

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
November 9, 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, Paul Marienthal,
Tim Ross, Corinne Weber

Absent: Jim Hegstetter

Also Present: Bob Fennell, ZEO

PRELIMINARY BUSINESS

Minutes of October 9, 2009: Chairman Annas asked if everyone had read the Minutes of the October 9, 2009 meeting and invited comments or questions. Hearing none, Corinne made a motion to accept the Minutes as written. The motion was seconded by Tim and all present 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.

PUBLIC HEARINGS

7:15 Public Hearing for Appeal 09-08, Michael Anderson application to erect a six foot fence in the required front yard where a maximum of four feet is allowed. The applicant's lot is located at 60 Station Hill Road in the Barrytown Hamlet zoning district. Mr. Anderson was represented by his builder, Steve Dunning. Chairman Annas opened the Hearing and read into the record a letter from Mr. Anderson's next door neighbor opposing the building of the fence. The letter was distributed to all the members of the Board. The neighbors, *Mr. & Mrs. Garcia*, expressed the opinion that the fence would constitute a safety hazard because it would block their view of the traffic when they are trying to back out of their driveway. Mr. Dunning said that Mr. Anderson had spoken with these neighbors and they had not expressed any concerns to him. He provided the Board with new photographs showing where the fence would go and said that in the three years he has worked there, he has never seen the neighbors park in the area near the Anderson driveway.

Chairman Annas stated that although there are obviously many openings in the fence, as you walk toward one end of it there is a point where it appears to become a solid and that view could block traffic. Mr. Dunning said that the area had been completely wooded and Mr. Anderson has cleared all the large trees and scrub. If anything, he said, they have increased the transparency of that area.

In response to questioning, Mr. Dunning said that the fence would be twelve feet from the edge of the pavement. Tim asked if the fence could be moved back another two feet. Mr. Dunning said that since the drop off begins at 13 ½ to 14 feet, this could be done; however he said that Mr. Anderson had been hoping to plant the front and back of the fence with small, low lying ornamental plants.

Tim noted that there is not much traffic on Station Hill Road. He felt that if the fence is thirteen feet from the edge of the pavement and nothing is planted which is over 24 inches high, it will be safer than it ever was. Mr. Dunning said that Mr. Anderson would be happy to stipulate that the plantings not become a hindrance as far as sight line is concerned. Chairman Annas again expressed his concern over how wide the fence would appear from the side. Using the length of the fence and the width of the bars, he calculated that at some point that fence could appear eight feet wide. Mr. Dunning stated that he did not believe that that could be the case in this instance because the arc of the fence could never cover eight feet.

Paul asked how far back from the pavement the sight line has to be. Tim responded that the requirement is presently 14 ½ feet. He said that it cannot go back that far because there is a drop off; however, if it were 13 feet and there were only low lying vegetation in front of the fence, it would be an improvement. Chairman Annas felt that with a thirteen foot setback, the neighbors should be able to see clearly. John asked if there was a curve in the road. Tim said that it was a very mild curve.

Chairman Annas questioned whether the neighbors have the legal right to back out of the driveway and whether there is any need for them to back out of the driveway. Mr. Dunning asked why they are backing out now that if it is that big an issue. He felt that if the fence is 13 feet back from the road, it would not change things for them. Corinne expressed the opinion that if there is a potential safety issue, the Board should go to the site and investigate that issue. Mr. Dunning offered to unroll 50 feet of safety fencing where the proposed fence has been sited so that the Board could go there, meet with the neighbors and determine whether the proposal is reasonable or not. However when he learned that this would require continuing the Hearing until December, he asked if it could not be decided sooner so that the fence could be installed before the ground freezes. After discussion, it was decided that the Hearing would be continued to Saturday, November 21st at 9:30 A.M, at which time the Board would meet at the property to inspect it. The neighbors will be notified. (Note: It was later decided that after the site visit the Board will return to the Town Hall to make a decision.)

7:35 Public Hearing for Appeal 09-09, Jim & Lynn Gallagher application to permit an existing six foot fence in the required front yard where a maximum of four feet is

allowed. The applicant's lot is located at 1 Knox Rd. in the R1.5 zoning district. Mr. Gallagher submitted to the Board and read into the record a letter of approval for his project signed by three of his neighbors. He also submitted pictures showing various views of his house and the fence area. Tim asked if there will be a gate and Mr. Gallagher responded in the negative. Chairman Annas asked what is going across the front of the house. Mr. Gallagher said that there is nothing there now, but he plans to put up a four foot high ornamental wrought iron fence.

