

## **DRAFT**

### **Town of Red Hook Zoning Board of Appeals Meeting Minutes December 14, 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, Chairman, Kenneth Anderson (for most of Greig Hearing only), Christopher Carney, Paul Marienthal, Tim Ross

Absent: John Douglas, Jim Hegstetter

Also Present: Trilby Sieverding, Alternate; Bob Fennell, ZEO; Victoria Polidoro, office of the Town Attorney

#### **PRELIMINARY BUSINESS**

Minutes of November 9, 2011: Chairman Annas asked if everyone had read the November Minutes and invited comments or questions. A small change on Page 7 had been submitted by Victoria Polidoro. Paul made a motion to approve the Minutes with this small change. 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 HEARING**

7:05 Public Hearing for 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 9G in the RD5 zoning district. The Hearing was opened at 7:05; however no one was present to speak to the issue. Chairman Annas asked Mr. Bennett if he had any comments to make. He said that his home had been burglarized three times and he is trying to keep it as safe and private as possible. He wants to give his wife a sense of security as she is home with their five children. Tim asked Mr. Bennett why he had chosen a height of eight feet when even the side yard height limit is six feet, which is a standard fence height. Mr. Bennett responded that this is what his wife wanted and what made her feel secure.

Tim said that a similar situation had recently arisen with a fence on Rt. 9G. Seven feet was requested and six feet was granted. Paul said that he felt that it would have been better if the fence had been built straight up because now it looks visually jarring. Mr.

Bennett promised to straighten it up if the Board gives its approval. Tim asked if Mr. Bennett had a problem with six feet. He did not feel that there was much to gain in going to eight feet. From a consistency point of view he said that he did not have a problem with six feet. Chairman Annas noted that the home was at one of the gateways to Red Hook and speculated about how bad it would look if everyone chose to build such a high fence. Tim felt that a lower, well maintained fence would do what the applicant wants and could be a little bit nicer than having the area open.

As there were no comments from the public, Chairman Annas closed the Public Hearing at 7:10 P.M.

Motion To Grant Variance

Tim Ross made a motion to grant a variance for a six foot fence in its present location provided that it is installed in a professional manner because it would be a benefit to the applicant and would not be a detriment to the public or the safety and welfare of the community. The motion was seconded by Paul Marienthal.

A roll call vote was taken with the following results:

Nick Annas	Nay
Chris Carny	Aye
Paul Marienthal	Aye
Tim Ross	Aye
Trilby Sieverding	Aye

The motion was therefore passed 4 to 1.

**REVIEW OF APPEAL**

7:17 Appeal 11-13, Eugene Michaels Enterprises (Sidelines Bar & Grill) application for a wall sign of 15 square feet in addition to a free standing sign of 12 square feet for a total signage area of 27 square feet where the code permits one sign of 12 square feet for non-residential uses. The applicant's property is located at 7909 Albany Post Road in the RD3 zoning district. Matthew Michaels was invited to present his project. He said that, although it is a residential district, there had had been a restaurant at that location previously and the permit is still in effect.

Mr. Michaels said that he wants the signage because people drive by quickly and he wants them to know that there a restaurant there. He said that the signs will be aesthetically pleasing. The Board looked at the sketches which Mr. Michaels had submitted. In response to questioning, Mr.Michaels said that he plans to open his restaurant in January or early February. Chairman Annas set the Hearing for Jan. 11, 2012 at 7:05 P.M.

## **PUBLIC HEARING**

7:20 Public Hearing for 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 is across two lots, 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 fifty 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. Chairman Annas opened the Public Hearing at 7:20 P.M. Mr. Greig stated that the Hearing Notice should have stated that he is asking for a fifty foot setback from Rockefeller Lane and Pitcher Lane, not a zero foot setback.

*Amy Dubin*, who lives next door to Greig Farm, asked for clarification of what is being requested. Chairman Annas explained the request. She asked if the airstrip had existed before. Mr. Greig stated that the use has existed for thirty five years. Chairman Annas, however, said that there is no pre-existing use. Bob Fennell, ZEO, said that no pre-existing use has been factually demonstrated. He said that no data has been provided to the Town. Mr. Greig said that no one asked; if anyone had asked, he said, he would have provided data. Attorney Victoria Polidoro said that the ZEO determines whether there is a pre-existing use. In the absence of such a determination, this must be treated as a new use.

*Ms. Dubin* said that she is aware that Mr. Greig has been landing his plane on the field and that he needs a Special Permit to build an airstrip. Her question, she said, is what size plane will this runway accommodate? She also asked whether any other use besides personal use is intended. She said that if a plane was overhead and landed close to her property, she would be frightened. She felt that if there were more than one personal plane, it would be dangerous and frightening and asked if other planes were going to use the airstrip. She said that if other planes were going to use the airstrip, the public should know that. Chairman Annas said that Mr. Greig has stated that the airstrip would be used for his personal transportation and possibly the takeoff and landing of crop dusters. Victoria Polidoro said that once this airstrip is approved, who will use it cannot be ascertained.

