

Town of Red Hook
Zoning Board of Appeals Meeting Approved Minutes

November 12, 2014

CALL TO ORDER

The meeting was called to order at 7:00 PM by Chairman Annas.

ROLL CALL

Members Present: Nick Annas, Chris Carney, Ken Anderson, John Douglas, Trilby Sieverding

Members Absent: Tim Ross, Jim Hegstetter

Also Present: Victoria L. Polidoro, office of the Town Counsel

PRELIMINARY BUSINESS

Minutes of October 8, 2014: Chairman Annas asked if everyone had read the September 10, 2014 Minutes and invited comments or questions. Hearing none, Ken Anderson made a motion to accept the Minutes as written. The motion was seconded by Chris Carney and all were in favor.

Planning Board Minutes and Letters: Chairman Annas asked the Board if they had any comments. There were no comments from the Board.

Building Inspector/ZEO Permits, Memos/Comments: The Board members are receiving the building permits. There were no comments from the Board.

Comments from the Chairman: Chairman Annas introduced Anne Rubin as the new ZBA Clerk, and mentioned that the outgoing Clerk, Jackie Fenaroli, was transferring to the Building and Zoning Office.

Ms. Victoria Polidoro asked if anyone was present for the Ham House matter, Appeal number 14-07, which had been withdrawn.

REVIEW OF APPEAL

Appeal 14-08, Douglas and Talea Taylor application for an interpretation of the determination of the Building Inspector denying building permit #2014:0073 be revoked pursuant to Section 74-5 K Fire Prevention and Building Construction, of the Code of the Town of Red Hook, siting mobile home was illegally placed on the Historic Hudson Valley property, i.e., without a valid building permit. The applicant's property is located at Montgomery Place Orchards, River Road in the Agricultural Business District, Tax Grid #6173-00-520145.

Attorney Richard R. DuVall, McCabe and Mack, LLP, introduced himself and said he was here to represent the applicants, Doug and Talea Taylor.

Richard DuVall outlines the Taylor's position:

In these very narrow circumstances, the requirement, in the Town Code, that the application for a permit for a mobile home, if not from the owner of the property, must be accompanied by an affidavit, or authorization from the property owner, violates section 305-A of the Ag and Markets Right to Farm Law.

This law prohibits municipalities and other state agencies from imposing unreasonable restrictions on farming activity, as described in the Right to Farm Law, provided it is not a matter of public health and safety. This is not a matter of public health and safety, so we are not talking about interfering with a Town's right to regulate those two things.

What we have here is a mobile home installed on a farm, used as housing for temporary workers, at a site which has been used for that purpose going back to the 1930's, 80 odd years. Doug and Talea started working as employees of Montgomery Orchards at, or around, 1986. After a several years the owner of Montgomery Place indicated that he no longer wanted to have them as employees, but to spin off the farming operation, and have them manage it. Starting in the late 1990s they worked as independent operators, ran the farm, and did not receive paychecks. The relationship was finally documented in 2004, and Exhibit A is a copy of that agreement in the application to this board.

Around 1990 Montgomery Place Orchards placed a mobile home, with a pad, water, septic and electricity on the same site. It was on the property until 1999, when hurricane Floyd caused damage to render it unusable. HHV did not remove it. Doug Taylor has mentioned a photograph on the Town of Red Hook FD website, documenting their using the mobile home as a demonstration site for a drill, since, in its dilapidated state, it needed to be dealt with.

From 1999 to the spring of 2014, Doug and Talea have housed their migrant workers offsite. For roughly 25 years the same crew has come to work at the farm. As have other workers, at other times going back to the 1930s. For Doug and Talea offsite housing of migrant workers is not ideal, since it is expensive and time consuming, and represents a burden on farming operations. Workers who do not drive must be driven to and from the farm. From spring of 2014 the offsite housing became unavailable, and Doug decided to invest in a mobile home that could be placed on the site of the former temporary worker housing, in order to avoid the burden of offsite housing.

He approached the Town for a permit to place a home on the exact pad of the old housing, and was initially told that he did not need a permit, because it was a farming operation. This is exactly consistent with the Ag and Markets Right to Farm provisions. Doug, however, in the spirit of those provisions, did recognize that the Town had a right to regulate health and safety issues connected with placing a mobile home on the site, and so applied for a permit, was issued a permit, and installed the mobile home. There are pictures in the record showing the mobile home, it is delightful and far superior to what was there formerly.

