

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
July 11, 2012**

CALL TO ORDER

The meeting was called to order at 7:15 P.M by Chairman Nick Annas.

ROLL CALL

Members Present: Nick Annas, Kenneth Anderson, Christopher Carney, Paul Marienthal, Tim Ross

Absent: John Douglas, Jim Hegstetter

Also Present: Victoria Polidoro, office the Town Counsel

PRELIMINARY BUSINESS

Minutes of June 13, 2012: Chairman Annas noted that the Minutes had not yet been done due to the illness of the Secretary.

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

7:15 Appeal 12-07, Jakob Cirell application for an interpretation of Section 143-41 (D) (4) of the Town Code which lists allowable farm industries and businesses on farms in the RD3 zone. Mr. Cirell wishes to establish a small brewery at 214 Oriole Mills Road, Tax Grid #6371-00-397857 in the RD 3 zoning district. Chairman Annas opened the Public Hearing at 7:15 P.M. He explained that the Board is neither going to grant or deny a permit for this operation. The purview of the Board is to make an interpretation of the current Town Code. The Building Inspector feels that the language is somewhat vague. Chairman Annas noted that the operation which Mr. Cirell is proposing is a small operation, starting out with 900 gallons of beer. He proposes to increase that two or threefold in the coming years. Still, that is not a lot of beer. There are other farms in the Town of Red Hook which ferment products on premises, he said, e.g. Montgomery Place Orchards and others.

Chairman Annas then called on Mr. Cirell to give a brief overview of his proposal. Mr. Cirell said that he plans to open a very small brewery. He plans to brew 75 barrels in the first year, the equivalent of about 140 kegs. The Hyde Park Brewery probably makes over 300 barrels a year. So what I am proposing, he said, is just a fraction of what most local breweries make. I plan on using NYS agriculture and a malting operation in Hadley, Massachusetts. I plan to source the hops locally, perhaps at Rokeby Estates and/or Bard

College, but also to grow some of these products. Locating the brewery on a farm will allow me to grow some of these products on site. The waste product is perfect for livestock feed. With 75 barrels of beer, there would be about 2,000 pounds of animal feed. With that amount of feed, you could support 150 chickens.

The idea is to build a brewery and build a farm around it. Bob Fennell, ZEO, looked at the zoning law for the RD3 zone and thought that it could be considered an industry. However the processing of locally produced agricultural products is allowed there. Mr. Fennell felt that there was a vagueness in the word "processing." However in my opinion, Mr. Cirell said, beer is a process. Mr. Fennell also felt that "locally produced agricultural products" was also vague. Since I am buying hops within the town, Mr. Cirell said, that is certainly local and under the USDA Farm Act of 2008, local is defined as any product grown within a state or within a 400 mile radius. Therefore, he concluded, he felt that he would be operating the brewery within the parameters of the zoning law.

Mr. Cirell then said that he would like to bring to the attention of the Board that in 1999, Appeal 4-99, the Board made a decision to locate Allison Winery (on the Greig property) in the RD3 zoning district. The plan they had was to set up a vineyard on fifteen acres and use those grapes to make wine. The Town agreed to this plan and thought it fit the description of a farm industry as per the zoning code. He then assured the Board that this will not be a huge brewery. The wells and the drainage on the property cannot support a large brewery, nor can the land area or the location.

Mr. Cirell said that his plan is to apply to the NYS Liquor Authority for a microbrewery license. One of the laws regarding operation under such a license applies to sales. Most sales will be at farmers' markets, e.g. in Rhinebeck, Red Hook, Saugerties, etc. On premises sales are also permitted under the microbrewery license, as well as tastings and tours. I do not intend, he said, to open up a drinking establishment and under the law I cannot sell alcohol to be consumed on the premises. My tastings are not going to involve a huge festival. He said that he believes the enterprise could be very successful. He also felt that it could help support the burgeoning hops industry in NYS as well as the grain industry.

Attorney Victoria Polidoro asked if Mr. Cirell had obtained an authorization to represent the owner. When it was ascertained that this had not been done, Ms. Polidoro said that the Board could not take action until it had the authorization. Chairman Annas said that since the Board does not have formal authority from the owner, the Hearing must be continued until August.

Chairman Annas said that the Board had received many letters of protest, some of which had been mailed to the Board prior to the Hearing and several of which had been handed to the Board after the Public Hearing was opened today. Due to the number of letters received, he did not read them into the record. He asked if anyone present was in favor of the brewery. Hearing no responses, he then invited the public to speak, ask questions or provide comments.

