

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
May 12, 2010**

CALL TO ORDER

The meeting was called to order at 7:05 P.M. by Chairman Nick Annas.

ROLL CALL

Members Present: Nick Annas, Kenneth Anderson, Christopher Carney, John Douglas,
Paul Marienthal, Tim Ross, alternate Trilby Sieverding

Absent: Jim Hegstetter

Also Present: Bob Fennell, ZEO

PRELIMINARY BUSINESS

Minutes of April 14, 2010: Chairman Annas asked if everyone had read the Minutes of the April 14, 2010 meeting and invited comments or questions. Hearing none, Paul made a motion to accept the Minutes as written. The motion was seconded by John 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.

PUBLIC HEARINGS

7:15 Public Hearing for Appeal 10-01, Gonzalez-Stewart application to erect a solar PV array 35 feet from the front property line where the Code requires a 60 foot front setback. The applicants' lot is located at 162 Spring Lake Road in the RD3 zoning district. Carlos Gonzalez was present as was Dave Byrne of Hudson Valley Clean Energy. Chairman Annas opened the Hearing and invited comment from the public. Mr. Gonzalez came forward with pictures which he presented to the Board. He stated that he had wanted to place the solar panels on the barn roof; however, the structure is very old and has an uneven roof. He said that he felt that placing the array near the trees would make it less visible and would minimize the impact. He gave the Board members copies of a photo which he had marked to show his proposed site for the array. The septic field is to the left of that site. The posts for the array could not be placed there as they would ruin the septic field. Putting it further away would increase the cost. Therefore, this seemed like the best place to site the array.

He noted that some people had objected to this site, as it would face the entrance to Deer Run and have a visual impact on people entering or exiting that road. However, if we put it 25 feet or more back, he continued, it would have the same or more visual impact. He handed out another photo showing this proposed placement and said that the trees pretty much block the view of the array. There is no safety issue as it would be behind a row of trees; the only issue is the visual impact.

Chairman Annas said that he has been to the site and agreed that the only issue is that of visual impact. He said that the Board had received several letters in regard to this appeal and he proceeded to read the first letter, which was from the *Red Hook Conservation Advisory Council*. The Council was strongly in favor of approval of this appeal. Following the reading of this letter, *Dennis Collett*, a member of the Council, read into the record his own letter in favor of the project. Chairman Annas noted that it was not the purview of the Board to debate the merits of solar energy, but rather to address the issue of the visual impact of the proposed array.

Harald Fivelsdal, who lives directly across from Mr. Gonzalez, read into the record comments additional to those made in the letter which he had submitted to the Board. He said that he has lived in Red Hook for 22 years and has been at his present address for ten years. While stating that he was not opposed to renewable energy, he asked whether the savings in energy could be achieved by other means. With a maximum height of ten feet and length of 62 feet, there would be a 620 square foot billboard near the road. From my property, he said, and coming down from Deer Run, you are going to see this solar array.

You can see beyond the trees from our home. We live on the hill and we can see it all the time, he continued. If it is visual pollution to the residents of my neighborhood, then it would be so for me and my family if it were moved further to the west. At the last meeting, it was suggested that the array be moved sixty feet to the west. This would place it squarely in front of our yard. He said that he realized that some kind of concession had to be made; however he asked that the array be placed in the original, proposed location. Don't move it away from the residents of Deer Run and make it visible solely on my family's property so that our property can be devalued, he argued. There will be a ripple effect; if our values go down, the other property values will go down. If I want to sell my house in the future, I want to know that I can retain it's value. The impact of this project should be shared fairly with all the residents of Deer Run and not just put on my back, he concluded.

Mr. Gonzalez agreed with Mr. Fivelsdal and said that he would never move it there because the trees are thinner there and it would have a greater visual impact. For the record, Chairman Annas then read the letter submitted by Mr. Fivelsdal. Mr. Fivelsdal commented that when the trees in his yard shed their leaves, the whole field in question is visible from his house. "One can look straight through the tree line", the letter said, "and see whatever is placed there." It also suggested that either the other six acres owned by Mr. Gonzalez and/or Ms. Stewart or their one hundred acre lot must afford at least one site sixty feet from property boundaries which could be suitable for the PV array. It also suggested that the Board obtain neutral expert opinion as to whether the benefit could be

obtained by other means. Further, the letter questioned why a large swath of trees could not be cleared to make way for this project since Mr. Gonzalez has cleared trees in the past for other purposes and owns the equipment necessary to relocate trees. He objected to consideration being given to the possible impact upon his neighbors' properties while the impact on his property is not taken into account.

