

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
September 29, 2010**

CALL TO ORDER

The meeting was called to order at 7:03 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

Also Present: Jim Ross, TB Liaison; Steve Cole, Building Inspector; Chris Chale,
Town Attorney

Absent: Jim Hegstetter

PRELIMINARY BUSINESS

Minutes of August 11, 2010: Chairman Annas asked if everyone had read the August 11, 2010 Minutes and invited comments or questions. Hearing none, Ken made a motion to accept the Minutes as written. The motion was seconded by Chris Carney. John abstained; however all other members were in favor.

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

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

Comments: Town Attorney Chris Chale announced the closing of her firm's office in Poughkeepsie and the opening of an office at Spring Brook Road in Rhinebeck. The Hudson office will remain open.

REVIEW OF APPEAL

Appeal 10-07, Robert & Linda Lasher application to vacate stop work order. In lieu thereof, the applicants wish to obtain a Special Permit from the Planning Board to treat the existing residential structure as a "cottage" with the new home becoming the principal dwelling unit. In order to do so, two variances would be required, viz. permission to construct a 950 square foot home where the maximum allowed by the code is 650 square feet and permission to construct the home on a 2.98 acre parcel where three acres are required. The applicant's property is located at 442 Lasher Road in the RD3 zoning district. Chairman Annas said that a Building Permit had been issued in April. Tim said that at that time the lot was viewed as an existing parcel of record of 1.78 acres. The line separating Dutchess and Columbia Counties runs through this parcel and the 1.78 acres reflects only that part of the parcel which falls in Dutchess County. Under that

interpretation, Chairman Annas said, there was no issue. Several months later, a Stop Work Order was issued because the financing bank felt that the parcel should be considered one whole parcel rather than being split in two by the County line. Under that interpretation, they expressed concern about the existing structure on the property.

John Douglas asked who made the decision to issue the Stop Work Order. Steve Cole responded that he had done so after having consulted with the Town's legal department. Town Attorney Chris Chale said that the Bank had asked Steve for a letter with respect to the two structures and he had therefore consulted with her about that. In response to Steve's request, she provided him with legal advice.

Chairman Annas verified with the applicants that in the interim they have sought financing from another bank which is not concerned about the existence of another structure on the property. He then invited the applicants' attorney, John Marvin, to review their position. Mr. Marvin thanked the Board for holding a Special Meeting to review this application. What happened with the first Bank really had nothing to do with the property itself, he said. The bank has certain criteria for when they go to sell or underwrite their loans. When they saw that there was an existing residential unit on what was going to be mortgaged, they said that it did not flow within their product categories; they felt that they couldn't sell that loan with two units on the property. They then went back to Steve and asked for a description with just the Red Hook portion. He went to Chris Chale for legal advice and then the Stop Work Order was issued.

Mr. Marvin asked the Board to keep in mind that there are two issues before them. One is an appeal of the Stop Work Order. If the Board decides to reverse the Stop Work Order and say that the original interpretation is correct, then we are done. We do not have to address the variances; we can withdraw our application for the Special Permit for the cottage for the Planning Board and the Lashers can go on and finish their home. If you agree with the second interpretation, then we need the variances. Our only other alternative at this moment is to get a Special Permit. Otherwise they will have to either take the existing structure down, which they do not want to do, or not build the house.

Mr. Marvin then cited a case from 1988 which took place in Lake George in which the facts were almost the same. There was a municipal boundary which split a lot into two pieces. The Zoning Enforcement Officer did exactly what Steve did initially. He issued the Permit because the lot was a pre-existing lot of record. It was non-conforming, but fell within their non-conforming grandfather clause. The neighbors challenged that and the Appellate Division ruled that the interpretation of the ZEO was reasonable. Chris Chale noted that the ZBA made the decision that that was the interpretation of that town and the court was considering whether to uphold the determination of the ZBA. Mr. Marvin concluded his argument by saying that if the Board agrees with the original interpretation which formed the basis upon which the Building Permit was granted, then the matter is resolved. However, if you think you should be considering what is across your municipal boundary, then we have to continue on to the variances.

