

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
June 10, 2009**

CALL TO ORDER

The meeting was called to order at 7:00 P.M. by Chairman Nick Annas.

ROLL CALL

Members Present: Nick Annas, Kenneth Anderson, John Douglas, Jim Hegstetter, Paul Marienthal, Corinne Weber, alternate Trilby Sieverding

Absent: Tim Ross

Also Present: Bob Fennell, ZEO, Jim Ross, TB Liaison

PRELIMINARY BUSINESS

Minutes of May 13, 2009: Chairman Annas asked if everyone had read the Minutes and invited comments or questions. Hearing none, he made a motion to accept the Minutes as submitted. The motion was seconded by Corinne and all were in favor.

Planning Board Minutes and Letters: There were no comments from the Board.

Building Inspector/ZEO Permits and Memos: The Board reviewed the Permits and memos.

Comments: Chairman Annas informed the Board that Steve Cole, Building Inspector, had tried to make an appointment with Mr. Vrooman and Mr. Vrooman put that off until June 16th. He is way behind relative to his agreement to clean up his parcel and complete the construction of his shed. Chairman Annas felt that the reason for Mr. Vrooman's delay is that he is now hurrying to try to show that he has done something. Corinne said that she had run into him and he has had a stroke. She was therefore in favor of showing some leniency toward him. Chairman Annas said that the Board can give him some leeway; however he was not in favor of granting a year's extension. He said that he had passed by the property and saw signs of some activity. Corinne agreed and said that when she spoke with Mr. Vrooman he said that he had run out of money. His stocks had taken a down turn. He is in his seventies and there is not a lot he can do himself, especially since he has recently had a stroke. Chairman Annas said that he, Steve Cole (Building Inspector) and Bob Fennell (ZEO) would be going to see Mr. Vrooman to speak with him and to assess the progress he has made on his property.

PUBLIC HEARINGS

7:15 Public Hearing for Appeal 09-04, Ralph & Grace Cort application to subdivide parcel into two lots. This proposal would require the following variances:

Lot A: A variance from the 1.5 acre minimum lot area to 1.183 acres
A variance from the 180 foot minimum lot width to 160 feet.
A variance from the 50 feet front yard setback to 11 feet.

Lot B: A variance from the 1.5 acre minimum lot area to 1.003 acres
A variance from Section 143.21C(2) which requires that the building line be set back 50 feet from the line at which the minimum lot width for the Zone is achieved.

The applicant's lot is located at 186 W. Market St. in the R1.5 zoning district.

Chairman Annas opened the Hearing for public comment. Mrs. Cort said that she had gotten a telephone call from *Mrs. Lown* across the street and she had no problem with the proposal. Chairman Annas said that the application has to be referred to Dutchess County Planning. He informed Mrs. Cort that the Board will refer the appeal to the County and they are required to respond within thirty days. As the Board cannot take action until they hear from County, Chairman Annas continued the Hearing until July 8, 2009 at 7:15 P.M.

7:30 Public Hearing for Appeal 09-05, Abraham Nussbaum application to erect a six foot front yard fence where the maximum height allowed is four feet. The applicant's lot is located at 82 Hapeman Hill Road in the RD3 zoning district. Chairman Annas opened the Hearing for public comment. *Sam Lore, representing Millie Norton* who is a neighbor of Dr. Nussbaum, said that Ms. Norton was concerned about whether both sides of the fence would be painted and maintained. Chairman Annas said that Dr. Nussbaum had showed the Board pictures of the proposed fence and it is a "neighbor friendly" fence which is finished on both sides. He presumed that whatever treatment is done would be done on both sides. Bob Fennell said that Dr. Nussbaum had indicated that the fence would be maintenance free. John said that the Board can require that the fence be maintained in good order on both sides. Bob said that code requires that the good side of the fence face the neighbor.