Chairman Annas noted that if he wished to, Mr. Gonzalez could clear the trees along the road and move the array sixty feet back from the field and he would not have to go through the ZBA. That, he said, would be far more objectionable than anything under discussion. In the conclusion of his letter, Mr. Fivelsdal said that "the question is whether the Board can balance the desire to develop renewable energy use with the equally strong desire to preserve the natural beauty and rural character of our town as well as the best interests of all of our local residents."

Chairman Annas asked for any further comments from the public. *Mr. Tom Grieb*, who lives at 179 Spring Lake Road directly across from Mr. Gonzalez, said that he has no objection to solar energy. He said that he has had solar on his house since 1985. However, he said that he is opposed to this variance as he does not see the need to move the array closer to Spring Lake Road. That will block the road view, create a cluttered, billboard effect and will depreciate the value of the properties in the area. He said that he had no problem with Mr. Gonzalez keeping his array inside the field. There is plenty of room for him to do that without requiring a variance. Mr. Grieb also felt that there could be a safety issue if a car were to hit the array.

Upon questioning, Chairman Annas said that he had met with Mr. Byrne and determined that the request is for a variance of thirty feet rather than 35 feet.

Mr. Grieb asked why the variance is necessary. Mr. Gonzalez replied that he is asking for the variance for aesthetic reasons. When you put the array closer to the trees, it intermingles with them. If you put it in the middle of the field, it becomes more visible. Mr. Grieb disagreed, stating that he felt the array would appear larger and more cluttered the closer it is to Spring Lake Road. Dave Byrne expressed concern about shading from the trees behind the open field if the array were placed farther away from the road. Mr. Grieb disagreed with Mr. Byrne's assessment of the amount of shading which would result if the array were to be placed to the rear of the field. Mr. Byrne offered to go to the field with Mr. Grieb and demonstrate how he has measured the degree of shading.

Mr. Collett pointed out that the engineering study which was done is an accepted practice by NYSERTA in order to award a grant. Chairman Annas asked Dave Byrne if he was willing to show the Board his engineering study and he agreed to go over his shading analysis report with anyone who was interested. He said that Hudson Valley Clean Energy has done a study and they have determined the optimal distance from the southern tree line. Mr. Byrne agreed that the array could be moved another ten or twelve feet toward that tree line; however there would be little or no change relative to visual impact. Therefore he stressed the importance of discussing how the array could be shielded from the road.

In response to questioning, Dave Byrne explained the NYSERTA process. There is a technical review by engineering staff which usually takes about four to five months. This application is pending, which means that it has passed the technical review. Further discussion ensued regarding the amount of shading and how it was calculated. Chairman Annas asked Mr. Grieb if he would be happier if the array were moved thirty feet into the field. He said that he would, because it would create less of an obstructive view along the road way. Chairman Annas felt that the array would be more intrusive if it were in the middle of the field.

Chairman Annas said that at the last meeting there was discussion about moving the array ten to twelve feet closer to the southern tree line and it was mentioned that Mr. Gonzalez has the equipment to do major transplanting. The whole issue, Chairman Annas said, is to get the array out of sight. Dave Byrne said his company would paint the base of the poles dark green. *Jennifer Fivelsdal* said that her property is on a hill and she would still see the array from her windows. *Harald Fivelsdal* asked if geothermal energy could be used. Mr. Byrne responded that geothermal does not work effectively for a house as old as Mr. Gonzalez's. In response to questions regarding alternative locations for the array, Mr. Byrne said that he had looked at all the other possibilities, e.g. the barn roof, the house roof, etc. and this was the only location on the property which would work effectively and not force them to take down a huge swath of trees.

Chairman Annas said that the applicants can legally install this system and if they chose to push the array back, the Board could not legally block them. Therefore, it is to our benefit to work with them because if a variance is granted, conditions can be attached to it which can be negotiated.

Paul said that he went to the site and walked it slowly and carefully. He asked why they don't simply resolve the issue by planting around the array. There is plenty of room on either side of the existing trees to fill the space. Mr. Gonzalez said that the trees overlap, so you can plant under the trees but there are no open spaces between the trees. Paul said that you cannot plant between them, but you can plant thick, evergreen bushes in front of them and fill that space. Dave Byrne said that the reason the proposed site is thirty feet from the road is that if branches break during the winter, we do not want them to fall on the array. When John suggested that trees be planted in between the existing trees and the road, Mr. Gonzalez responded that this would choke out the existing trees. Paul suggested that forsythia be planted. There was discussion regarding the type and location of various kinds of plantings which would provide a horticultural solution. In order to resolve these issues, John recommended that the next meeting be held at the property.