Corinne asked for the reason for putting up the fence. Noise abatement and privacy, Mr. Gallagher responded. He said that at the last meeting, there was a question as to whether there were any six foot high fences in the area. He cited two fences on Alder and one on Aspinwall. Tim said that the fence is not noticeable when you drive by. John agreed but Chairman Annas disagreed, also noting that Mr. Gallagher's parcel is one of the gateways to Linden Acres.

Chairman Annas opened the Hearing for further comments. *Ronald and Patricia Martin*, neighbors who live directly opposite Mr. Gallagher, stated that they have no objection. Hearing no further comments, Chairman Annas closed the Hearing.

Motion to Approve Variance

Chairman Annas made a motion to approve the six foot fence with the front yard setback as presently constructed because it will provide the privacy the applicant is seeking, there are no objections from the neighbors and it will not impact the health, safety or welfare of the public. The motion was seconded by Corinne. A roll call vote was taken with the following results:

Tim Ross	Aye
Corinne Weber	Aye
Paul Marienthal	Aye
John Douglas	Aye
Ken Anderson	Aye
Nick Annas	Nay

The motion was therefore carried and the variance approved.

7:45 Public Hearing for Appeal 09-10, Susan Simon & Elizabeth Jones application to build an office in an existing barn. The following variances are requested:

1. Reduce required lot area from 1.5 acres to .852 acres
2. Reduce required front setback from 50 feet to 18.7 feet.
3. Increase office area from maximum of 500 square feet to 1265 square feet.

The applicants' lot is located at 38 Spring Lake Road in the Upper Red Hook Hamlet zoning district. Chairman Annas opened the Public Hearing and read into the record a letter of opposition from *Linda Keeling* citing possible safety problems due to the condition of the barn and questions regarding the septic system. The letter was distributed to all members of the Board. Chairman Annas noted that several comments in the letter

were unrelated to the issue at hand. He said the safety concerns would be addressed because the barn would have to be structurally sound in order to comply with the Building Code after the renovations are made.

At the last meeting, he continued, the applicants were advised to contact the Dutchess County Board of Health. The applicants told the Board that they had done so, but the Board of Health had nothing to say about the renovation project as they are only concerned about adding bedrooms to the property. Tim questioned this response because if you have an office with one additional employee, by design standards that would mean that you would need an additional fifteen gallons of water a day. Typically, the Board of Health would look at that. Ms. Jones said that this is not relevant to their project because the same people who use the house would use the barn.

Tim responded that the issue is how waste water from the barn would enter the septic which is presently serving the house. Ms. Jones said that, according the present design, the current septic system is between the two buildings and the barn will be connected to that system. Tim said that he has no doubt that the present system can handle it; but the connection is an issue. Since the property drops off slightly in the back, you will probably need a separate tank and a separate pump chamber because you will not be able to gravity to the existing house tank. Ms. Jones said that she cannot address the technical details, but the engineer and the architect have discussed this and they have a solution.

Bob said that this is a commercial application and would be approved by an engineer rather than the Health Department. Tim agreed, but said that if pumping is required, the Health Department will probably want to review it. This will become an issue, he continued, when you go for a Building Permit. If what comes out of the barn is three feet lower than the septic tank, the Building Inspector will want you to have a design which proves that you can get it up to the existing system and that the existing system is adequate to handle that. If a variance is granted, this should be one of the conditions. John told the applicants that if the Health Department does not want to deal with it, have them send a letter to that effect.

Paul noted that if there is a bathroom in the barn, in the future someone may want to live there. He asked if, in that case, the septic system would be adequate. Bob responded that at that time, the Building Inspector would require Health Department approval for the extra bedroom. After discussion, it was determined that an accessory apartment would not be permitted in the barn because it is on a substandard lot. Chairman Annas expressed concern about the future use of the barn. Ms. Simon stated that she and Ms. Jones had no intention of renting it out.

Chairman Annas asked for any further comments from the public. Hearing none, he closed the Public Hearing and asked for further comments from the Board. Corinne said that what the applicants are asking for is extensive, especially in view of the size of their business. John said that the barn is already there and what they want to do is take the barn, renovate it so that it is in good shape and utilize it in a good way. It will look good when it is done. They are taking a barn which is now in bad shape and improving it.

When they are done, most people will not even know that there has been a change. They simply want to use all the space which the present barn occupies. Why minimize the use of the present structure and leave part of it vacant.

Paul said that he had no problem with the size of it. His only concern was with the use of water in the future. He said that he would feel much better about it if he knew that the septic system could handle an increased load because he felt that this would be required some time in the future. Tim said that, based on the soils map, he would expect that the present system could probably handle four times the current load.