There are two variances; one is the lot size. A cottage is permitted on a three acre or greater parcel and the total parcel is 2.98 acres. The other variance is to increase the 650 square feet permitted for the structure to 950 square feet. He noted that ZEO Bob Fennell had taken the measurements he was using for the proposed structure. In sum, he said, you must decide whether you are going to consider what falls in an adjacent town or not. He said that what he would prefer would be for the Board to reverse the Stop Work Order. It would be a lot easier and less expensive for the applicants who have a foundation which is dug and poured and a house which they have ordered and committed to buying.

Mr. Marvin noted that in his letter to the Board he stated that he thought that completion of the project would not create a change in the character of the community and that if one went through the criteria used by the Board, there would not be any negative impact on the neighborhood. He also felt that there would not be any complaints from the neighbors.

Following the earlier suggestion of Town Attorney Chris Chale that she go over the legal analysis of the case with the Board so that they could receive advice from their attorney prior to their deliberation, the Board recessed at 7:25 P.M. for a private attorney-client session. They returned at 7:50 P.M. and Chairman Annas opened the floor for further discussion of the Appeal.

Chairman Annas recapped the previous discussion, saying that the two avenues open to the Board are to vacate the Stop Work Order or proceed with the variances. Mr. Marvin said that the issue might be overblown; i.e. it might be far fetched to think that this would set a precedent for landowners with properties which are divided by County or town lines. He pointed out that although the Planning Board was concerned about this issue, they did not take a position. John asked Mr. Marvin his legal opinion about Red Hook giving variances which would affect parcels in another county. Mr. Marvin stated that he believed that Steve's original interpretation was legal and proper.

Paul expressed concern about how many properties might be affected by such a decision and felt that he needed to have this information before he could form an opinion. If there are twenty or thirty cross boundary lots, this decision could set a dangerous precedent. Any of the owners of such lots could then put a second house on their property. Mr. Marvin noted that they would have to go through the Planning Board to do so.

Tim Ross said that, as a professional, he has encountered similar situations in Dover and Beekman and the Town Attorneys of those towns did not consider the lots as part of the larger parcel. Mr. Marvin said that if it is shown that the project will not be harmful to the neighbors, the Stop Work Order should be vacated as it would not be fair to the applicants to force them to proceed with the variances.

John pointed out that the Planning Board had said that additional variances might be needed later. Chris Chale responded that this had related to the question of whether or not to consider the new house as an accessory structure. However, the Planning Board had

taken this issue off the table, feeling that it was more straightforward to consider the existing house as a cottage.

Chris Chale noted that, following Mr. Marvin's argument, the result would be a non-conforming structure. Jim Ross stated that this was a pre-existing non-conforming lot and, as such, should be grandfathered. Mr. Marvin added that there are protections other than zoning laws, e.g. laws which regulate leach fields, wells, etc. He noted that Clermont was not looking beyond their line.

Chairman Annas then polled the Board to determine their position on whether the Stop Work Order should be vacated and the application for variances withdrawn. Tim Ross agreed with this position. Chris Chale noted that a Hearing is required for an interpretation; however the neighbors do not need to be notified. Chris Carney stated that he was in favor of vacating the Stop Work Order. Paul said that he would like to know how many properties would be affected and asked if there is a way to obtain this information. It was ascertained that the footers for the structure have been put in; however the Stop Work Order then prevented further construction. Ken ascertained that the applicants have Board of Health approval for their septic system. After John Douglas stressed that this was a lot which preexisted zoning, Ken stated that he would favor vacating the Stop Work Order. Taking a tally, Chairman Annas said that the Board is therefore five to one in favor of vacating the Stop Work Order.

After a brief discussion about the necessity and logistics of having a Hearing, Chairman Annas set the Public Hearing for October 13, 2010 at 7:05 P.M.

ADJOURNMENT

Paul made a motion to adjourn the meeting. The motion was seconded by John Douglas and all were in favor. The meeting was adjourned at 8:30 P.M.

Respectfully submitted,
Sheila Franklin