

**APPROVED**  
**Town of Red Hook**  
**Zoning Board of Appeals Meeting Minutes**  
**August 8, 2012**

**CALL TO ORDER**

The meeting was called to order at 7:06 P.M by Chairman Nick Annas.

**ROLL CALL**

Members Present: Nick Annas, Kenneth Anderson, Paul Marienthal, Jim Hegstetter, Trilby Sieverding

Absent: John Douglas, Tim Ross, Christopher Carney

Also Present: Victoria Polidoro, office the Town Counsel

**PRELIMINARY BUSINESS**

Minutes of June 13, 2012: Chairman Annas asked if everyone had read the June Minutes and invited comments or questions. Hearing none, Ken made a motion to approve the Minutes as written. The motion was seconded by Jim and all were in favor.

Minutes of July 11, 2012: Chairman Annas asked if everyone had read the July Minutes and invited comments or questions. Hearing none, Jim made a motion to approve the Minutes as written. The motion was seconded by Ken and all were in favor.

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

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

**REVIEW OF APPEAL**

7:09 Appeal 12-08, Mitchell Bodian application for an interpretation of Section 143-41 (D)(4)(a) of the Town Code regarding whether storage should be permitted on a farm. Mr. Bodian has been ordered to remedy the following violation of the Zoning Law by June 23, 2012: use of this property for the storage of party rental equipment and supplies and commercial dish washing. The applicant's property is at 210-214 Oriole Mills Road, Tax Grid #6371-00-398857, in the RD3 zoning district.

Amanda Bodian is representing Michael Bodian and has come forward for an interpretation of the Law. Chairman Annas said that there would be no interpretation of this tonight and explained that the way the process goes is to review the application and try to get whatever additional information the party wants to provide to the Board. All adjacent landholders who border within 300 ft. the parcel will be notified by certified mail of the public hearing to be held the following month. At that time the information is digested and hopefully a ruling will be made.

Ms. Bodian apologized and said that she thought that she was going to get an explanation on this and asked if the Board wanted additional information on this.

Chairman Annas said the Board wants whatever information she can give them to support her application. He explained that she has been denied the permit and said the interpretation he received from the Code Enforcement Officer is that this is an illegal operation. She received a Notice from the Officer to cease and desist on that activity and Chairman Annas is of the understanding that Ms. Bodian is actually continuing that activity.

Ms. Bodian thought that the Board was looking for an explanation on that before they could digest it. Chairman Annas responded “No” to that and stated that the Public Hearing on this would be held on September 12<sup>th</sup>. They will be put on the docket for 7:05 p.m. Chairman Annas explained that, if everything goes properly, a ruling will be made at that time and they will either get an acceptable interpretation or one that will deny her the permitting process. He also informed Ms. Bodian that this Board will neither issue nor deny the permit – that is not the Board’s responsibility. They are simply going to rule whether or not that is an acceptable use of the property and from that it will have to go to the Planning Board. Chairman Annas explained that, in the meantime, they have to cease those operations. Ms. Bodian asked for an interpretation again.

Chairman Annas read the June 1, 2012, letter from Bob Fennell regarding the May 31, 2012, site visit which was to determine if Rhinebeck Party Rentals use of the property complied with the provisions of the Town of Red Hook Zoning Law. Bob Fennell stated in his June 1 letter that under Section 143 no business and commercial uses are permitted by the District’s Schedule of Use Regulations and ordered and directed the parties involved to comply with the Zoning Law of the Town of Red Hook and to remedy this violation on or before June 23, 2012. Chairman Annas asked Ms. Bodian if she had seen this June 1 letter. Ms. Bodian replied that TLC Corporation is her husband’s business – he is one of the partners and she had not seen that letter.

## **PUBLIC HEARING**

7:20 Continuation of Public Hearing for 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 RD3 zoning district.

Chairman Annas opened the meeting to public comment.