In response to Corinne's concerns, John asked for a stipulation that the total number of employees on the property be limited to three. A second stipulation that it has to be approved by the Health Department would cover the water issue. The third stipulation would be that the construction has to meet the present Building Code. Chairman Annas asked if the applicants could scale back the bathroom so that the barn is not readily convertible to living quarters. The applicants agreed to changing the full bath to a half bath.

Motion to Approve Variances

Chairman Annas made a motion to grant the variances which permit the renovation of the barn to a 1265 square feet office building with the stipulations that:

- 1) there be two lavatories and no bathroom;
- 2) there be no exterior signage to indicate that there is such a business;
- 3) the exterior of the building not be appreciably modified;
- 4) there be Board of Health approval of the water and sewage or a letter from the Board of Health indicating that they are not concerned;
- 5) there be no more than a total of three employees at this location;
- 6) construction be under the present Building Code.

Tim added that there will be no visual change to the property. It will be a benefit to the applicant, no detriment to the neighborhood or the health and welfare of the community.

The motion was seconded by John. A roll call vote was taken and all were in favor. The motion was therefore passed and the variances approved.

The applicants agreed to provide a set of plans and photographs for the record.

8:25 Public Hearing for Appeal 09-11, David Vosburgh application to create a new parcel with a proposed dwelling to be placed at a point at which the flag lot is 209 feet wide. The Code requires that a dwelling on a flag lot be placed 60 feet behind the point at which the lot achieves the required 240 foot minimum lot width. The applicant's lot is located on Middle Road in the RD3 zoning district. The applicant was present, but was represented by Mark Graminski, surveyor. Chairman Annas opened the Hearing and asked if there were any questions or comments from the public. Neighbor *Pat Husted* asked for an explanation of the project. She was invited to examine the plans along with

neighbor *Paul Vosburgh*. Using the plans, Mr. Graminski went over the proposal with Mr. P. Vosburgh and Ms. Husted. He said that his client is in front of the Planning Board now for subdivision of the property and his proposal has received sketch plan endorsement. Before going to preliminary application and review by the Planning Board, the variance for the house location for lot #1 required the approval of the Zoning Board of Appeals.

Mr. Graminski reviewed the history of the subdivision proposal. The Planning Board required that a Farmland Protection Plan be drawn up for the Kesicke lot line alteration. The plan had to include building locations for the three lots which were proposed. The site for the house for lot #1 was proposed by MC Acres and approved by the Planning Board because it allowed for the maximum maintenance of farmland. However, in order to place the house in that location, a variance is required from this Board. Bob asked if the lots can be further subdivided and Mr. Graminski responded that they cannot. The land for this parcel will be placed in conservation easement with Winnakee Land Trust.

Pat Husted said that in her experience the Vosburghs have made every effort to preserve farmland and her feeling is that they should be allowed to proceed with their project. *Paul Vosburgh* said that he has serious objections. This plan, he said, does not conform to the approved Farmland Protection Plan. It has different building envelopes in different areas than what was previously agreed upon by the Planning Board. I have an active agricultural operation here, he continued, and the placement of the residence within that envelope violates the provisions of the Zoning Law. With his cattle, he said, he is not going to be able to meet the requirements regarding noise and he anticipates complaints regarding noise and odors. Bob said that where farm animals are involved, there is an exemption from the requirements of the law. Mr. P. Vosburgh said that the law requires that an adequate buffer must be provided between agricultural activities and residential uses. Bob responded that this would be a Planning Board issue. Mr. Graminski said that what is required is that if there is any subdivision or residential development within 500 feet of agricultural activity, you must be mindful of that agricultural activity.

Mr. P. Vosburgh said that the next item is water quality. He said that his neighbor had to find a new water supply and put in a water system to deal with e-coli. Therefore, he said, I am potentially liable for problems with the water supply. He quoted the Zoning Code as saying that no fenced area for large animals shall be closer than 100 feet to a residence. The proposed residence is closer than that. This provision in the Code is not being met. Mr. Graminski took issue with these objections and reiterated that the Planning Board has endorsed the sketch plan with regard to the location. He said that the development area on lots 2 and 3 do mirror, in spirit, the Farmland Protection Plan. Mr. P. Vosburgh disagreed. Mr. Graminski said that Mr. P. Vosburgh seems to have more of an issue with the Planning Board process than with this process.

Bob Fennell suggested that Mr. P. Vosburgh put his comments into writing. Chairman Annas expressed concern about the closeness of the animals to the residence and Mr. Graminski said that it would be possible to locate the house 100 feet from the fenced area for the animals. Corinne read an excerpt from the Aug. 3, 2009 Minutes of the Planning

Board with questions regarding this issue. Chairman Annas said that the Planning Board must have agreed with this plan or they would not have referred it to this Board. He asked if Mr. P. Vosburgh had presented his arguments to the Planning Board. Mr. Vosburgh replied that he was not aware of what this plan was until he got to this meeting. He said that he had never been contacted by the Planning Board.