Bob Fennell reviewed the relevant section of the code, viz. Section 143.70. It states that: a Special Permit is required; the airstrip must be situated on a lot of not less than fifty acres; no landing or takeoff area shall be closer than 300 feet to any street line or property line; no structure associated with aircraft activity shall be located within 200 feet of any residential property line or street line. Chairman Annas said that once this is designated as an airport, Mr. Greig can then take off or land as many aircraft as he wishes to. Tim said that the FAA has regulations regarding private airstrips. Mr. Greig said that he only wants to fly his own plane. He does not want an airport facility and he does not want to have other pilots use the airstrip. He does not want to register with the FAA because then the airstrip will appear on the map and other pilots may want to use it. He wants the fifty foot setback from the road for takeoff. He uses the other half of the property for landing.

Chairman Annas read a letter from neighbor *Linda Keeling* which stated that aircraft have been landing on the airstrip to go to Gigi's. She said that the use is a new use and is less than four years old. She therefore felt that the use should not be grandfathered. She also said that the airstrip has been used by private planes landing to buy goods from the Greig Farm Market which is now rented by Gigi's. She said that the larger planes seemed to have some problems during lift off and the airstrip seemed a little short for landing. Ms. Keeling was present and added that her primary concern was whether other planes would be using the facility.

*Matthew Nucci* of 222 Pitcher Lane said that he is very close to the properties in question. He stated that his concern was also with the other planes which would be landing there. He said that although Mr. Greig has stated that the noise is no greater than that made by a Harley Davidson, it is actually louder. He also said that debris gets blown onto his property when the aircraft takes off and lands. He was concerned about what would happen if the airstrip were on the map,

*Amy Dubin* said that Mr. Grieg is a responsible and caring neighbor; however she was concerned about distance from agricultural buffers. The relationship between residents and agriculture should not be uncomfortable and this is a very uncomfortable relationship. This is a situation in which we really need setbacks to deal with noise, dirt, traffic, oil and safety. Once you grant permission for an airstrip, you are opening up the possibility of a whole range of activities. For these reasons, she concluded, we need to follow the letter of the law.

Neighbor *Debbie Gillen* said that although her neighbors received the Notice of Public Hearing, she did not. A search of the record revealed that the Notice had been correctly mailed to her address, but had been returned by the Post Office. She was concerned about the possible effect of the airstrip on the value of her property and on her taxes. She was also concerned about other planes landing on the airstrip and about noise, traffic and the possible use of runway lights. Ms. Polidoro said that Mr. Grieg has stated that he wants the airstrip only for personal use. Mr. Grieg added that if other pilots wanted to use the airstrip, he would refuse them permission to do so. Bob Fennell said issues such as lights and towers would be the purview of the Planning Board. Ms. Polidoro said that there are several steps which have to be taken before this airstrip can be approved: the Planning Board has to issue a Special Use Permit; the ZBA has to approve the setbacks and the Town Board has to issue an approval.

*Amy Dubin* asked what size plane could be accommodated by this airstrip. Mr. Greig replied that it would accommodate fixed wing single engine planes; it would not accommodate jets, turbo-props or helicopters. Ms. Polidoro noted that variances run with the land; therefore if the property were ever sold, the variance would still stand.

The Chairman recognized *Peter Klose*, attorney for *Mr. and Mrs. Cohn*, neighbors on Pitcher Lane. He said that the Board should not be considering this issue at this time. He said that although it has been described as an airstrip, it is not an airstrip. Under the New York State General Business Law and the regulations of the Department of

Transportation, it is an airport. An airport is defined under Section 75.1 as any landing area regularly used by aircraft for retrieving or discharging passengers or cargo or providing takeoff to be used for personal or training purposes. This is an application for a Special Permit to install a brand new airport. The state regulations stipulate height requirements, buffers, safety zones, etc.

We have to start at the Town Board level, Mr. Klose said. The Town Board has to look at their comprehensive Master Plan and say that they want to have an airport at that location. Based on that comprehensive Master Plan, Mr. Klose felt that the Town Board would say that they do not want an airport at that location because the Town has already looked at airport locations in this zone and has said that there is only one parcel capable of handling an airport and that is Sky Park, not the Greig Farm. Ms. Polidoro said that although the Town did approve of the use of Sky Park as an airport, that does not mean that the Town decided that no other parcel in the ABD Zone should have an airstrip.

Mr. Klose said that the setbacks are all hypothetical because we do not know what the DOT will require. The DOT specifically sets forth the regulations regarding every detail of an airport. What we have before us, he said, is a hypothetical, potential airstrip for use by one potential plane which could be extended to any other use. This application should not be considered or it should be denied and the applicant should be sent to the Town Board for consideration of whether this is an appropriate use.

