

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
July 13, 2011**

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, Christopher Carney, Jim Hegstetter
Paul Marienthal, Tim Ross

Absent: John Douglas,

Also Present: Trilby Sieverding, Alternate; Jim Ross, Town Board Liaison; Robert
Fennell, ZEO

PRELIMINARY BUSINESS

Minutes of June 8, 2011: Chairman Annas asked if everyone had read the June 8, 2011 Minutes and invited comments or questions. Mr. Richard Canter, attorney for Mr. Coon, asked that the word "agriculture" be substituted for the words "commercial nursery" in the description of the Coon application. The change was accepted by the Board. Hearing no other comments, Ken Anderson made a motion to accept the Minutes as amended. The motion was seconded by Jim Hegstetter and all were in favor.

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

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

Comments: Chairman Annas said that in the past the Agenda has allocated fifteen minutes for preliminary business; however, typically, this business does not require more than five minutes. Therefore in the future the first agenda item will start at 7:05 rather than 7:15. In view of this change, Chairman Annas noted that it is very important for the members of the Board to be at the Town Hall at 7:00 P.M. If a member cannot make a meeting, he asked that the member e-mail him.

REVIEW OF APPEAL

7:05 Appeal 11-03, Arvine & Wendy Coon application for an interpretation of the determination of the Zoning Enforcement Officer denying the sale of agricultural products on their property at 7221 Albany Post Rd. in the R1.5 zoning district. Mr. and Mrs. Coon were present along with their attorney, Mr. Richard Canter. Chairman Annas asked if everyone was aware of the changes to the zoning law which were voted upon by

the Town Board the previous evening. Among other things, there is a new interpretation of agriculture which will go into effect in a matter of days. Under the circumstances, Chairman Annas said, that renders the Coon application moot. Mr. Canter replied that Mr. and Mrs. Coon wish to proceed with their application appealing the decision of Mr. Fennell that the proposed use is not allowed at their location. He said that at the moment the old law is still in effect and he would like to make a brief presentation to explain what the Coons are seeking and then proceed to a Public Hearing. He said that he felt they are entitled to the determination notwithstanding the change in the law.

Mr. Canter said that the use which Mr. and Mrs. Coon propose is agriculture. It has a specific definition and it is allowed in the R1.5 zone where their property is located. It is a use which does not require either site plan approval or special permit approval. It requires only a Building Permit. The intended use by Mr. and Mrs. Coon, in keeping with the definition of agriculture, is to produce, keep and maintain for sale plants and animals as listed in the definition in the code. They propose to sell products grown on site, products which they have grown elsewhere and products which others have grown.

Mr. Fennell has said that the sale of these products can only take place in either a farm stand one, a farm stand two or a roadside stand. We respectfully disagree, Mr. Canter continued. Farm stands are accessory uses; they are uses on a farm. We are not proposing a use on a farm. Roadside stand is a use which is limited to products which are produced or grown by the operator of the stand. We are proposing to sell products in addition to those grown and produced by Mr. and Mrs. Coon.

The definition of agriculture lists three activities, viz. producing, keeping and maintaining products, Mr. Canter said. There is no language in this section of the Code which limits the use of the property to products grown on the property nor does it limit the sale to products grown by the operator. The section says that the purpose of producing, keeping or maintaining is to sell, lease or personally use the products. We believe that, under the terminology of the law, the other definitions of farm stand one, farm stand two, roadside stand and commercial nursery are all separate and distinct from the use called agriculture. We have asked Mark Graminski to appear this evening, he said, to show the Board what Mr. and Mrs. Coon propose to do.

Mr. Graminski presented a plan showing the two separate Coon parcels, which are at the intersection of Route 9 and Rokeby Road. There is access to the properties off Route 9. Using the plan, he explained the proposed layout of the project. The plan showed the house, two garages and greenhouse which already exist on the property as well as the areas intended for the proposed agricultural use. One garage would be utilized for storage of agricultural products and the other would be a sales area. In response to questioning, he said that the sales display area would be outdoors and showed the Board where that would be located. There would be no new structures. The Board reviewed the plan. Chairman Annas asked which of the existing structures were built in the past few months. Mr. Graminski responded that the only one built in the past few months is the greenhouse.

Ms. Victoria Polidoro of the Town Attorney's office said that even if the appeal goes to Public Hearing and the determination of the ZEO is overturned, the applicant will gain nothing because the new law applies and the use will be carried out under the new law. Mr. Canter acknowledged Ms. Polidoro, but said that he intends to present facts which he believes entitle Mr. and Mrs. Coon to have the benefit of the law prior to the amendment. There are circumstances, he continued, where a property owner may use the prior version of the law. We believe that this is one of those cases. Ms. Polidoro said that Mr. Canter can give her his analysis and she would give him her analysis in return.

In response to questioning by Chairman Annas, it was determined that the property to the north is in the B1 district while the rest of the adjacent properties are in the Agricultural Business District. Chairman Annas asked if Mr. Coon had been before Planning. Mr. Canter said that he had not and added that Mr. Coon had submitted a previous application which had been withdrawn. Mr. Canter also said that about fifteen years ago there had been an application for a use variance for a commercial nursery. That use is not allowed in the R1.5 zone and the appeal was denied. Bob Fennell pointed out that there is an existing variance on the property. A use variance was granted for an antique shop.