*Harvey Cohn* of Oriole Mills Road was recognized and asked at what point does this get stopped. This is being continued because the owner was not present at the last meeting, he is not present here again and asked how many nights do he and his neighbors have to keep coming out. He questioned at what point does the Board say “stop wasting our time” and move on?

Chairman Annas replied that, to his knowledge that does not happen.

*Attorney Victoria Polidoro:* I am sure there is going to have to be a process of serving the owner to make this official. We need to make sure that he understands that he is being requested here by certified mail and there will have to be some kind of response.

*Judy Fox, Executive Director of Camp Rising Sun* was recognized and noted that she was present at the last meeting. It was made abundantly clear and very specific that the owner needed to be the one to petition for the interpretation. If the owner chose not to be present and chose not to provide the authorization that Chairman Annas very clearly articulated was required, does it not suggest to the Board that the owner, by inaction, is not really interested in pursuing this? Might that not empower the Board to make that assumption and move forward on that basis?

*Attorney Victoria Polidoro* replied that this is the first time that she has ever come across the issue of not having the party present and not having an owner's consent form.

Chairman Annas questioned Ms. Bodian as to why she was present at the meeting this evening and she responded that she is present for the 12-08 Appeal regarding Rhinebeck Rentals. Ms. Bodian said that Mr. Bodian has been away for a week and they had talked about her coming to this meeting. Chairman Annas asked if Mr. Bodian said anything to her about the fact that he needed to have an authorized representative present and she said no.

Chairman Annas commented that he spoke to Mr. Bodian and he stated that he could not make the last meeting for some reason and he had all intentions of being here at this meeting.

*Attorney Victoria Polidoro* noted that public comment can still be taken and the Board could still review whatever it is that the Board wanted to review – the Public Hearing needs to be continued until the next meeting and if we don't get the owner's consent by that time, we will have to discuss it then.

Chairman Annas presented the Draft of the Determination regarding the Appeal by Jacob Cirell consisting of a list of facts in this case which he will read and unless someone denies them, then they will stand as facts for this case. These are based on the data that were collected from the Public Hearing, data collected by submitted comments from the public, information collected by Jacob Cirell and information from the Board Members that viewed the property.

*Susan Lindner* was recognized and stated that she thinks if they are facts that have been collected from the last hearing that it might be beneficial to those that are present for this to hear what those facts are. She was not present at the last meeting and she has not seen the Summary of the last meeting nor where there were any minutes published.

Chairman Annas noted that this is not a Summary of the meeting. He offered to tell Ms. Lindner what they have.

*Susan Linder* commented that they should have this in writing and her observation is that without it in writing it seems very difficult.

Chairman Annas stated that he will be reading from Confidential Attorney/Client Privilege Documentation and he assured everyone that they will not be receiving a copy of the document. He announced that this meeting is in the public domain now and what is stated here in this meeting will become a matter of public record. What he now says will go into the Minutes and when the Minutes are published a copy can be obtained, but until then Chairman Annas will read the list of what they believe to be facts.

1. The property is located in a residential district, the RD3.
2. The Town amended the Zoning Law in 2011 to create the Agricultural Business District, otherwise known as the ABD.
3. A brewery is specifically identified as a permitted use in the (ABD).
4. A brewery is not identified as a permitted use in the RD3.
5. Farm industry is permitted in the RD3 subject to the standards in 143-141(D).
6. The list of permitted farm industries includes “processing of locally produced agricultural products”.
7. In 1999 the Board determined that a winery is a permitted farm industry to the Greig Farm, a 500+ acre working farm, in Appeal No. 4-99.
8. The applicant has stated that he will grow several hops plants on the property.
9. Hops constitute a small percentage of the ingredients in beer, approximately 5%.
10. Grains for the beer will be sourced from farms within Red Hook and other farms within a 160 mile radius.
11. Crops have not been grown of the property for several decades.
12. Christopher Lindner, a neighbor, asserts that crops have not been grown on the property since 1935, which is not contradicted by anything in the record.
13. The property was used to board horses for two (2) years. During that time there was an average of seven (7) horses boarded.

