ken Migliorelli* feels a fence should have a purpose.
17. *Pete Hubbell* said perhaps a clause definition should be added as a 10 ft. fence with vines is not a spite fence.
18. *John Douglas* concluded the AOSC would like a height exemption: a. No permit for fencing  
b. No fee c. spite fence definition included d. No height or set back restriction
19. *Rich Biezynski* the law should state “Agricultural fences are exempt”. He also suggested following the fence exemption wording in the NYS Ag & Markets law which references farm property over 7 acres.
20. *Norman Greig* felt that farming has its difficulties and the town’s laws should be supportive or there is still a problem going forward.
21. *Sue Simon* suggested the AOSC rewrite the law with the things suggested and give it to the ZRC to consider.
22. *John Douglas* suggested emailing Sue Simon and she will forward it to the ZRC members.
23. *John Hardeman* said the next meeting of the AOSC is the 22<sup>nd</sup> and it can be reworked then. He thanked the ZRC for entertaining the issue and we will try to keep the lines of communication open in the future.
24. *Bill O’Neill* wanted to know if this applies to all districts.
25. *Norman Greig* emphatically stated it does as he has multiple zoning designations on his properties and he wants to be able to erect a fence if needed.
26. *Brent Kovalchik* agreed this pertains to a commercial farmer.
27. *John Hardeman* agreed we will address this in our next meeting.

**Adjournment:** The meeting adjourned at 8:04 pm.

**Next Meeting:** The next regular meeting of the AOSC will be **Tuesday, April 22<sup>nd</sup>**.

Attachment: Draft Resolution suggested by Norman Greig’s lawyer (Note: The text was recopied from the Zoning Code online for better text visibility.)

Respectfully submitted,

Linda J. Keeling, AOSC secretary  
Approved 5/27/14

RESOLUTION

WHEREAS, the Town Board of the Town of Red Hook has found that farming is an essential activity within the town and wishes the town to encourage the maintenance of and development of new agricultural land.

WHEREAS, as the date of this resolution §143-28 of the Zoning Code of the Town of Red Hook provides as per attached Exhibit A.

WHEREAS, as of the date of this resolution §74-5. Building Permits of the Zoning Code of the Town of Red Hook provides as per attached Exhibit B.1

NOW THEREFORE, the Town Board of the Town of Red Hook RESOLVES to amend - 4 by adding the following definition:

“AGRICULTURAL FENCE. An enclosing structure erected for the purpose of containing, excluding, or harboring animal or plant life.”

NOW THEREFORE, the Town Board of the Town of Red Hook RESOLVES to amend Section §143-28 of the Zoning code of the Town of Red Hook to add paragraph D as follows:

“D. In any zoning district all agricultural fences shall be exempt from the requirements of Article VII of the Zoning Code: Site Plan Review and Approval Procedure.”

NOW THEREFORE, the Town Board of the Town of Red Hook RESOLVES to amend §74-5. Building Permits to add subparagraph B. (10) as follows:

“(10). The installation of or maintenance of any agricultural fence.”

{Remainder of page intentionally left blank}

Resolution

Offered by:

Seconded by:

Roll Call vote: Yes No

I, Susan McCann, Town Clerk of the Town of Red Hook, Dutchess County, New York, do hereby certify that the foregoing resolution is a true and exact copy of the original file in my office which was adopted by the Town Board of said Town at a duly called and held meeting on the day of and of the Whole thereof.

Dated:

Exhibit A

Town of Red Hook, NY

Tuesday, April 22, 2014

Chapter 143. ZONING

A. Fences and walls for nonagricultural purposes shall not exceed six feet in height when erected in a required side or rear yard nor exceed four feet in height when erected within the required front yard except as otherwise specifically required by this chapter. Fencing for agricultural purposes shall be authorized to a maximum height of eight feet in any required yard.

B. In any zoning district, all such fences and walls shall additionally conform to the requirements of § **143-16B** as pertain to corner lots where special sight clearance considerations are necessary to protect traffic safety.

C. In any zoning district, all such fences and walls shall have the finished face of the fence or wall directed toward the abutting property. The property owner on whose land the fence or wall is located shall be responsible for the maintenance of both sides of the same, provided that if the abutting property owner does not provide access for such maintenance, the property owner shall be relieved of the obligation for maintaining the finished face of the fence or wall.

EXHIBIT B

Town of Red Hook, NY

Tuesday, April 22, 2014

A. Building permits required. Except as otherwise provided in Subsection B of this section, a building permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid-fuel-burning heating appliance, chimney or flue in any dwelling unit. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Building Inspector.

B. Exemptions. No building permit shall be required for work in any of the following categories:

(1) Construction or installation of one-story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and

storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 100 square feet and each of the following criteria is satisfied:

- (a) The structure does not have a permanent foundation;
  - (b) The structure is not served by any utility, such as electricity, gas or plumbing;
  - (c) The structure does not exceed 10 feet in height;
  - (d) The structure is never used for human habitation; and
  - (e) All other requirements of Chapter **143** related to accessory structures are fully met;
- (2) Installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (3) Construction of temporary motion-picture, television and theater stage sets and scenery;
- (4) Installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (5) Installation of partitions or movable cases less than five feet nine inches in height;
- (6) Painting, wallpapering, tiling, carpeting, or other similar finish work;
- (7) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
- (8) Replacement of any equipment, provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
- (9) Repairs, provided that such repairs do not involve:
- (a) The removal or cutting away of a load-bearing wall, partition, or portion thereof, or of any structural beam or load-bearing component;
  - (b) The removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress;
  - (c) The enlargement, alteration, replacement or relocation of any building system; or
  - (d) The removal from service of all or part of a fire protection system for any period of time.
- C. Agricultural buildings, as defined in the New York State Uniform Fire Prevention and Building Code, will be required to obtain a permit prior to construction, but will otherwise be exempt from the application of the Uniform Fire Prevention and Building Code.