Mr. Collett underscored Chairman Annas' previous observation, saying that from the standpoint of law if Mr. Gonzalez does not get this variance, he can make this something which would be much more undesirable by moving it into the middle of the field where it will be much more visible. He felt that the issue of visibility was not important relative to the larger environmental issue. The neighbors who were present strongly disagreed with his viewpoint. *Mr. Grieb* said that those who live close to the property should be considered.

Chairman Annas said that he wanted to continue the Hearing and meet as a Board on site for further discussion of the issue. He asked Mr. Gonzalez to provide the precise location of the leach field. Mr. Gonzalez was not sure he could locate a map. Tim suggested that he contact the Board of Health and give them the tax number of the property. If it is an approved system, they will have it. Mr. Gonzalez expressed his dismay at the discussion, saying that he was trying to do what he felt was best for the town by putting the array in a spot which minimized the visual impact.

As Mr. Gonzalez was concerned about the possibility of impacting his septic system, John pointed out that moving the array closer to the house will increase the efficiency of the system and reduce the cost. He said that holding the next meeting at the site would better enable the Board to determine whether the array can be moved closer to the house and would also resolve the debate over whether or not there are holes between the trees which need to be filled. Dave Byrne asked if the meeting could be held as soon as possible. Chairman Annas schedule the continuation of the Hearing for May 14, 2010 at 4:30 P.M. at the Gonzalez-Stewart property.

7:50 Public Hearing for Appeal 10-02, Marchessault application to construct a front porch 28 feet from the road where the Code requires a 50 foot setback. The applicant's lot is located at 21 Echo Valley Road in the R1.5 zoning district. Chairman Annas opened the hearing and read into the record a letter of support from neighbor *Lisa Murray*. He invited comments from the public. Mr. Marchessault said that they have wanted to put a front porch on the house since they bought it. It would add value to the house and fits with the neighborhood in which many of the houses already have front porches. He said that the setback is necessary because they are right up against a rock hill.

Hearing no further comments from the public, Chairman Annas closed the Public Hearing. He said that there had already been a variance allowing the front setback to be reduced from 50 feet to 38 feet. The present variance will further reduce the setback from 38 feet to 28 feet. He agreed that the porch would be in keeping with the neighborhood.

Motion to Approve Variance

John Douglas made a motion to allow the Marchessaults to build a 320 square foot, ten by thirty two foot front porch on their existing residence at 21 Echo Valley Road and reduce the setback from 50 feet to 28 feet. It is not a detriment, but rather a benefit to the Town of Red Hook. The motion was seconded by Tim Ross. A roll call vote was taken with the following results:

Paul Marienthal	Aye
Chris Carney	Aye
Ken Anderson	Aye
John Douglas	Aye
Tim Ross	Aye
Nick Annas	Nay

The motion was carried by a five to one vote.

8:10 Public Hearing for Appeal 10-03, Chen (Red Hook Wine & Liquor) application to construct a free standing sign and place it five feet from the side property line where the Code requires that no such sign be placed closer than 15 feet from any property line. The applicant's property is located at 8040 Albany Post Road in the B1 zoning district. The applicant was represented by Mr. Larry Launhardt, who will be running the Red Hook Wine and Liquor store at the site. Chairman Annas opened the hearing and read into the record a letter from neighbor *Pete Hubbell* stating that he had no objection to the project provided that it meets with the requirements of the town code.

In response to Chairman Annas' question, Bob Fennell said that there had been a previous variance. There is presently a complex sign on the south side of the property. Mr. Launhardt said that his store will be on the north side. Bob read the relevant sections of the code and concluded that it permits a total of 76 square feet, 60 square feet plus the 16 square foot complex sign. Tim said that the Board does not have to deal with the complex sign as that has already been dealt with. There was discussion as to the dimensions of the existing and proposed signs.

Mr. Launhardt said that the variance he is asking for is to place his sign five feet from the northern property line, rather than the fifteen feet required by the code. The Board, however, was also concerned with whether or not proposed signage will meet the requirements of the code. John asked Mr. Launhardt how big the sign will be. Mr. Launhardt said that he did not remember, but the size has not changed. Tim said that the total allowable signage is 60 plus 16 square feet and he is presently at 72 square feet at the site. Therefore, he has four feet available. Chairman Annas said that the drawing shows that the sign will be five by five, i.e. 25 square feet. Tim asked Mr. Launhardt how far from the white line he is planning to put the sign. Mr. Launhardt responded that it will be 18 ½ feet from the highway. Tim concluded that Mr. Launhardt needs two variances, one for the additional 25 square feet of signage and one to reduce the setback from the property line from fifteen feet to five feet.

Mr. Launhardt said the sign has not been made yet and therefore he would like to know what size sign he can have. Tim said that he needs a diagram of what Mr. Launhardt is planning to do. Bob said that Mr. Launhardt presently has a four square foot allowance and he needs to apply for however much more he needs.