Corinne asked where Ms. Norton's property is relative to Dr. Nussbaum. Chairman Annas responded that it is to the right if one is facing the driveway. Chairman Annas invited further comment from the public. *Paul Levin*, a neighbor across the street, asked for an explanation of what Dr. Nussbaum wants to do. Bob Fennell explained that the law allows a four foot fence in the front yard, which is sixty feet deep. So you can only have a four foot fence there but you can have a six foot fence for the rest of the property. In response to further questioning from Mr. Levin, Chairman Annas explained that Dr. Nussbaum wants to go from four feet to six feet and bring it within a short distance of the road. Mr. Levin expressed a concern about visibility. John explained that the fence will not be along the roadside; it will be perpendicular and will be eight feet off the road. Mr. Levin said that the road is treacherous already. John explained that the fence runs on the side of the property. It will be on Millie Norton's side only. It will be six feet high, start eight feet back and run the length of the property, ca. 100 feet.

Mr. Levin again expressed concern about visibility. He said that the road dips down as it heads toward the fork and a driver cannot see easily when going around the corner. Even at the town speed limit of 30 mph, it is difficult driving. John said that that was why Dr. Nussbaum indented the fence, so that he would have enough line of sight vision. Mr. Levin questioned whether eight feet is enough, saying that he felt it should be further back. Bob asked him what he felt would be appropriate. Mr. Levin responded that a big car is ten feet long. You don't want to be right on road; you want to be back a little bit. I think, he concluded, that it should be about twelve feet back from the road. Corinne asked if Nick had seen the property. He said that he been there, but had looked at it only from the standpoint of someone exiting the driveway. He felt that eight feet back, the driver would be beyond the fence to see the road. However, he said that he understood Mr. Levin's point and did not think that setting it back twelve feet would hamper the effect Dr. Nussbaum is seeking. The dwelling is much further than twelve feet back.

Jim Ross asked if the distance would be calculated from the center of the road or from the property line. Chairman Annas said that Dr. Nussbaum was calculating the distance from the edge of the pavement. Jim said that the edge of the pavement is not even his property. You have to know where you are starting from. Chairman Annas said that according to Wayne Hildenbrand, the Highway Superintendent, the road right of ways are fifty feet and do not necessarily run down the center of the right of way. One cannot tell without a survey. Jim Ross said that Dr. Nussbaum should have a survey which would show exactly where his property is in relation to that road.

Corinne asked why Dr. Nussbaum needs six feet in height rather than four feet. John responded that there is a drop off where the fence is going, thus making the driveway higher where the fence is going to go. *Sam Lore* said that it is practically level there. Chairman Annas agreed, saying that although Dr. Nussbaum described it as being about two feet lower, he did not believe that it was. Paul asked if *Mr. Levin* would have a problem with twelve feet from the macadam and Mr. Levin responded that he did not think so. Corinne asked why Dr. Nussbaum had not let the natural vegetation grow in. After the twenty years he has been there, the vegetation would have formed a natural barrier. Chairman Annas said that Dr. Nussbaum indicated that the deer eat the vegetation.

Jim Ross said that the actual property line should be located and the distance should be calculated from that line. *Sam Lore* agreed. John said that if you measure twelve feet from the macadam, you have the five foot right of way from the side of the road plus another seven feet. He again asked *Mr. Levin* if that would be acceptable to him and Mr. Levin responded in the affirmative. Chairman Annas asked how close to the road you can legally build a fence. Bob responded that it is up to the Highway Superintendent. The code does not specify. Corinne suggested that the Board consult with Highway Superintendent Wayne Hildenbrand. John said that if the right of way is five feet, Dr. Nussbaum's proposal of eight feet would put it off the right of way. And if the calculation includes an extra four feet back from the macadam, that gives us an extra seven feet.

Corinne said that a diagram should have been provided. Chairman Annas suggested that the Hearing be continued until next month so that further information can be obtained. John asked that: 1) a letter be sent to Dr. Nussbaum asking that prior to the next meeting he provide pictures of the proposed fence and a schematic showing where he is proposing to put the fence as well as the distance from the road and 2) the Highway Superintendent go to the property to look at the parcel. Bob Fennell asked that a copy of the survey also be requested.

Trilby said that the proposed fence was a finished, solid wood fence with flat slats and about twelve to eighteen inches of lattice work at the top. Therefore you can see through it and it is not as imposing as a solid fence. John made a motion to continue the Hearing until next month. The motion was seconded by Corinne and all were in favor. The continuation of the Hearing was scheduled for 7:30 P.M. on July 8, 2009.

