

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
November 9, 2011**

CALL TO ORDER

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

ROLL CALL

Members Present: Nick Annas, Chairman, Kenneth Anderson, Christopher Carney, John Douglas, Paul Marienthal

Absent: Jim Hegstetter, Tim Ross

Also Present: Victoria Polidoro, office of the Town Attorney

PRELIMINARY BUSINESS

Minutes of September 14, 2011 and October 12, 2011: Chairman Annas asked if everyone had read the September and October Minutes and invited comments or questions. Secretary Sheila Franklin said she had received an e-mail from Trilby Sieverding saying that Trilby had attended the October meeting but had not been listed among those present. No other corrections were made. Therefore Paul made a motion to accept the two sets of Minutes with the one correction noted. The motion was seconded by Chris 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.

PUBLIC HEARINGS

7:05 Hearing for Appeal 11-10, Kim & Joe Curthoys application to demolish the existing residence and build a new residence at 183 Country Club Drive with total building coverage of 18%, and 70% open space where the Code allows maximum building coverage of 7% and open minimum space of 80%. The applicants' property is located at 183 Country Club Drive in the RD3 zoning district. Chairman Annas opened the Public Hearing at 7:05 P.M. Mr. Curthoys was present along with his attorney, Mr. Herman Tietjen.

Mr. Tietjen said that the wording of the Appeal should be corrected as the building is not going to be completely demolished; three walls and the roof will be demolished. Those parts of the building which need to be reinforced in order to put on a second story which meets present code requirements are going to be changed. He noted that the Board had previously granted the Curthoys a variance for exactly the same footage. He handed out

copies of plans showing the footprint of the structure. He reviewed these plans with the Board and said that the only new thing will be the garage. Everything else is already on the site. He asked that the Board approve this project again.

Mr. Tietjen reviewed the history of the project, saying that it took the Curthoys a long time to get an architect and subsequently, Mrs. Curthoys became pregnant and had their second child. They therefore did not act on the 2008 variance which the Board had granted. When they reapplied, they were informed that this variance had expired. Chairman Annas confirmed that if no action is taken on a variance, it will expire after eighteen months. In 2008, they had requested to reduce open space from 80% to 70% and increase coverage from 7% to 18%. Chairman Annas confirmed that these figures included the existing studio.

John said that Mr. Tietjen stated that the plans show all the structures which are on the property; however there is a shed on the property which is not shown and which has not been removed. Mr. Tietjen agreed that the shed is indeed on the property and is not shown; however it will be removed when the building is completed. Chairman Annas asked if the plans meet the side yard setbacks. Mr. Tietjen said that he believed they do. He thought that the Board had considered this at the previous Hearing.

The Board discussed the current plans which the Curthoys had submitted. Mr. Tietjen said that parts of the building will be taken down in order to build a secure structure which can carry a second floor. The entire footprint, except for the garage, already exists. The house plan is exactly the same as the earlier sketch which was submitted in 2007 and 2008, he said.

The Board then reviewed the 2007/2008 file. John said that the old plans were very different from the current plans. The 2007/8 request was for a garage and play area addition. That was what was approved. Mr. Tietjen said that the footprint of the house was the same. John said that the footprint has not changed, but the square footage has changed. Mr. Tietjen said that no architectural plans had been made at that time. Only a sketch was submitted and the Curthoys had only a concept then. There was discussion regarding exactly what had been submitted earlier and what had been approved by the Board.

Chairman Annas said that in August the Board had approved the Curthoys' application for increased coverage based on the prior data. However, when the applicant went for the Building Permit it was determined that their plan exceeded the code height limitation. He confirmed that what they are asking for now is only the increased coverage and decreased open space, not a height variance.

The Board reviewed and discussed the records of the 2007/8 approval as well as the August, 2011 approval. Mr. Curthoys said that the new construction is necessary because the construction of the present structure is substandard. The joists and wall frames do not meet present code. The design has been changed so that the new structure can be "green." He said that the coverage of the property was at 11% when he purchased it.

Chairman Annas confirmed that both the earlier and the current plan were for multi-storied structures. The Board continued to review the records of the previous requests. A portion of the Minutes of the August 10, 2011 meeting were read. Chairman Annas said that there is no issue relative to the footprint, but how much new construction there will be above the footprint. Mr. Curthoys said that if the structure is to be secure, it cannot just be an add on. Chairman Annas asked how much taller this will be than the existing structure. Mr. Curthoys did not know. However, he said that other buildings in the area are as high as 35 feet tall.