The first time Doug and Talea were informed that there was a problem with the mobile home was when they received a letter from the Building Inspector, stating owner of the property,

Historic Hudson Valley, aka HHV, complained to the Building Inspector, that they had not authorized the placing of a mobile home on the site.

Richard DuVall further states that HHV did not contact Doug and Talea directly, regarding the authorization question, for the mobile home. We go back to Exhibit A in the Application, the agreement between HHV and Doug and Talea. In this agreement, they are obliged to carry out the farming operation. The principal reason to maintain the farm is to preserve the historic integrity of Montgomery Place and to foster HHV's mission. Housing on that site is exactly consistent with the past use of the farm. I don't think Doug and Talea had any reason to think that anyone would object [to their placing a mobile home for farmworker housing on that site].

[In the agreement, page 2 of exhibit A] HHV further requires that [the Taylors] promptly respond weather and other conditions that could cause damage to the farm, and help by your presence and watchfulness, maintain the security of the farm and the historic site – from page 2 of exhibit A. Having the farmworkers present on the property is not only essential for the farming operation, but integral to supporting HHV's mission.

The agreement also states that HHV will incur the costs of major repairs and capital improvements. They were not forthcoming to fix up the older mobile home, Doug and Talea took care of it on their own.

Is it always an unreasonable restriction on an applicant to require authorization from the owner and for the Building Inspector to ask if the applicant has permission? We understand that it is not, but in these very narrow circumstances, where we have an operator who has been there for 28 years, fulfilling its specific mission, according to its contract, requiring Doug and Talea to provide an affidavit stating that the owner has authorized them to apply for this building permit, is, in fact, an unreasonable restriction on farming, in this state.

Chairman Annas invites counsel for HHV to state their position.

John Lyons of Grant and Lyons Law Firm in Rhinebeck, NY, with Kim Garrison, a lawyer in the firm, who has worked with me on preparing the materials for this evening. We represent HHV and have looked at the Appeal filed by the Taylors. We are providing a written submission to you, this evening that will deal with the facts of the matter and the legal arguments that apply, in great detail. In speaking this evening I will hit the high points of that material. There are 2 points that form the basis of our arguments.

The first point is the section of the Town of Red Hook Code requiring an owner's affidavit to be part of the building permit application, is clear, unambiguous and reasonable, and should be upheld. Listening to Mr. DuVall and reading the materials he has submitted, there is really not an issue with regard to the application of that section. He is really arguing that the Right to Farm Laws should be called upon to exempt the applicant from providing an owner's affidavit, in this case.

Our position is this board does not have the jurisdiction to determine that requiring an owner's affidavit constitutes an unreasonable restriction on the right to farm. The so called Right to Farm Law is section 305A of New York State's Agriculture and Markets Law, and is often interpreted as giving farmers exemptions from local land use regulation. That is a shorthand that takes great liberties with what the law actually says.

What the law actually says is that municipalities may not enact regulations which apply to farmers that unreasonably restrict farming operations. The New York State Commissioner of Agriculture and Markets is the person who determines if a local regulation unreasonably restricts farming.

The Department of Agriculture and Markets has set forth a specific procedure for bringing those questions forward. I have participated in a number of these reviews, and the procedure is as follows. The farmer makes an application to the state Ag and Markets Department; the farm must be located in a state certified agricultural district; the farming operation must fit the definition as such; and the farmer must demonstrate why the local regulation, as it applies to his/her farming operation, is unreasonable. The Agriculture and Markets Department reviews that complaint, speaks to all involved parties, including the municipality, and makes a preliminary ruling. After this the municipality can submit arguments, if it does not concede the issue, and additional comments if there are compelling public health and safety reasons why the regulation is in place.

This procedure goes right to the issue of jurisdiction. Zoning Board of Appeals is a creature of New York State Law section 267 of the State Town Law, which authorizes municipalities to create a Zoning Board of Appeals. In section 267B, of the Town Law, the legislature sets forth the boundaries of Town authority. You can grant or deny applications for area and use variances. You can interpret the zoning law for the Town of Red Hook and you can hear appeals from people who have been aggrieved by the decisions of the officials who administer the Town zoning law.

Those are the four corners of your authority. Zoning Boards of Appeal can't go outside those boundaries. The argument that's being raised here, section 305A of the Ag and Markets Law, is outside of those boundaries. So we are saying you do not have the jurisdiction to determine that the owner's affidavit should not be required on that basis.