Chairman Annas asked Ms. Polidoro if she agreed and felt that the Board is premature in considering this application. She said that she respectfully disagreed with Mr. Klose. When the Town Board considers this application, they will have the obligation to refer the application to the DOT who will then conduct a technical review of the airstrip and determine whether it meets the requirements of the FAA and the DOT. That kind of review would be very helpful to this Board in making its determination. However the Board is obligated to review the application. It would be helpful if an application could be made now to the Town so that it can be referred to the DOT and this Board could have the response of the DOT to consider in making its determination. As an alternative, she said, the Board could refer the application to the DOT for comments; however there is no guarantee that the DOT would respond.

Chairman Annas said that it is difficult for the Board to rule on an issue where safety is one of the primary concerns because the Board is not expert on the issues associated with airport runways. Mr. Klose said that the Board does not even know what this is about because there are no maps, diagrams or surveys. It is all hypothetical.

Tim said that he did not have an issue with the Board reviewing this application because it is a special permitted use in the zone. If a variance is issued, the Board can put conditions and constraints on it. There is an advantage in coming to the Board because the Board can place restrictions on a variance. Mr. Klose cited sections of the law which stated that Town Board approval of an airport is required. He said that you cannot approve of something without a site plan in front of you. Ms. Polidoro said that the Board does have a map and Mr. Grieg has been asked for additional information which has not

been provided. Mr. Greig said that he had submitted a packet of information. It was ascertained that this packet had been mailed to the ZBA members.

Mr. Greig stated that the FAA does not require a Permit for a landing area which is only used occasionally. Ms. Polidoro said that the FAA is a federal agency. It is the state Department of Transportation which has to determine whether or not this is a safe location and whether or not the setbacks which are proposed can be used safely. Mr. Klose said that the first step under the law is Town Board approval. We are not even sure where the exact location of the runway is. We have no specifications for shoulders, flight paths or anything else. There are no facts in front of this Board. We have a hand drawn map on a tax map.

*Paul Kappel* was recognized. He lives at 232 Rockefeller Rd., across the street from Mr. Greig. He said that he has no problem with what Mr. Greig is doing. Mr. Greig has been his neighbor for twenty years and he has watched him land his plane. That part of the property looks better than rest of the property. The flight path that goes over the field goes across the road. He said that he has never seen Mr. Greig land low over the road. There is some noise, but not a lot of noise. It is not noisier than some of the farm tractors.

Paul Marienthal said that the problem is not with Mr. Greig's personal use of the airstrip; the problem is that the force of law turns this property into an airstrip in perpetuity. Trilby said that all the families which had their properties put in the Agricultural Business District have sacrificed their property rights and their land values and were told that if they were in the ABD they would have opportunities to use their land in other ways to make up for the loss. One of those ways was to have a private airstrip with a Special Permit. This was an existing use and, although other approvals have to be obtained, the ZBA is here to review the variance for the setbacks.

Mr. Klose said that he felt that if an airstrip is approved it will be reassessed as an airport and not as an agricultural use. Mr. Greig would then lose his agricultural exemption. Mr. Greig responded that Ag and Markets would defend this as an agricultural use. *Amy Dubin* said that Sky Park, as an airport, was taken out of the Ag District. She said that a Special Permit is not an allowable use. As a property owner, she said, her property value has plunged. Once it is on the map and once it is an allowable use, it has the potential for radically changing the character of the neighborhood. In addition, it will run with the land. Therefore it needs to be reviewed by the Town Board.

Bob Fennell said the Mr. Greig has not demonstrated that he has a prior non-conforming use. Mr. Greig said that he went to the ZEO to discuss the issue and was told not to worry about it. However, he thought it over and came back and asked for a letter stating that he had a prior non-conforming use and was told that he needs a Special Permit. He was referred to the Planning Board and the Planning Board said he needed a variance from the ZBA.

Chairman Annas asked Mr. Greig if he felt that he could establish a pre-existing use. Mr. Greig said that he could show aerial photos which were taken over the years. Chairman

Annas said that if Mr. Greig can get a letter from the ZEO or otherwise establish pre-existing use, then the application is moot. Mr. Klose said that this is not a proper application; the application presumes that there is no pre-existing use here. This application should therefore be withdrawn and a new one submitted. Mr. Greig said that the Greig Farm has many different parcels and although there has been continuous use over the years, different parts of the farm were used as an airstrip over the years. Trilby asked how you can tell if it has been used as an airstrip if it is a hayfield. There is no way to know that.

Mr. Klose said that this is a hypothetical exercise because we do not know what the FAA will decide. Ms. Polidoro said that the Board should get a DOT opinion as to whether or not this airstrip meets their basic requirements. However they may not respond unless the request comes from the Town Board. A SEQR Review also will have to be done.