Michael Shapiro said that he had submitted the legal opinion of attorney John Adams. As it was ascertained that all the members of the Board had the document, Mr. Shapiro returned to his seat in the audience.

Judy Fox, Executive Director of Camp Rising Sun was recognized. She said that she had submitted a letter and pictures. She said that she was accompanied by the Camp Director, the Assistant Director, a past Board President, the Facilities Manager, the Chair of the Buildings and Grounds Committee and several alumni of the camp and the Board can address any questions they may have to these people. Camp Rising Sun is a close neighbor to the proposed brewery.

Ms. Fox said that when she received the letter about the Public Hearing, her first reaction was concern about the children who are out on the road all the time and the fact that there is a very sharp curve in front of the property. She said that any enterprise which would bring more traffic worries her as her number one concern is the health and safety of the children. She said that there are sixty teen age boys at the camp from 14 to 16 years old who come from all over the world. She said that the camp has activity centers on both sides of the road. The camp has a long history; it been there since 1930.

She said that her curriculum is centered on responsible leadership and caring about one's fellow human beings and the environment. Now a commercial process is being introduced into this residential district. There will be odor impact, traffic impact, sewage impact, materials which have to be disposed of beyond the property, truck and pedestrian traffic. What kind of message, she asked, are we giving our boys? We try to introduce a lifestyle and model of living and learning from one another and not having to derive your fun from the kinds of things which young people today frequently engage in to have fun. I worry about what message it sends to children to have an alcoholic beverage enterprise so nearby, she said.

Ms. Fox said that she also worries about the influence of people visiting this establishment who do not have a commitment to the immediate neighborhood. There is a potential for unintended things to occur. The character of the neighborhood should not be changed based on a business plan which is not compliant with the law. The matter is before this Board because there is a question as to whether or not this property is intended for the purpose which is proposed. If this area is not specifically designated for this purpose, it should not be used for that purpose. She concluded by referring the Board to the maps and photographs which she had submitted. The maps show that the boys must cross the road several times during the day and evening in order to engage in the program.

Dr. Robert Mellins, pediatrician and former Director of the Board of Camp Rising Sun, was recognized. He said that he had been a camper, then a counselor, member of the Board several times and then served as President for three terms. He said that the Camp is proud that the boys are taught responsible leadership and moral behavior. They are taught to be exemplars and to avoid drugs and other harmful substances. To have a brewery with the odors and the potential for contamination and waste next door is a travesty. He

emphasized his concern for the health and safety of the boys. He questioned whether a facility with the history and the principles of Camp Rising Sun should have to contend with a brewery next door.

Steven Bang, alumnus and former Facilities Manager of Camp Rising Sun, was recognized. As caretaker for many years, Mr. Bang said that he lived on the campus. He said that he wanted to speak for a lot of people who are not present. Oriole Hills Road is a real asset to the community. It is a fully shaded country lane on which people walk, bicycle ride, jog, dog walk, walk and cross country ski. It should not be jeopardized.

Neighbor *Cathy Grande* said that she would like echo the points made by Ms. Fox. The road is not wide enough to support a venture such as this, she said. There is currently an operation being run in that facility and there are trucks on the road constantly. She felt that this upsets the neighborhood. Families walk up and down the road, walk their dogs and like to spend time in their yards. It is a very rural area. This kind of operation, as well as the one currently being operated from that facility, pose a danger to the residents of the area. I do not want to see the area become more commercial than it currently is. Therefore, she concluded, the brewery operation should be not be allowed. She said that she has lived in the area for 35 years and this is the first time she has felt intimidated.

Brian Williams was recognized. His property is adjacent to the Bodian property on which Mr. Cirell proposes to build the brewery. He said that a brewery operation uses approximately 7.8 gallons of water per gallon of beer made. The brewery will be at the head of the stream and will produce more waste water than a common household. And when production increases, this problem will be intensified. Several neighbors have already had problems with waste water. What happens to the stream is a concern to me, he said. Mr. Bang also felt that the land was not very good for farming. Further, he said that he was also concerned because Mr. Cirell does not own the land. If he leaves tomorrow, what kind of a legacy does he leave behind? Mr. Williams also expressed concern about the beautiful waterfall on that road. In conclusion, he said that he was concerned with what this would do to the stream, the traffic and the effect it will have on the neighbors, especially the Camp which he said had been a wonderful neighbor.