Tim said that he understands that Mr. P. Vosburgh wants to have the residence placed as far away as possible from his agricultural operation; however, the flip side is that as much open space as possible should be preserved. If there are already houses which are close to that operation, what is the lesser of the two evils? Is it breaking up that big field or putting the house 100 feet from the cattle. The prospective purchaser has to realize that he is close to a farm and he is going to have the associated noises and smells. If the whole area is agricultural and you have the right to put some houses in, there has to be a border somewhere. The question becomes what is the least objectionable resolution.

John said that the proposal would result in two houses which are very close to each other. Tim said that that is actually what they want. They want to cluster the houses and save the open land. Bob said that if the house is built, the agricultural operation would have to move 100 feet back. The onus is on the farm operation. Mr. Graminski reiterated that he could shrink the building envelope and move the house back 100 feet, thus resolving that issue. The water quality, he said, is the purview of the Health Department. He felt that, due to the fact that the house will be located on a hill, it would be unlikely that e-coli would intrude. He reiterated that the Planning Board is supportive of the plan and offered to go back to them and ask for a letter endorsing the configuration of the lot layout. The original Farmland Protection Plan was a planning tool. It has changed somewhat in that it has now been detailed and refined. Mr. P. Vosburgh said that it is more than a refinement; it is a total change.

Corinne suggested that Mr. P. Vosburgh submit all his concerns in writing and Mr. Graminski respond to them. Mr. P. Vosburgh said that he would appreciate having the opportunity to review the plan in detail. He said that he had not seen the plan before and had based his objections on the Zoning Code which he had reviewed because he had concerns about his farming operation. The Board agreed that Mr. P. Vosburgh should submit his concerns to the Zoning Board of Appeals. They will be distributed to all members and to Mr. Graminski, whose response can then be sent to Mr. P. Vosburgh and the Board members. In order to allow time for this process, the Hearing was continued to 7:15 P.M. on December 9, 2009.

ADJOURNMENT

A motion to adjourn was made by Chairman Annas, seconded by Corinne and all were in favor. The meeting was adjourned at 8:45 P.M.

FINDINGS AND DECISION

Appeal #09-10, Susan Simon and Elizabeth Jones application to build an office in an existing barn.

FINDINGS:

1. The property is located in the Upper Red Hook Hamlet Zoning District at 38 Spring Lake Road, Red Hook.
2. Tax Map #6373-01-319857.
3. The zoning law requires:
 - A. A minimum lot area of 1.5 acres.
 - B. A minimum front setback of 50 feet.
 - C. Maximum office area of 500 square feet.
4. The applicant wishes to:
 - A. Reduce the required lot area to .852 acres.
 - B. Reduce the front setback to 7.3 feet.
 - C. Increase the office area to 1265 square feet.
5. The following stipulations are made to the approval of this variance:
 - A. There will be two lavatories and no full bathroom.
 - B. There will be no exterior signage to indicate the presence of a business in the barn.
 - C. The exterior of the building will not be appreciably modified.
 - D. There will be Board of Health approval of the water and sewage systems or a letter from the Board of Health indicating that they do not wish to render a decision on this matter.
 - E. The renovation will be carried out under the present Building Code.
 - F. There will be no more than a total of three employees at this location.
6. A variance would be of benefit to the applicant with no detriment to the community.
7. As there will be no visual change to the property, there will be no change in the character of the neighborhood.
8. There will be no impact on the health, welfare or safety of the community.

DECISION: Nick Annas made a motion to grant the variance based upon the above findings. The motion was seconded by John Douglas and carried by a 6-0 roll call vote.

Dated: November 9, 2009

FINDINGS AND DECISION

Appeal #09-09, Jim & Lynn Gallagher application to permit an existing six foot fence in the required front yard where a maximum of four feet is allowed.

FINDINGS:

1. The property is located in the R1.5 Zoning District at 1 Knox Road, Red Hook.
2. Tax Map #6273-14-313360.
3. The zoning law requires a maximum fence height of four feet in the required front yard.
4. Four of the applicant's neighbors expressed approval of the existing fence.
5. A variance would be of benefit to the applicant in that it will provide privacy and noise abatement and there will be no detriment to the community.
7. There will be no change in the character of the neighborhood. There are several other six foot fences in the area.
8. There will be no impact on the health, welfare or safety of the community.

DECISION: Nick Annas made a motion to grant the variance based upon the above findings. The motion was seconded by Corinne Weber and was passed by a roll call vote of 5 to 1.

Dated: November 9, 2009