Chairman Annas said that Mr. Launhardt needs to ask for an additional variance as there is no discussion of signage in the present application. He also stressed the need for Mr. Launhardt to provide accurate dimensions and distance from the road. Chairman Annas scheduled the continuation of the hearing for June 9, 2010 at 7:15 P.M.

8:30 Public Hearing for Appeal 10-04, Frick application to erect a single family dwelling which would cover 13% of the property where the Code limits coverage to a maximum of 7% and to reduce the side setback from the minimum of 21 feet to 12 feet. The applicant's property is located on Country Club Drive in the RD3 zoning district. Tim recused himself because he had done the septic design for Mr. Frick. Chairman Annas

opened the hearing and invited public comment. Neighbor *Chris McLoughlin* said that he lives across the road from Mr. Frick and has the property closest to him on Rt. 199. He said that he would not be able to see the proposed house and has no objection. Chairman Annas noted that the Board has received four letters in support of this project from Mr. Frick's neighbors, viz. from *James Stathatos, Dennis McGettigan, John Coneys, and Don and Carol Campbell*. Mr. Frick then submitted to the Board eleven additional letters of support from other neighbors, all living on Country Club Road.

Chairman Annas said that the width and placement of the proposed building seemed to be dictated by the intent to use solar energy. Mr. Frick disagreed and used his map to show the Board the orientation of the house and where the solar panel roof will be located. He said that what he wants to do is orient the house so that from the main room, they can follow the sun from breakfast to lunch to dinner.

Chairman Annas said that he did not have a problem with the coverage. Bob did a study of the area and said that there is typically about 19% coverage. His concern, he said, was that of safety. It is a 55 mph zone and the location of the bedroom could present a safety hazard. Mr. Frick said that there is also a 20 foot buffer which the state owns and it is a rise. There has never been an accident there, he said.

Mr. Frick said that what he is asking for is far less than any of the other variances which have been granted in the area. He said that he chose to have the variance where it is so that it would not affect the neighbor. If you like, he said, we can shift it to the other side, but then we will need the variance on the other side. If I need 21 feet, the way it is sited now I will have it on one side with 15.5 feet on the other side to the property line plus an additional 20 feet of state owned land prior to the start of Rt. 199. So I am looking for 5.5 feet. He said that he could not push the house back any further because of the design of the septic.

Motion to Approve Variance

Chairman Annas closed the Public Hearing. Paul Marienthal made a motion to approve the reduction of the setback from 21 feet to six feet and to increase the coverage from 7% to 13%. The motion was seconded by Ken Anderson. A roll call vote was taken with the following results:

Paul Marienthal	Aye
Chris Carney	Aye
Ken Anderson	Aye
John Douglas	Aye
Nick Annas	Nay
Tim Ross	Recused

The motion was passed by a four to one vote.

ADJOURNMENT

Chairman Annas made a motion to adjourn the meeting. The motion was seconded by Chris Carney and all were in favor. The meeting was adjourned at 9:25 P.M.

Respectfully submitted,

Sheila Franklin

FINDINGS AND DECISION

Appeal #10-2, Marchessault application to construct a front porch 28 feet from the road where the Code requires a 50 foot setback.

FINDINGS:

1. The property is located in the R1.5 Zoning District at 21 Echo Valley Road, Red Hook.
2. Tax Map #6272-00-812886.
3. The zoning law requires a 50 foot front setback.
4. The applicant wishes to construct a front porch with a 28 foot setback, reducing the current 38 foot setback an additional ten 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.
7. 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: John Douglas made a motion to grant the variance based upon the above findings. The motion was seconded by Tim Ross and carried by a 5-1 roll call vote.

Dated: May 14, 2010

FINDINGS AND DECISION

Appeal #10-04, Frick application to erect a single family dwelling which would cover 13% of the property where the Code limits coverage to a maximum of 7% and to reduce the side setback from the minimum of 21 feet to 6 feet.

FINDINGS:

1. The property is located in the RD3 Zoning District on Country Club Drive, Red Hook.
2. Tax Map #6372-19-739189.
3. The zoning law requires a maximum of 7% coverage and a minimum side setback of 21 feet.
4. The applicant wishes to erect a family dwelling with 13% coverage and a 6 foot setback.
5. There were no objections from the audience and a large number of letters from neighbors in support of the project.
6. A variance would be of benefit to the applicant with no detriment to the community.
7. 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: Paul Marienthal made a motion to grant the variance based upon the above findings. The motion was seconded by Ken Anderson and carried by a 4-1 roll call vote with Tim Ross having recused himself.

Dated: May 14, 2010