Chairman Annas said that the current plan is for a two story building with the same footprint. He asked if there were any objections. Paul said that the project should not have been called a play area and garage when what the Curthoys want is a new house. However, he said that he had looked at the site and he had no problem with it.

As Mr. Curthoys owns the adjacent lot, Ken asked why he did not combine the two lots. Then he would not need any variances. Mr. Curthoys replied that he would like the other lot to be available to his wife should anything happen to him. Alternatively, he would like to see the lot go to one of his children.

Chairman Annas then read into the record several letters which were received from concerned neighbors. *Mr. James Mort* objected to the amount of coverage requested and felt that Mr. Curthoys should combine his two lots. Chairman Annas added that the Board has granted variances in the past which have exceeded the current request. As much as 20% to 22% coverage has been granted to other property owners in the area. Another letter of objection was received from *Patricia Troy*. The next letter was from *Patti Mort* and referred to the possibility of combining the two adjacent properties. This letter was also signed by *Karen and Donald Campbell*. The last letter was from *Tom Markunas* and referred to changes in the character of the community. He was also concerned that the Curthoys had not submitted their proposal to the homeowners association. Chairman Annas made it clear that the rules and regulations of the homeowners association are not the purview or responsibility of the Board.

Mr. Victor Basil of 43 Country Club Drive was recognized by the Chairman. He said that he is a neighbor of the Curthoys and is also on the Board of Directors for the Country Club. He said that he had not necessarily come to oppose the proposal; however he would like to find out what was granted and learn about the proposed demolition and construction as he has not seen any plans. He would like to ascertain for himself whether this construction falls within the rules and regulations. He acknowledged that several homes in the area had exceeded what the Curthoys are requesting. Chairman Annas said that it is the responsibility of the Code Enforcement Officer to see that whatever is done conforms to what the Board prescribes.

Mr. Derek Moore, the Curthoys' next door neighbor, said that the drawings which the Board is reviewing were done in April and Mr. Curthoys did not submit them at the time of the August Hearing. Therefore, Mr. Curthoys knew in April that they were not

planning to build just a play area. He was also opposed to the design of the proposed structure.

Mr. Tietjen said that the drawings were in the possession of the Town at the time Mrs. Curthoys came in for the Building Permit. John said that the drawings were not in the possession of the town zoning enforcement officials at the time when the ZBA met in August for the Hearing. They were submitted by Mrs. Curthoys after the ZBA had granted the variance and that raised the red flag that the 35 foot height limitation would be exceeded. The granting of the variance, therefore, preceded the Board having seen the drawings. What you wanted was a new structure and the variance which was granted was for a revised structure. Mr. Tietjen said it would not be a total demolition; they will be taking down three walls and the roof.

Ken asked what would happen to the neighborhood if a similar structure were built on the adjacent lot. Would it look like two extremely large structures side by side. Chairman Annas asked what if everyone else chose to build structures of the same size. Mr. Curthoys then handed out photographs of several large homes in the area. There was discussion leading to the conclusion that the area is evolving from one with only summer homes to a neighborhood with a substantial number of year round houses.

Chairman Annas asked if there were any further comments. Hearing none, he closed the Public Hearing at 8:16 P.M. He said that many of the homes in the area were built prior to code. The property already had 11% coverage when Mr. Curthoys purchased it. There are many precedents for coverage variances in the area. He asked Mr. Basil about the position of the Country Club Board regarding this expansion. *Mr. Basil* said they were concerned. Chairman Annas asked if the Curthoys need permission from that Board. Mr. Basil responded that the protocol requires that the Curthoys submit the proposal to the Board of Directors prior to going to the ZBA. Mr. Tietjen asked if the Board of Directors had acted on the other variances in the area. Mr. Basil said that in some cases, the Board had expressed concern. Chairman Annas again affirmed that this issue is between the Board of Directors and the Curthoys and has nothing to do with the ZBA.

Attorney Victoria Polidoro asked that, prior to making a decision, the Board review the criteria for area variances. Chairman Annas felt that granting the variance would be a benefit to the applicant and would not be a detriment to the community. Building more costly structures cannot be a detriment to the community. Further, there is precedent for granting such a variance as several variances which are either equal to or greater than what the Curthoys are seeking have been granted in the past three years. A structure with a 7% coverage would restrict an owner to a very small dwelling on the lots in the area. Also, granting the variance would be consistent with the manner in which the community has been evolving. Paul pointed out that it would be a detriment if a house of the same size were to be built next door. Mr. Tietjen added that it will not add to pollution as it will be a "green" house. Chairman Annas said that it could be considered to have a negative visual effect on the community. Paul said that it would not be bigger than other houses in the development.