Chairman Annas said that he felt that the Board should seek an opinion from the DOT as to whether an airstrip is appropriate or whether the buffer zone between the public thoroughfares will be adequate. Since Mr. Greig is taking off across a public thoroughfare, he asked about what would happen if a takeoff had to be aborted. Mr. Greig felt that he has enough space to deal with any contingency.

Mr. Klose said that it would be premature for the Board to make a decision based on the scanty information which it now has. The Town Board should refer the application to the FAA. Mr. Greig responded that the FAA does not require this if the airstrip is only used intermittently. Tim said that what Mr. Greig is asking for is a variance so that he can go forward with the procedure of the formal review with the Town Board and the Planning Board for Special Permit. We do not do the technical review. That is the purview of the Town Board. If we give him a variance, he still has to go before the Planning Board. Ms. Polidoro said that the Board does have to decide whether the variance can be done safely.

*Mr. Nucci* asked what would stop other planes from landing on the airstrip. *Amy Dubin* said that this is a highly regulated industry. There are technical regulations for takeoff and landing which must be adhered to. *Debbie Gillen* said the landing path is close to the houses and she was concerned about accidents in an area with a considerable amount of road traffic.

Ms. Polidoro said that she is not sure that there is enough information for the Board to make a decision. Chairman Annas said that the Board cannot shorten a buffer area without having knowledge of what the impact of that action would be. Tim said that in any case, Mr. Greig has to go to the Town Board. Ms. Polidoro said that the Town Board can obtain the technical review and the ZBA would benefit from having that technical review. Mr. Klose said that Mr. Greig should withdraw his application and go to the Town Board. Mr. Greig said that he will not withdraw his application; he wants the ZBA to take action. Chairman Annas said that the Board will continue the Hearing and have the Town Board go to the DOT if they feel that they will approve the application at some point. With that information, this Board can then act on it more appropriately.

*Linda Keeling* asked if she could get a map showing where the airstrip will be located. She also expressed her concern about the variance going with the land and the property becoming an airport.

To allow time for the DOT to respond, Chairman Annas continued the Hearing until February 8, 2012 at 7:05 P.M. He said that he would refer the matter to the Town Board and ask them to seek an opinion from the DOT. Ms. Polidoro asked Mr. Greig to submit any relevant information to the Town Board so that they can forward it to the DOT.

Motion to Continue Hearing

Tim Ross made a motion to continue the Hearing to February 8, 2012 at 7:05 P.M. The motion was seconded by Chairman Annas. A roll call vote was taken and all were in favor.

Motion to Go Into Executive Session

Tim Ross made a motion for the Board to go into Executive Session with town counsel Victoria Polidoro to discuss how to go about requesting information from the DOT and how to put together a concise plan of action for the applicant. The motion was seconded by Chairman Annas. A roll call vote was taken and all were in favor.

Motion to Return to Normal Session

The Board returned from Executive Session at 9:20 P.M. and Tim Ross made a motion to return to normal session. The motion was seconded by Paul Marienthal. A roll call vote was taken and all were in favor.

Motion to Refer Application to Town Board

Tim Ross made a motion for the Chairman to write a letter to the Town Supervisor requesting that the Town Board ask the DOT to review this application for a private airstrip. At the same time information will be forwarded to the applicant to provide the necessary information for him to give a complete application to the DOT. The applicant is requested to provide the Town Supervisor with this information so that she can refer it to the DOT. The motion was seconded by Paul Marienthal. A roll call vote was taken and all were in favor.

Motion to Classify the Action as an Unlisted Action under SEQR

A motion was made by Chairman Annas to classify the action as an unlisted action under SEQR. The motion was seconded by Tim Ross. A roll call vote was taken and all were in favor.

## **ADJOURNMENT**

Chris Carney made a motion to adjourn the meeting. The motion was seconded by Chairman Annas and all were in favor. The meeting was adjourned at 9:45 P.M.

Respectfully submitted,

Sheila Franklin  
Secretary

## **FINDINGS AND DECISION**

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.

1. The property is located at 4045 Route 9 G in the RD5 zoning district
2. Tax Map #134889-6172-00-470293
3. The zoning law allows a maximum fence height of four feet.
4. The applicant is asking for approval of an eight foot fence which has already been installed.
5. Approval was granted for a six foot professionally installed fence.
5. There was no opposition to the applicant's proposed fence.
6. 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.
7. There will be no detrimental change in the character of the neighborhood.
8. There will be no impact on the health, welfare or safety of the community.

**DECISION:** Tim Ross made a motion to grant the variance based upon the above findings. The motion was seconded by Paul Marienthal and carried by a 4-1 roll call vote.

Dated: December 14, 2011