

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
October 13, 2010**

CALL TO ORDER

The meeting was called to order at 7:02 P.M. by Chairman Nick Annas.

ROLL CALL

Members Present: Nick Annas, Kenneth Anderson, Christopher Carney, John Douglas,
Jim Hegstetter, Paul Marienthal, Tim Ross

Also Present: Jim Ross, TB Liaison; Chris Chale, Town Attorney. From the
Planning Board: Chris Kane, Chair; Patrick Kelly; Chris Munn.

Absent: None

PRELIMINARY BUSINESS

Minutes of September 29, 2010: Chairman Annas asked if everyone had read the September 29, 2010 Minutes and invited comments or questions. Hearing none, Ken made a motion to accept the Minutes as written. The motion was seconded by Paul 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 will review the Permits and Memos at the next meeting.

Comments: Chairman Annas noted that several members of the Planning Board were present.

PUBLIC HEARING

7:15 Public Hearing for 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 opened the Hearing for public comment. In response to the Chairman's question, John Marvin, attorney for the applicant, stated that he had nothing to add to what he had presented at the previous meeting. However, as two issues are before the Board, he asked whether they wish to

consider the repeal of the Stop Work Order first and then proceed to the second issue, viz. the variances, if the Board votes not to repeal that Order.

Chairman Annas said that first he would like to call on Chris Kane, Chair of the Planning Board, to present the views of that Board. Ms. Kane said that the applicants are before the Planning Board with an application for a Special Permit. Traditionally in this type of situation where there is a boundary question, we have looked at the lot in its entirety. Looking at it in this manner, we asked what the issues would be if there were no question regarding the municipal boundary and how, in such a case, would the Planning Board review an application for a Special Permit. She said that they have scheduled a Public Hearing for the Special Permit for their next meeting on October 18th. If the Permit is granted, the Lashers can resume construction on the 19th.

The issue, Ms. Kane continued, was discussed at the last Planning Board meeting and the general consensus was to grant the Special Permit with conditions regarding the two variances for which the applicants have applied to the ZBA. We would request that the ZBA grant the variances rather than vacating the Stop Work Order because there are a number of related issues which would have major ramifications for other parcels in the town since the decisions of the ZBA are precedent setting and have the force of law. Therefore, if you were to vacate the Stop Work Order, that decision would become in essence the law of the land and you would be saying that a municipal boundary creates a subdivision, which is not how a lot is defined in the current zoning law.

Ms. Kane asked if the Board had considered how a decision to vacate the Stop Work Order would affect other such lots on the northern, southern and eastern boundaries. From the point of view of the Planning Board, this would create a land locked lot with no access to a town road. We as the Planning Board, she stated, are not allowed to create such lots. In conclusion, she stated that she felt that the same thing could be accomplished by granting the two variances.

Chairman Annas asked if anyone from the public would like to address these issues. *Jesse Zimmerman* said that the Lashers have been very good neighbors of his for over twenty years. He lives next door to the Lashers, just to the east. He said that he had the same situation relative to his lot and if he were in their position, he would like to be able to put a small house on the property. However, he stated that he was not taking a position one way or the other.

Patti Zimmerman raised a question regarding the size of the proposed house. Chairman Annas said that the habitable space of the house which the Lashers wish to construct is 1700 square feet. Ms. Zimmerman asked if it were possible to request that there be a buffer or tree line between her house and the proposed structure. Chairman Annas replied that contingencies can be made upon the granting of a variance and this request can be taken into consideration. He noted that as this house would be behind that of the Zimmermans, it could impinge upon their privacy. He asked how Mr. Lasher would feel about creating such a buffer. Mr. Lasher responded that he would be receptive to adding some kind of a buffer.

Mr. Marvin questioned the concern over the frequency with which this issue might arise. In terms of the lot being land locked, he said that he was not sure that this is correct. If a lot were truly land locked it would mean that if a person wanted to get a Building Permit from the Town of Red Hook, they could not show that there is some kind of access. It is not that this municipal line creates a subdivision, but rather the ZEO, in his original interpretation, looked beyond that line to see what is there. The Lashers own the front part, the part in Columbia County. Through that, they have access. They could not have gotten a Building Permit unless there were access. In support of reversing the Stop Work Order, he said that he thought that the original interpretation of the ZEO was consonant with the long held notion that the Code should be interpreted in a manner which supports the property rights of the owners.

Chris Kane said that the Planning Board was advised by the Town Attorney that if the Stop Work Order were vacated, it would create a subdivision with access problems. Paul asked Ms. Kane if she had done the research to find out how many lots could be affected by this decision. Ms. Kane responded that she did not have time to consider any area other than Lasher Road and there are a number of lots on that road which could be affected. Paul said that he thought that there might also be some in Milan which could be affected. He thought there might be a total of about twenty lots.

Mrs. Levine said that some of these issues could be addressed by putting covenants in place which would remain with the land and would state that the owners had no intention of subdividing the lot. She also noted that this situation is creating incredible hardship for the Lashers. They are living in a difficult, temporary situation. She urged the Board to resolve this situation in a manner favorable to the Lashers. She felt that if the decision of the Board affects other properties, the number affected would be a manageable number.