Chairman Annas said that the applicant plans to produce about 900 gallons of beer a year. Mr. Bang stated that it takes up to twelve gallons of water to produce a single gallon of beer. That is about 10,000 gallons of water. That's what a typical household will use in three months, Chairman Annas replied. It is not a large quantity of water. Mr. Williams responded that he is worried about what future production will be. It might involve 30,000 gallons of water. Also, neighbors are already having problems with water. Chairman Annas said that 30,000 gallons of water is less than what a typical household uses in a year. Mr. Williams said that the location near the stream is his main concern.

Attorney Victoria Polidoro said that a lot of the issues being raised are actually the purview of the Planning Board. The issue before this Board is whether or not this is a farm industry. Mr. Williams felt that this was a grey area. Chairman Annas said that Bob Fennell felt that the area was grey enough that he could not issue a Permit. He

emphasized that the Board was not going to grant or deny permission for the brewery to be established; it is simply going to offer an interpretation as to whether or not this is a permitted use. If the interpretation is favorable for Mr. Cirell, he must then go to the Planning Board.

Harvey Cohn said that for fifty years he has been living at 211 Oriole Mills Rd., across the street from the proposed brewery. He said that he is committed to maintaining the environment and the character of the neighborhood. He expressed concern that Mr. Cirell is not the owner of the property. He said that Mr. Cirell keeps calling the property a farm; however the property has never been a farm. No type of grain or hops have ever been grown there. The only agricultural use of the property was horse boarding, which was a recent enterprise and is no longer operating. At this time, the property is being used by Rhinebeck Party Rentals, which is an illegal use and there is presently a zoning violation on the property because of that use.

Mr. Cohn questioned whether the Board should be hearing any kind of interpretation when there is an active violation on the property. He also questioned why this proceeding is under Mr. Cirell's name when the landlord is Mr. Bodian. Mr. Cirell said that Mr. Bodian did not know he was supposed to be here. Mr. Cohn said that as Mr. Bodian is the owner of the property, he should appear. He said that there has been nothing but problems since Mr. Bodian purchased the property in 2004.

The zoning section cited by Mr. Cirell, Mr. Cohn continued, speaks of farm industry as an accessory use. If you look at the definitions of farm industry in the Code, you will see that a farm industry is to be conducted by the farm operator. Mr. Cirell is not the farm operator. It is supposed to be incidental and secondary to the farm use, which it is not as there is no farm there. The brewery will be the primary use. Section 143.4 of the Code say that the objective of a farm industry is to expand the income of a farm throughout all seasons. This is a misuse of a clause which is meant to help legitimate farmers. It is supposed to provide additional income to legitimate farmers, not to offer a loophole to put a commercial use in a residential district.

Mr. Cohn further said that the town's open space plan specifically seeks to keep existing space undeveloped to avoid urban sprawl. Any economic or tourist value of such an operation as a brewery would be much greater in one of the existing villages or a previously developed area. It should not be in a residential district. Mr. Cohn also questioned whether there is a valid CO for some of these buildings. He asked that the Zoning Board speak to the ZEO and have him check out the large abandoned building to the right of the driveway. It has been in an abandoned state since 2004. He said that it is his understanding that a party rental business has been operating from that location and he expressed concerns about the septic system and about the safety of anyone working in that building. Chairman Annas said that these issues are the purview of the Building Inspector, Steve Cole and any legitimate complaint should be brought to him.

Deborah Barrow was recognized. She said that it is her understanding that the zoning code of the town has established specific areas for agricultural business and this area is

not included. She felt that this business would hurt the residents of the area and would pose safety problems. The road is nearly a one lane road with a cliff on one side and, at another point, a camp on both sides. It is not a good place for an agricultural business. The traffic on that road is dangerous and in the winter there is no place to move over. We cannot have any more traffic on that road. Further, a precedent should not be set by starting any kind of commercial activity on any RD3 property. Today it will be a few gallons of beer; who knows what it will be tomorrow. Also, the Town of Red Hook has spent the greater part of this summer doing construction and repair due to run off from the creek.