Mr. Canter said that he needs to review the law which was passed last night; however, he asserted that the Coons have the right to use the old law. He asked that the Board proceed to a Hearing. Ms. Polidoro said that if they do go under the new law, they would need a new application. Mr. Canter said that it would be up to the ZBA to determine if they would need a new application. Chairman Annas said that if Mr. Fennell accepts the request under the new law, all proceedings could be dropped. Mr. Canter said that if, after review of the new law, they think they would be permitted under that law, they would seek a determination from Mr. Fennell. However, at this time they would like to proceed under the current application. He conceded that one outcome might be that the application would be denied because it is moot.

Ms. Polidoro asked if Mr. Canter could elaborate on what the applicants are planning to sell. Mr. Canter replied that the application spells out what the applicants are proposing to sell, viz. plants and animals as listed in the definition of agriculture.

Chairman Annas set the Public Hearing for August 10, 2011 at 7:05 P.M.

7:35 Appeal 11-06, Kim & Joseph Curthoys application to construct a garage and play area addition with 80% open space and 18% building coverage where the zoning law permits 70% minimum open space and maximum building coverage of 7%. On April 9, 2008 the ZBA granted a variance for this construction; however the applicants took no action on this approval and the variance has expired. The applicants' lot is located at 183 Country Club Drive in the RD3 zoning district. The Minutes from the 2008 Appeal Review and Public Hearing, as well as a copy of the variance which was issued at that time, had been sent to the members of the Board prior to the meeting for their review.

In response to Chairman Annas' question, Bob Fennell said that a variance expires after twelve months. Chairman Annas asked Mr. Curthoys if he wanted to do exactly what he

had proposed in 2008. Mr. Curthoys responded in the affirmative. Chairman Annas noted that on Country Club Drive many coverage variances have been issued and they seem to average about 19%.

Chairman Annas set the Public Hearing for August 10, 2011 at 7:20 P.M.

7:50 Appeal 11-07, Richard and Nancy Nuzzo application to construct a 252 square foot car port/bedroom addition seven feet from the side property line where the zoning law requires a twenty foot side yard setback. The applicants' property is located at 63 Birchwood Drive in the R1.5 zoning district. It was determined that Mr. Nuzzo's property is in Forest Park. Chairman Annas gave Mr. Nuzzo the floor to explain his project. Mr. Nuzzo said that he had applied for a Permit on May 20, 2011 and it was granted on May 26th. The first inspection was on May 27th. Mr. Nuzzo presented the plans to the Board.

Thereafter, Mr. Nuzzo continued, we received a phone call saying that there was a problem with the first inspection. The Zoning Officer had received a phone call from a neighbor asking if we had obtained a variance. When it was ascertained that we had not obtained a variance, the Zoning Officer issued a Stop Work Order on June 10th. This created a serious problem because the posts were set and the structure was completely framed. Although work was stopped, the Zoning Officer was kind enough to allow us to finish the roof in order to protect the work which had already been completed from water damage. Since then, Mr. Nuzzo said, he had contacted all of his neighbors, including the one who called, and none of them object to the project.

Bob Fennell said that Mr. Nuzzo had been issued a Building Permit for the construction based on the dimensions which he had provided. Mr. Nuzzo explained that the form he filled in was confusing and he had filled in the dimensions incorrectly. According to the information which he provided, no variance would have been needed. Bob agreed that Mr. Nuzzo had made an honest mistake; the form was confusing and has since been revised.

Chairman Annas asked Mr. Nuzzo if he had a survey. In response, Mr. Nuzzo provided several aerial photographs. It was established that the existing structure is eighteen feet from the boundary. The lot boundaries are not straight; it is a pie shaped lot. The Board reviewed the photos and the plan. Chairman Annas ascertained that the construction has been made weather tight and the roofing has been finished. However construction cannot be restarted until the Stop Work Order is withdrawn.

Chairman Annas inquired about the stance of the nearest neighbors. Mr. Nuzzo assured him that they support the project. Paul said that he would like to know the exact distances to the house. Bob reviewed the Code and said that, per Section 143.13.4, the minimum side yard setback would be twelve feet rather than twenty feet. Therefore, the applicant only needs a variance of four feet. Tim said that it would be very helpful if the applicant had a good map of the property showing exactly how far he actually is from the boundaries and how far he will be after the construction. Chairman Annas said it would

also be helpful to have a letter of support from the nearest neighbor. Mr. Nuzzo said that he could obtain letters from his neighbors.

Chairman Annas set the Public Hearing for August 10, 2011 at 7:35P.M.

ADJOURNMENT

Tim Ross made a motion to adjourn the meeting. The motion was seconded by Jim Hegstetter and all were in favor. The meeting was adjourned at 8:05 P.M.

Respectfully submitted,

Sheila Franklin
Secretary