Whether or not it is an undesirable change is a matter of opinion. It is not undesirable because it is consistent with the manner in which the development is evolving. The benefits resulting from granting this variance could be achieved by other means, viz. a lot merger. That point is therefore arguable. The variance would be substantial as it would allow coverage which is more than double the maximum allowed by code. However it is not out of line with other variances which have been granted in recent years. It was considered that every variance which the Board grants is self created.

Chairman Annas informed the applicant that the Board has seven members and since only five are present, four would have to vote in favor of the variance in order for it to pass. He therefore offered the applicant the option of waiting until the next meeting, when there might be more members present. Mr. Curthoys said that he did not want to wait as he felt that he was asking for the same thing as was granted him previously.

Motion to Grant Variance

Paul made a motion to grant the variance as the proposed structure falls within the present footprint as it appears in the 11/9/11 schematic which has been initialed by the Chairman. The existing shed shall be removed prior to the issuance of the Building Permit. No structures other than the proposed house, the proposed garage and the existing studio shall ever be added to the property. The increase from the present 11% coverage to 18% coverage shall be permitted; however no additional coverage shall ever be permitted. Open space can to be decreased from 80% to 70%. The motion was seconded by Ken Anderson.

A roll call vote was taken with the following results:

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

The motion was therefore passed by a 4 to 1 vote.

REVIEW OF APPEAL

9:05 Appeal 11-11, Larry Bennett application to approve eight foot fence already installed in front yard where the Code permits a maximum height of four feet. The applicant's property is located at 4045 Route 9 G in the RD5 zoning district. Mr. and Mrs. Bennett were present to present their case. Mrs. Bennett said that she has been burglarized three times. Although those responsible for the last two burglaries have been apprehended, they walked away with everything in the house. They have been convicted and have been sentenced to two years for burglarizing her home. Mrs. Bennett says she has five children and they put up the fence for security reasons.

Chairman Annas asked Mrs. Bennett if she thought that the fence would prevent further burglaries. It will prevent them from seeing us, she responded. We planted trees and they died. We do have a dog, but the burglars abused the dog. With the fence they cannot see our children or our house. When the first burglary occurred, we were not living in the house because we had had a fire. In each case, no one was at home. Chairman Annas said that this happens frequently after a fire, with our without a fence. Mrs. Bennett said that the fence prevents people from being able to see her children. She said that they planted evergreens, but they did not grow. They even tried transplanting some trees from the back; but they did not thrive. Mr. Bennett said that the fence is a six foot tall stockade fence with two feet of lattice underneath. The lattice enables the Bennetts to see if cars are parked nearby. The fence gives the family a sense of security, he said. The lower part of the fence can be seen from the bedroom.

John asked the Bennetts to bring a diagram to the Public Hearing showing how far the fence is from the macadam. In response to questioning, the Bennetts said that they want to keep the stockade type fence. Chairman Annas asked about the total length of the fence. Mr. Bennett said that it is forty feet on one side and 24 feet on the other side. They have more property, but they just want to block the house.

Chairman Annas set the Hearing for December 14, 2011 at 7:05 P.M.

9:35 Appeal 11-12, Norman Greig application to install a private airstrip across his two lots. One of these lots is only 30 acres, while the Code requires a minimum lot size of 50 acres. Since the airstrip traverses two parcels, a zero foot setback from these two property lines will be required. In addition, since the strip goes right up to Rockefeller Lane and Pitcher Lane, an area variance of zero feet from both of these street lines will also be required. The applicant's properties are located on Pitcher Lane and Rockefeller Lane in the ABD zoning district. Mr. Grieg said that he had been before the Planning Board and they support his proposal. He said that he only uses half of the runway and that he wants a fifty feet setback from the Rockefeller Lane and Pitcher Lane property lines, not zero feet.

Victoria Polidoro said she was present at the request of the Chairman. She distributed a memo on procedure to the members of the Board. She said that she was late in delivering the memo because she has been trying to contact the ZEO in order to understand why Mr. Greig is going for this variance. In the application he says that this is an existing airstrip. If it is a pre-existing airstrip, there is no reason for Mr. Greig to be before the ZBA for a variance. If it is not a pre-existing non-conforming use, then a new application has to be made establishing a new use. Mr. Greig said that it is not a non-conforming use. He said that he was told by the ZEO that he did not have to do anything because it was a pre-existing use. However when he asked for a letter to that effect, he was unable to get one. That is why he decided to come before the ZBA.