Patti Zimmerman asked what was going to happen to the house which is already on this property. It is not presently occupied. Is it going to be rented? Chairman Annas said that he thought that the owners have the option of renting one or both of the houses. Tim said that it would be another residential structure. Chairman Annas asked if there were any other comments from the public. Hearing none, he closed the Public Hearing.

Chairman Annas noted that when the Board was polled at the last meeting, a majority was in favor of vacating the Stop Work Order. However, after hearing from the Planning Board, he said that he thought it might be better to consider the two variances and view the parcel as a whole, including the portion which extends into Clermont. John asked Chris Kane if the Planning Board had submitted anything on this request to the Dutchess County Office of Planning and Development. She said that she would check. Chairman Annas stated that the ZBA had notified Dutchess County Planning and read a letter from them stating that they consider the issue at hand to be "a matter of local concern."

John asked if anything has happened relative to the agricultural data statements. Ms. Kane replied that they had been circulated. The Board reviewed the current map. Ms. Kane said that the Lashers will have to submit to the Planning Board a detailed map drawn up by a Professional Engineer.

Paul said that he was comfortable with the variances but was not comfortable with changing the law. Tim said that he feels very strongly that the Order should be vacated because the only law here which spans the county lines is health law and they have met that with the Dutchess County Board of Health approval. This lot of 1.76 acres with suitable road access, which meets all the setback requirements and can get BOH approval is an existing lot of record and as such should be granted a Building Permit. To do anything short of this would be unfair to the applicants. In my professional life, he said, I have had the same situation where the town attorneys said that the portion in the adjoining town is a separate parcel and should be treated as such.

As far as precedent setting, Tim continued, I do not have an issue with it setting a precedent if there is a 1.4 acre parcel which is split and can meet all those health and safety requirements, which it would have to do in order to obtain a Building Permit. Therefore, there would be no harm in vacating this Stop Work Order and letting these folks finish their house. Thus, I move that this Board vacate the Stop Work Order and allow them to continue. We cannot give a variance to something which is not in the Town of Red Hook, i.e. a cottage which is in Columbia County. Chairman Annas said that the Board is considering the Clermont portion, but is only ruling on the Red Hook portion. Tim agreed and said the Board should stop looking right there. The part which needs to be looked at over County lines has been looked at by the Board of Health. The motion was seconded by John Douglas.

Jim asked how much work has been done. Chairman Annas responded that the excavation has been done and footings have been put in. In addition, the Lashers have purchased the structure, done a lot of site work and paid for considerable legal fees. He said that his understanding is that the time at which the Lashers can get back to work will be the same whether the variances are granted or the Stop Work Order is vacated. Chris Kane said that the Planning Board meeting is scheduled for the 18th. Tim said that there is no guarantee that approval will be granted then. Plans have to be updated, etc.

Chairman Annas asked if the Stop Work Order were vacated today, could work be resumed tomorrow. Chris Kane said that they would still need a Special Permit. Chairman Annas noted that after the Building Permit was issued, they were able to start work immediately. Why, then, could they not resume work once the Order is vacated? Chris Chale said that it would depend upon how the Board structures its interpretation. Implicitly, you are being asked to interpret the law in such a way that they are considered to have a valid parcel. You have to have a reason for your interpretation and if the reason is because we think that the interpretation of the Code is as the applicant requests, that is what you would say.

John said that if the Board votes to vacate the Stop Work Order, that vote makes the Order null and void and the Lashers can go back to the original Permit and continue construction as they would then have a valid Building Permit. Chris Kane responded that that is not the issue before the Board. The issue is whether or not you are going to make an interpretation which supports the Stop Work Order. You cannot vacate a Stop Work

Order without having a rationale. The second issue is consideration of the variances. Those are the two issues before the Board.

Tim said that Steve Cole's initial interpretation when he issued the Building Permit was that the town's jurisdiction ends at the town line. You can amend my motion to state that the interpretation is that the Building Inspector is to look at that portion of split lots which reside in Red Hook to determine if special treatment or variances are required. Paul asked if there is any way which we can put something in the decision which does not allow this to become a precedent, so that anyone who has a split lot cannot build a second house on it. Paul said that there seem to be about fifteen or twenty lots about the same size, viz. one to four acres. John felt that this might comprise only about 1% of the lots in Red Hook. Chris Kane said Paul was only considering the area around the parcel in question, not all of Red Hook. Tim said there are a lot more substandard, border lots in town which would be at issue.

Chairman Annas asked Tim whether he wants to vacate the Stop Work Order so that the applicants can get back to work instantly. Tim replied that this was not his reason. I think it is the right thing, he said. We have authority over the Town of Red Hook; we do not have authority over Columbia County. The Health Department does and they have done what is appropriate in reviewing this parcel to see if it is buildable. That decision has been made. They have met the laws which straddle the boundaries. Nick said that Dutchess County Health has no authority in Columbia County. Tim said that they do. They do not look at the house which is on the other side of the County line; but they do look at the wells. Nick said that they cannot rule on what is on the Dutchess County side. Tim responded that if something is existing on the Columbia County side which impacts the Dutchess side, they can deny it. Following the same logic, Chairman Annas asked why the Board should not give due consideration to what exists over the border.