*Chris Lindner* comments that it was not an average of seven (7), it was a maximum of seven (7). That is very different than this case because you need to have boarded at least ten (10). At no time did it reach this. Chris would like to correct this – that is not factual. Chris stated that he did say it but it is not correct.

Chairman Annas asked Ms. Bodian for a precise number and she commented that she is not sure – they rented it to a number of different people.

14. The horse boarding operation has ceased.
15. 28.35 acres, is registered in the DEC Forestry Management Program and is committed until the year 2019.

16. The remaining 9.5 (verify acreage) acres appear to have unsuitable soils for farming as they are very rocky. No tillable land is apparent.

These are observations. The Town has claimed it is not suitable for tilling.

17. There is no livestock on the property.

18. There are no visible crops of any kind on the property.

19. Several of the buildings on the property are in disrepair and do not appear to be used for agricultural purposes; and

WHEREAS, pursuant to the Red Hook Town Code Section 143-136, the Board has found and determined that:

1. The property is not being used for a farm operation;
2. The property is not proposed to be used for a farm operation;

Chairman Annas reported that it is unfortunate that this is as far as the Board is able to go this evening because of the technicality that the Board does not have written consent from, who appears to be, the owner. Chairman Annas apologizes to those who made the second trip and asked if either the applicant or his designee show up at the next meeting or this process will be closed.

*Jacob Cirell* requested to ask a question or two. He commented that as we learned about this process and still are learning, thanks to you all for your patience with everyone, one item came up that he would like to ask about specifically that such an application for an interpretation should be accompanied by an environmental form.

*Attorney Victoria Polidoro* replied that interpretations are type 2 actions so there is no environmental review required.

Chairman Annas said that interpretation would be the next step.

*Jacob Cirell* stated that at the last meeting counsel determined that his attorney's statement that it appeared that these applications were not suitable, not the kinds of applications that you all should be hearing. They were really not within your jurisdiction.

*Attorney Victoria Polidoro* stated she did not make that determination. She said that there was no authorization for them and therefore it should not have been before the Board at that time but they had already set the Public Hearing.

*Jacob Cirell* replied that when he asked that question, Victoria said it could differ with John Adams, our attorney, that this should not be just summarily thrown out which is what we surmised, you didn't even have to consider this nor should any of us need to be here.

*Attorney Victoria Polidoro* replied the Board has to consider an application that is before it.

*Chris Lindner* stated that they would like to add more information that was not given last time about what they believe the environmental impacts will be and why the law forbids this kind of industry and commercial activity in the RD3 District. He would like to submit that. He would like to speak a little bit more to the environmental repercussions of this and recognize that the CAC was here for a while and he knows that they meet at the same time as the ZBA. He spoke to the Chair and she has conveyed the information that he has gathered to the Committee members and they felt that they should be here so that they could hear what was being said and so forth. Without receiving anything, as far as he can recall, he does not know if you can eventually get this into the list, but he feels that not only will there be pollution from a brewery but they have a serious problem with drawing water and their wells have run dry in recent years, the camp has just drilled another well, he understands, and if we have a brewery pumping water out of the aquifer that we share then he thinks it is likely that most of the summer they will have no water nor will the brewery. They have run into a problem there. The second issue is the wastewater and he does have some new information on that. We are down slope; not only down slope but bedrock slope and the bedrock out there is a shisty shale where water moves easily through the bedrock. His well is down slope through the bedrock from this party rental supply storage facility. He wants to emphasize why we need to be considering this at all and their water is severely contaminated. They have had it tested twice this summer and it is just getting worse. The levels of colorform are off the charts and they had e-coli as well and he is pretty sure where it is coming from. It is not coming from them – the only thing upslope from them is TLC Acreage. The other issues that the CAC was concerned about was air quality, the smell of the brewery stinks to high heaven from what he has seen in researching this and so there will be air quality issues as well. Those are another reason for the zoning law reading as is does that you are here to decide upon.