Mr. Greig said that no one has complained about his use of the airstrip. Chairman Annas said that the fact that no one has complained does not mean that nobody objects. Most people are afraid to complain. Mr. Greig said that he was told that the airstrip would be

allowed by Special Permit. He said he thought that the Planning Board was going to send a letter to the ZBA. The letter from the Planning Board was included in the materials provided to the members at the start of the meeting and then discussed by the Board. If the runway is to continue to be across two parcels, zero setbacks are necessary in the middle. The runway has been there for a long time, John said. He said that you really need two variances, but as there are two adjacent lots this becomes four variances. Victoria said that the Board should consider the impact on the community. She said that the Department of Transportation has an Aviation Bureau and they require a ten to fifteen foot setback from the roadway.

Chairman Annas expressed concern about the proximity of the airstrip to the Mill Road School and a nursery school. Paul asked where the plane is kept. Mr. Greig said it is in front of the house. Victoria asked Mr. Greig to prepare a Short Environmental Form. He said that he had already done that for the Planning Board. She also asked for an authorization for Mr. Greig to represent the owner, his brother Robert Greig. When Mr. Greig said that he had also submitted that to the Planning Board, the Secretary for the Board was asked to obtain those documents from the Planning Board. Victoria said that the Planning Board had not submitted those documents as they had decided not to do a coordinated review.

It was determined that the ZBA has to do a SEQR. Victoria said that the SEQR can be done prior to the opening of the Public Hearing or the Hearing can be held and it can be done afterwards. She said that under New York State law new airports have to be approved by the Town Board. Mr. Greig said that he did not want his airstrip to be considered an airport. Victoria said that under New York State law, all landing and takeoff strips must be considered airports. If this is a pre-existing, non-conforming use, a letter from the ZEO stating that or variances to establish that must be obtained. Mr. Greig said that it has been used as an airstrip by his family since the 1950's. Mr. Greig said that he did not want his airstrip to be marked as an airport because he does not want any other air traffic there.

John said that Mr. Greig wants to go through this process to insure that future generations will be able to continue to use the Greig airstrip. He should therefore continue this process, but also try to get approval from the Town Board, the Planning Board and New York State. As Victoria had a copy of the NYS application, John asked him to send a copy to Mr. Greig. Chairman Annas said that the Board needs to give Mr. Greig some clear direction. Victoria said that the ZBA needs a letter of authorization from Mr. Robert Greig, the short EAF form and any information which Mr. Greig can provide regarding the environmental impact of his airstrip on the community.

Mr. Greig said that his plane flies about thirty hours a year with about twenty takeoffs and does not have an environmental impact on the community. Chairman Annas said that one of the possible SEQR impacts could be noise. Victoria advised Mr. Greig to find out, in comparative terms, how much noise his plane makes. Mr. Grieg said that it makes less noise than a Harley. He said that he uses the plane for transportation, not for agriculture. One or two other aircraft use the airstrip and they sometimes do seeding.

Chairman Annas set the Public Hearing for December 14, 2011 at 7:20 P.M.

ADJOURNMENT

John Douglas made a motion to adjourn the meeting. The motion was seconded by Chairman Annas and all were in favor. The meeting was adjourned at 10:05 P.M.

Respectfully submitted,

Sheila Franklin
Secretary

FINDINGS AND DECISION

Appeal 11-10, Kim & Joe Curthoys application to demolish the existing residence and build a new residence with total building coverage of 18% and 70% open space.

1. The property is located at 183 Country Club Drive in the RD3 zoning district.
2. Tax Map # 6372-19-731137.
3. The zoning law allows maximum building coverage of 7% and minimum open space of 80%.
4. The applicant is asking for 18% coverage and 70% open space, but is not changing the footprint of the existing structure as it appears in the 11/9/11 schematic which was initialed by the Chairman of the ZBA. The existing coverage is 11%.
5. No structures other than the proposed house, the proposed garage and the existing studio shall ever be added to the property.
6. No additional coverage shall ever be permitted.
7. The existing shed shall be removed prior to the issuance of the Building Permit.
8. Several neighbors have expressed their opposition to the construction of this structure.
9. A variance would be of benefit to the applicant and will not be a detriment to the community as it will be consistent with other variances issued in the area.
10. There will be no detrimental change in the character of the neighborhood as it is evolving from a community of small summer cabins to a community with a substantial number of large, year round homes.
11. 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.

Dated: November 9, 2011