D. Exemption not deemed authorization to perform noncompliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in Subsection B of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

E. Applications for building permits. Application for a building permit shall be made in writing on a form provided by or otherwise acceptable to the Building Inspector. The application shall be signed by the owner or lessee of the property where the work is to be performed or agent of either the owner or lessee or by the architect, engineer or builder employed in connection with the proposed work. Where such application is made by a person other than the owner, it shall be accompanied by an affidavit of the owner or applicant that the proposed work is authorized by the owner and that the applicant is authorized to make such application. The application shall include such information as the Building Inspector deems sufficient to permit a determination by the Building Inspector that the intended work complies with all applicable requirements of the Uniform Code, the Energy Code and § 74-20 of this chapter. The application shall include or be accompanied by the following information and documentation:

[Amended 4-14-2009 by L.L. No. 1-2009]

- (1) A description of the proposed work;
- (2) The Tax Map number and the street address of the premises where the work is to be performed;
- (3) The occupancy classification of any affected building or structure;
- (4) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code;
- (5) The valuation of the proposed work;
- (6) The full name and address of the owner and the applicant, and the names and addresses of their responsible officers if any of them are corporations;
- (7) Evidence that all water supply and sewage disposal installations shall conform to the regulations of the Dutchess County Health Department;
- (8) Evidence of a driveway access and/or work permit from the appropriate authority or jurisdiction (New York State Department of Transportation, Dutchess County Department of Public Works, Town Highway Department);
- (9) Evidence of the issuance of any other permits and approvals (e.g., by the New York State Department of Environmental Conservation or the Army Corps of Engineers) required to carry out the intended project;

(10) Such other information as may reasonably be required by the Building Inspector to establish compliance of the proposed work with the requirements of the applicable laws, ordinances, rules and regulations, including, where applicable, details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data;

(11) Proof that the applicant has named the Town as an additional insured during the construction period and proof of compliance with New York State Workers Compensation Insurance and Liability Insurance requirements; and

(12) At least two sets of construction documents (drawings and/or specifications) which define the scope of the proposed work; are prepared and signed (by a New York State registered architect or licensed professional engineer where so required by the Education Law; indicate with sufficient clarity and detail the nature and extent of the work proposed; substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and a copy of a plot drawn to scale and accurately dimensioned and showing the location and size of all proposed new construction and all existing structures on the site, the nature of the work to be performed and the materials to be incorporated, distance from lot lines and such other information as may be required by either the Building Inspector to determine compliance with this chapter, Chapter **143** and other applicable regulations, including the requirements of the New York State Uniform Fire Prevention and Building Code or, where applicable, include a Planning Board approved site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.

F. Construction documents. Construction documents will not be accepted as part of an application for a building permit unless they satisfy the requirements set forth in Subsection **E(12)** of this section. Construction documents which are accepted as part of the application for a building permit shall be marked as accepted by the Building Inspector in writing or by stamp. One set of the accepted construction documents shall be retained by the Building Inspector, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the Code Enforcement personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a building permit will be issued. Work shall not be commenced until and unless a building permit is issued.

G. Issuance of building permits. An application for a building permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Building Inspector shall issue a building permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code and with the Zoning Ordinance of the Town of Red Hook.

*Editor's Note: See Ch. **143**, Zoning.*

H. Building permits to be displayed. Building permits shall be visibly displayed at the work site so as to be readily seen from adjacent thoroughfares, if possible, and shall remain visible until the authorized work has been completed.

I. Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the Building Inspector of any change occurring during the course of the work. The building permit shall contain such a directive. If the Building Inspector determines that such change warrants a new or amended building permit, such change shall not be made until and unless a new or amended building permit reflecting such change is issued.

J. Time limits. Building permits shall become invalid unless the authorized work is commenced within six months following the date of issuance. Building permits shall expire 12 months after the authorized work is commenced or 18 months after the date of issuance of the building permit, whichever shall first occur. A building permit which has become invalid or which has expired pursuant to this subsection may be renewed upon application by the permit holder, payment of the applicable fee, and approval of the application by the Building Inspector.

K. Revocation or suspension of building permits. If the Building Inspector determines that a building permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a building permit was issued violates the Uniform Code or the Energy Code, or where the person to whom a building permit has been issued fails or refuses to comply with a stop-work order issued by the Building Inspector, the Building Inspector shall revoke the building permit or suspend the building permit until such time as the permit holder demonstrates that:

(1) All work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code; and

(2) All work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.

L. Issuance of demolition permits. The Building Inspector shall issue demolition permits in accordance with applicable Town regulations regarding the disposition of unoccupied buildings or the required removal of unsafe buildings and structures. Except where deemed by the Building Inspector to be an emergency action necessary to protect public health and safety, no such demolition permit shall be issued within the Hamlet (H) District until the application for permit has been reviewed and a certificate of appropriateness issued by the Planning Board in accordance with the procedure and criteria set forth in § 143-45 of Chapter 143 of this Code.

M. Fee. The fee specified in or determined in accordance with the provisions set forth in § 74-17, Fees, of this chapter must be paid at the time of submission of an application for a building permit, for an amended building permit, or for renewal of a building permit.