Christopher Lindner of 192 Oriole Mills Road was recognized. He questioned whether the property is a farm. It is not in the Red Hook Agricultural Business District; it is in the Ag 20 District where farm industry is not permitted. For it to become a brewery, it would have to be a working farm first. No crops have been grown there for fifty years. There are very specific state laws which define what is a horse boarding operation. To qualify as a farm, at least ten horses must be boarded making ten thousand dollars a year on ten acres. We have talked to the horse boarders who were there until they were forced to leave, Mr. Lindner continued, and were told that they had seven horses on three acres. Therefore it does not qualify as a farm due to the horse boarding. Could it become a farm, Mr. Lindner questioned. It could, he said, but it can't become a brewery because it is in a district where a brewery is against the law. It is clear that under the law it does not qualify. It is a light industry. It is in the RD3 district which has many historic houses as well as Camp Rising Sun. Any commercial venture in this scenic rural setting would betray the spirit and values of the local citizens. In sum, this is not now a farm and a brewery cannot be operated there now or in the future according to Red Hook zoning law.

Chairman Annas asked if anyone else would like to speak. Hearing no response, he recognized Mr. Cirell. Mr. Cirell said that he appreciated hearing everyone's opinions. He noted that as it had once been a horse boarding facility, that would have brought traffic to the area. If anything were to be operated on that property, whether it be a farm or a brewery, there will be an increase in traffic. Crops, feed and fertilizer will be taken in/out. If you don't want traffic, the land will continue to be the mess that it is.

Mr. Cirell said that he understood the issue of the morals relative to having alcohol near the camp. But while he understands and respects these opinions, he said that people have been drinking beer for centuries. Many of the founding fathers were brewers. Relative to the waste water concern, Mr. Cirell said that a brewery consumes a lot of water and he plans to bring numbers when he goes before the Planning Board. He said that the cleaners to be used in the brewery will be eco-friendly detergents which will go into the septic tank/drainage system. The waste water will not have chemicals in it.

John Calderon, licensed architect, was recognized. He said that he volunteered as Chair of the Buildings and Grounds Committee for Camp Rising Sun. As a licensed architect, he said, he is liable and responsible for the maintenance and safety of the buildings and for following the local zoning ordinances and building codes. He said that Mr. Cirell talks about the brewery as being accessory to the farm. The farm should not be subsequent to

the accessory. Further, the section of the code in question is not a grey area. The applicant does not meet the requirements of the zoning ordinances. Mr. Calderon said that the applicant's request should not be granted. Such a variance or waiver is only intended to be granted in very rare cases when there is overwhelming evidence that the applicant does not have an equal alternative. As this is not the case, the Board should not rule in Mr. Cirell's favor, he concluded.

Chairman Annas stressed that the applicant has asked for an interpretation and that interpretation will stand not only for Mr. Cirell but for any future applicant. *Mr. Calderon* said that this is even more of a reason why it should not be granted. Chairman Annas clarified that this is an interpretation, not a variance. Mr. Cirell said that a similar interpretation had been made by the Board for the Allison Winery at the Greig Farm.

Charles Lindner said Greig had a permit from Ag & Markets on the state level. This application clearly could not receive such a permit as this would require that at least half of the grain and hops would have to be grown on the farm. The soils on this property are thin. The good soil which was there has eroded. What is left is shale bedrock. It is very infertile ground. It is very unlikely that any farming could take place there at this point. It will not meet the state requirements either to be a farm or to have a microbrewery.

Deborah Barrow said that prior to establishing the Allison Winery, Greig Farm was a thriving farm and cannot be compared to Mr. Cirell's property. Mr. Cirell replied that one cannot say that this property can never become a farm.

Mr. Lindner said that 80% of TLC acreage is in timber management until at least the year 2019. He said that he spoke to the DEC and they told him that it does not qualify as a farm. At the state level, you cannot say that you are a farm because you are preserving trees. The DEC stopped logging operations there three years ago and eighty acres were put into a timber preserve. So farming would have to be on a very small portion of the land which is severely eroded.

Motion to Continue Public Hearing

Tim Ross made a motion to continue the Public Hearing to August 8, 2012 at 7:20. The motion was seconded by Ken Anderson and all were in favor. Chairman Annas said that the Board needs time read and digest all the information which has been submitted.

ADJOURNMENT

Tim Ross made a motion to adjourn the meeting. The motion was seconded by John Douglas and all were in favor. The meeting was adjourned at 8:20 P.M.

Respectfully submitted,

Sheila Franklin
Secretary