John said that it would be the same situation if there were a ski run with 500 acres in Massachusetts and 500 acres in New York. New York State has no jurisdiction over the portion of the ski run which is in Massachusetts, only over that portion which is in New York State. So the Town of Red Hook has no jurisdiction in Columbia County. Chairman Annas stated that what he said was that the Red Hook jurisdiction only goes to the County line; but how they judge that parcel should take into consideration what exists at the boundary.

John asked how variances can be given for a property which is not in Red Hook. The cottage for which they are requesting variances does not sit in Red Hook. Chairman Annas said that the variances are not for the cottage; they are for the new home and the Board would consider that the adjacent cottage be a larger size. Tim said that this would be granting a variance for the size of the cottage. If there were 0.1 acres in the Town of Red Hook, it would never be an issue because you could not get setbacks or any of the necessary approvals. You need a substantial piece of property for this ever to come up again. I would be surprised if the number of parcels which could be affected were as high as twenty. Most of those are going to be over the zoning requirement.

Jim said that he appreciates the deliberations and concerns of the Planning Department; however, he said that he also understands what the applicants have been through. They would like to get back to work as soon as possible. No one in this room has opposed the project. I always weigh the opposition, he continued, and I always look at the human factor. I understand that this is a hardship and what this might do. I would like to see them get back to work as soon as possible and be able to finish the house. The County could take another month to get back to them. We don't know. There are no guarantees. I have to go with the human side of things and look at it and not think that it is creating that much of a hardship for the town or a precedent that will create tremendous issues.

Chris Kane said that the Planning Board is trying hard to resolve these issues. She said that we are not on the Board to go with our gut or to do what we feel is the best thing. We have specific parcels and what happens on one parcel cannot be translated to another parcel. You do not have that luxury, she said. You can achieve the same thing without vacating the Stop Work Order. Jim responded that we do not know that this will be resolved in five days; it could take another two months. Ms. Kane said that you have to think about the residents of Red Hook. Your decisions set precedents and you can be sued if your decisions are not consistent.

Chairman Annas explained that the County is no longer involved in this because they have determined that this is a matter of local concern. The ZBA's letter was received by the County on Sept. 13th and their response was dated the 16th. The furthest this could go would be back to the Planning Board. It was determined that a letter had been sent to Clermont and they had no interest in the matter. They are not considering anything beyond their line.

Paul said that he felt that the lot should be considered as a whole. Clearly, he said, both towns are looking at lot lines. He felt that Clermont is taking into consideration lot sizes and the number of structures. Tim said that they do not give variances or site plan approval on Red Hook property and he did not think they would attempt to rule over the line. Chairman Annas said that it is not ruling over the line; it is ruling in consideration of what lies across the line.

Motion to Vacate Stop Work Order

Tim made a motion that this lot of 1.76 acres, which is an existing lot of record in the Town of Red Hook with suitable road access, which meets all the setback requirements and has obtained BOH approval, be granted a Building Permit. The interpretation is that the Building Inspector is to look at that portion of split lots which reside in Red Hook to determine if special treatment or variances are required. The motion was seconded by John Douglas.

A roll call vote was taken with the following results:

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| Tim Ross | Yea |
| Jim Hegstetter | Yea |
| Chris Carney | Yea |
| Nick Annas | Nay |
| Ken Anderson | Yea |
| John Douglas | Yea |
| Paul Marienthal | Nay |

The motion was therefore passed by a five to two vote.

Chairman Annas noted that the Lashers can now resume construction immediately.

ADJOURNMENT

Jim Hegstetter made a motion to adjourn the meeting. The motion was seconded by Tim Ross and all were in favor. The meeting was adjourned at 9:30 P.M.

Respectfully submitted,
Sheila Franklin

FINDINGS AND INTERPRETATION

Appeal #10-07, Robert & Linda Lasher application for an interpretation of the Town of Red Hook Zoning Law which will vacate their 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.

FINDINGS:

1. The applicants' property is located at 442 Lasher Road in the RD3 zoning district.
2. Tax Map #6275-00-924100.
3. The applicant's lot is an existing lot of record in the Town of Red Hook with suitable road access which has met all the setback requirements and has obtained Board of Health approval. As such it should be granted a Building Permit.
4. The applicant wishes an interpretation which will vacate the Stop Work Order issued by the Building Inspector.
5. The interpretation is that the Building Inspector is to look at that portion of split lots which reside in Red Hook to determine if special treatment or variances are required.

INTREPRETATION: Based upon the above findings, Tim Ross made a motion interpreting the Zoning Law so as to permit the Stop Work Order to be vacated. The motion was seconded by John Douglas and carried by a 5-2 roll call vote.

Dated: October 13, 2010