7:45 Continuation of Public Hearing for Appeal 09-03, Ilka LoMonaco application to build a deck and sunroom eight feet from the rear property line where 25 feet is required. The applicant's lot is located at 72 Manor Road in the R1.5 zoning district. Chairman Annas asked if anyone was present to speak to the issue. He said that it has been established that neither the neighbors across the street nor the ones next door have any objections. The parcel behind the house, which would be the one most affected, did not respond. *Ron Bryce*, representing Ms. LoMonaco (who is out of the country), said the area in the back of the house is wet and it is not likely that anyone would build there. Chairman Annas asked for further comments. Hearing none, he made a motion to approve the variance.

Motion to Grant Variance

Chairman Annas made a motion to grant the variance reducing the rear yard setback from 25 feet to eight feet. There were no objections from the neighbors and there will be no change in the character of the neighborhood. It is unlikely that anyone would build on the lot to the rear due to the wetness of the area and the sloping terrain. The variance would be of benefit to the applicant with no detriment to the community. The motion was seconded by Corinne and all were in favor.

REVIEW OF APPEALS

8:00 Appeal 09-06, John Riker application to reduce rear yard setback from 20 feet to 8.5 feet for 250 square feet addition to pole barn. The addition was constructed without a Building Permit. The applicant's lot is located at 4223 Route 9G in the RD5 zoning district. Chairman Annas asked Mr. Riker to comment on the project. He said that when he built the lean to he did not know that he needed a permit. All I did, he said, was to put a roof up on four posts. I use it to house my tractor, he continued, and I put it in the back of the barn so that it would not be seen by anyone else. John asked Mr. Riker if he had a permit for the barn and he responded that he did. He ascertained that the issue is not the barn, but the lean to off the back of the barn. Corinne asked why Mr. Riker does not put the tractor in the barn. He said that his hobby is cars and his cars are in the barn. Upon

questioning from the Board, Mr. Riker said that his business is roofing and siding. John asked if the lean to has a concrete floor. Mr. Riker said that part of the floor is concrete because he used some extra concrete from other construction. Ken asked if the lean to is enclosed and Mr. Riker responded that only the back is enclosed. The ends are open.

Chairman Annas asked about the width and length of the overhang. Mr. Riker said it is forty by about ten feet. He did not know exactly. The barn is 40 by 40. In response to John's question about the length of the rafters, Mr. Riker said that they are twelve feet. Considering the other structures in the area, Corinne said that Mr. Riker is not asking for anything different from what the neighbors have. Mr. Riker said that he completed the lean to last Fall. It was ascertained that he received a letter from the town about a month ago. Bob Fennell said that Mr. Riker has violated the law. He needs to correct the violation by obtaining a variance and then a Building Permit.

Chairman Annas asked what kind of tractor requires a forty foot lean to. Mr. Riker said that the lean to houses more than just the tractor. He has an old Ford, a lawn mower, garden tools, etc. He said that the neighbors cannot see it unless they walk around the back of his property. Chairman Annas scheduled the Public Hearing for July 8, 2009 at 7:45 P.M.

8:15 Appeal 09-07, Philip Tasciotti application to use two parcels for commercial or office use. The applicant's lots are located at 5 Rokeby Road in the R1.5 zoning district, where commercial and office uses are not permitted. John ascertained that Mr. Tasciotti bought the property in 1996, then ran an antique store and lived on the property. Mr. Tasciotti said that he lived there for over a year while he was having his house built in Lagrangeville. He was going to continue to run the business, but had problems in 1999. He lost a son and had health problems of his own. He chose to close the business because of these problems and because it was doing poorly. He tried to sell it himself for about two years. After Hannaford came in, he continued, people were insisting that it should be commercial property. The realtors were saying that they could not compare it to like properties because it was not commercial.

Nick ascertained that both of Mr. Tasciotti's parcels are for sale and then he inquired about the zoning. Bob said that it is residential. He also clarified that the previous variance which was had been granted on the property (permitting use as an antique business) runs with the property since it has been instituted. He said that this is a use variance and the threshold issue is that Mr. Tasciotti has to demonstrate that he can't get a reasonable return from the property as it is zoned and he can't get a reasonable return from all the uses which are permitted in the zone. He has to provide dollars and cents proof and the Board has to weigh the evidence which he presents and make sure that he has met that standard. Corinne said that the evidence which had been presented by John and George Myers (the previous owners) was overwhelming. Bob said that no one could get a use variance if they bought the property because one of the standards is that if you bought the property and you knew what the zoning was, you would lose on that account.