*Jacob Cirell* stated that the amount of beer that he will be brewing is a small amount. He imagines you get more smell from manure from a farming activity which is completely legal on that property. There have been horses on that farm that have dropped their manure on that farm which probably a lot of the e-coli found in the water would come from that. A brewery does not have any type of waste that would contaminate the water and he plans to collect most of the runoff from the brewery. He has a plan drawn up which obviously can be presented to the Planning Board. He has been dealing with the waste water. He is going to bring water collectors for water runoff; he is going to have filters put in for filtering water. He has a whole plan drawn up on how to deal with waste water.

Chairman Annas said that for Mr. Cirell's benefit, he is going to have to get some data to substantiate that he has boarded more horses than what he has read. He would like numbers and dates and requested that he get that information.

*Chris Lindner* Our information came from her boarders. Our information as to how many horses were up there came from your boarders.

Chairman Annas explained that the Board is trying to establish whether or not a farm operation exists. If no farm operation can be shown to exist, then you cannot possibly have an ancillary to something that does not exist.

*Attorney Victoria Polidoro* The question is: if a farm does exist, is a brewery an accessory option?

*Jacob Cirell* said that in his statement he did propose that he would introduce livestock and do some farming activity.

Chairman Annas asked if he is trying to create a farm to circumvent the law so that he can build a brewery.

*Attorney Victoria Polidoro* – the Board can only act on the application that is before them right now. What you have to interpret is what you applied for, what you have put forward, so they can't answer that question. They would have to have a Public Hearing on that particular issue and go through the approval process.

*Jacob Cirell* I guess in my initial statement I did propose I would incorporate a farm around the brewery and I didn't really talk too much about it because it's a legal activity, it's already allowed in RD3 and I focused on the brewery. In regards to just starting a farm, it is pretty well known that farming is a pretty tough way to make it – it's not a get rich quick scheme. I enjoy the farming aspect of the whole thing. I have a daughter with cerebral palsy and it is not something I would be willing to take the risk and why I want to introduce a brewery to it is because it has a good profit margin that would help support the farm and I haven't really talked much about the farming because it is not an issue because it's an allowable thing to do on that property.

Chairman Annas stated that farming is allowable but then the brewery would support the farm but the farm has to exist and it does not.

Chairman Annas – The process is very simple. They approached Bob Fennell for a permit. Bob Fennell rejected it for the reasons you cited – the applicant appealed that and this is the appeal process. Now we have got to go through this, as redundant as it may seem, we have to go through this.

*Mr. Cohn* – is there not some stipulation, is it proper to be even considering the application on property that has an on-going violation? I don't know how the law goes.

*Attorney Victoria Polidoro* – the application is here to hear the violation.

*Trilby Sieverding* – Mrs. Bodian said that the farm property is owned by a corporation, one of the partners is her husband. Is this the approval note, is that going to suffice if it just comes from her husband or do all of the partners need to sign that?

*Attorney Victoria Polidoro* – It depends on how the corporation is set up, if he is the President or the Chairman, or whatever he is, he would have to sign it with his official signature.

Chairman Annas – there will be, as it stands now, a continuation of the Public Hearing on this issue on September 12, 2012, at 7:20 p.m.

8:19 Appeal 12-09, Application of Peter Sweeney for the following variances: to reduce the side yard setback from 35 feet to 10 feet and the rear yard from 35 feet to 32 feet.

Chairman Annas directed Peter Sweeney to speak to Bob Fennell to straighten out the changes that have been made so that the letter to the neighbors contains the correct numbers.

This Appeal will be heard on September 12, 2012, at 7:35 p.m.

#### **ADJOURNMENT**

Jim Hegstetter made a motion to adjourn the meeting. The motion was seconded by Paul Marienthal and all were in favor. The meeting was adjourned at 8:33 P.M.

Respectfully submitted,

Linda Stoddard  
Secretary