Chairman Annas said that he understood that a residential parcel on the edge of a commercial zone would be degraded as a residential property and would have greater market value if it were commercial. Both he and Bob Fennell agreed, however, that you have to draw the line somewhere. Myers tried to obtain a variance for another use and it was denied because it was a more intense use. He said that the town does not want development all the way down the highway; it has to be contained.

Mr. Tasciotti said that no one wants to live there because it is noisy and busy. They see it only as a commercial or office use. He said that he has never had one written offer, either through himself or through any of the realtors. Chairman Annas said that the parcel was the same way in 1996, when Mr. Tasciotti purchased it. Conway's was there. Although Hannaford was not there, the farmland and other development was there. Mr. Tasciotti said that if he were to drop the asking price, he would be owing money. He said that the original asking price was \$425,000 and he has reduced it to \$395,00. He noted that he had to refinance as has spent a lot of money on repairs to both the inside and outside of the structures over the years. After discussion, Paul noted that the difference between what the Tasciottis paid for the properties and what they are now asking is about \$260,000. Mr. Tasciotti stressed that he has spent a lot of money on upgrading the properties and has not had any return on them since 1999.

Bob noted that all use variances must be referred to the Planning Board. Therefore, this appeal has to go to the Red Hook Planning Board. It must also be referred to County Planning and possibly DOT. Bob will check the law regarding the necessity of referring to DOT.

Corinne asked if Mr. Tasciotti had tried to rent the property as an antique shop. He said that he had not. He had an offer to rent with option to buy but did not take it because the amount of the rent offered would not cover his expenses. He said that he also had a recent offer to rent but turned it down because it was only for nine months. Chairman Annas noted that the previous owners had tried for four years to sell the property and encountered the same problems. Corinne said that they tried to sell for well over four years. Chairman Annas acknowledged that the market is different now; but he said he thought Mr. Tasciotti should have been aware that if it were difficult to sell between 1992 and 1996, it would, for the same reason, still be a very difficult parcel to sell.

Mr. Tasciotti said that if you consider all the expenses, viz. mortgage, taxes, insurance, maintenance, he is losing about \$4,000 a month. Jim Ross said that Mr. Tasciotti must provide financial records showing that they have been trying to sell it for some time at the current appraised value. They must show that they have had it on the market for some time, have continued to drop the selling price and cannot get market value. Paul said that he would like to see the accounting for the expenses because \$260,000 is a lot of money. He is asking \$395,000 and he paid \$129,000. Mr. Tasciotti noted that he has been there for over ten years and the expenses have mounted. Jim Hegstetter told Mr. Tasciotti that he has to build a financial case to the Board showing that he has a hardship. The only way that can be done is to look at the expenses which have been put into the property, how many realtors have been used, how long has it been listed plus additional support

documentation from people who have shown the house and have not been able to sell it. You must present a case, he concluded, which shows financial hardship.

Chairman Annas scheduled the Public Hearing for July 8, 2009 at 8:00 P.M.

ADJOURNMENT

A motion to adjourn was made by Corinne, seconded by Chairman Annas and all were in favor. The meeting was adjourned at 8:50 P.M.

FINDINGS AND DECISION

Appeal #09-03, Ilka LoMonaco application to build a deck and sunroom eight feet from the rear property line where 25 feet is required.

FINDINGS:

1. The property is located in the R1.5 Zoning District at 72 Manor Rd., Red Hook.
2. Tax Map #6173-19-691239.
3. The zoning law requires a 25 foot setback.
4. The applicant wishes to reduce the setback to 8 feet.
5. There were no objections from the audience.
6. A variance would be of benefit to the applicant with no detriment to the community.
6. There will be no change in the character of the neighborhood.
7. There will be no impact on the health, welfare or safety of the community.

DECISION: Chairman Annas made a motion to grant the variance based upon the above findings. The motion was seconded by Corinne Weber and carried by a 6-0 vote