I will also mention there are some guidance documents issued by the Ag and Markets Department that discuss what constitutes an unreasonable restriction on the right to farm. We have copies of those documents for you. You find in them that the kind of regulation Ag and Markets is after are things like unreasonable Special Use Permit requirements, unreasonable Site Plan requirements, things that are really reaching into of how a farm is operated on a specific property.

The owner's affidavit, in this case, is really part of the Building Permit process. The guidance documents say, generally speaking, for they speak generally, even though the department rules specifically, on a case by case basis, that the requirement for farmers to seek a building permit does not constitute an unreasonable restriction on the right to farm.

Moreover, when your town rewrote your zoning, you spent a lot of time and effort to craft a zoning law that was in harmony with the philosophy of the State Ag and Markets Law, to ensure that your local zoning dovetailed with the requirements of Ag and Markets. Your Agricultural Business District, within which, this property is located, does allow for farmworker housing, but it says you have to apply for a building permit, and kicks it over to section 74-5 of the building code, that governs building permits. That is another factor that supports the proposition, especially considering the history of your zoning law, that the building permit requirement does not constitute and unreasonable restriction on the right to farm.

Requiring an affidavit from a land owner for a land use permit, is not unusual. It shows up in lots of zoning laws. There is a basic fairness here, requiring that the occupant notify the landowner, because land use activities carry consequences, and these cannot be entirely separated from the landowner. Owners must insure property that is occupied and used by others. Insurance rates can differ based on the land use activity. This connection that the owner be aware, and give consent regarding land used activities.

Chairman Annas: Do liability rates differ, if there are itinerant workers living on the property?

John Lyons: I do not know. If other people live on the property, there is a greater chance for liability.

I would like to make three points on the reason for an owner's affidavit. First, the owner's affidavit keeps the Town out of the private business between HHV and the Taylors, in terms of interpreting the contract between the parties. It shows consent – there is no interpretation necessary. Second, it ensures that decision making boards have the correct information. Third, if the ZBA does not require the owner's affidavit, there will be other reverberations beyond this particular case.

I have an affidavit, including the areas of disagreement, from David Parsons, CFO of HHV. Mr. Parsons and I read the minutes from the last meeting, and the materials submitted by Mr. DuVall, before preparing the affidavit. This document outlines areas in this matter, where we do not agree, and facts that need more prominent analysis. Farmworker structures were installed in the 1950s. This housing consisted of a series of small cabins with a separate, centralized kitchen and shower area. These structures fell into disrepair, and were subsequently removed by HHV, which was not keen on having migrant farmworkers on the property. As such, the present mobile home cannot be characterized as a swap out from a pre-existing structure. There is span of almost 15 years where the utilities on this site were not connected to anything. The other trailer that is there HHV is not interested in keeping and maintaining farmworker housing on the property. The agreement [between HHV and the Taylors] does not really speak to farm employee housing.

John Douglas: There was a trailer in the 1980s and 1990s. Is the affidavit notarized?

John Lyons: Yes. It was a big surprise to the HHV site manager to find the trailer, and he wondered why the Taylors did not notify HHV. After the Building Inspector went out to the site, and got back to HHV, they contacted Mr. Taylor, and were referred to Mr. DuVall. Our submission has a letter from me, with legal arguments, and Mr. Parsons' affidavit. There is also guidance material from Ag and Markets, and other materials that support our arguments.

Victoria Polidoro recommends closing the Public Hearing on this matter, and continuing the Public Hearing at the next meeting, in order to review the large amount of material submitted by John Lyons.

Trilby Sieverding: Why is matter before the ZBA? With all of the zoning changes the Town has made to enable farming and protect farmland. I don't really understand why the matter at hand is really in accordance with HHV's mission? She also mentions NYS Ag and Markets Law, section 305A: A document on the website: *Guidance on Local Laws that Affect Farmworker Housing* it talks about on farm housing for farm workers being absolutely essential for farm

operation, and protects it under New York State Law. If a farm operator, meets with a condition that is prohibitive to the operation of the farm, they take it to New York State. I would also like to read a definition from the Guidelines from New York State.. Farm buildings include farm labor housing, and as such is subject to the protections under section 305A The law also says it does not matter if the farm operator is the actual owner, or not. I don't know what we could determine in this case, I've read it, and it says that Ag and Markets would decide on the matter. .

Victoria Polidoro: The issue before the board is overturning or upholding the ZEO's decision to revoke the Building Permit, based on the Town Zoning Law, because an affidavit was not submitted. The first application did not identify the owner. Then HHV wrote a letter to the Building Inspector, and the issue was identified.

John Lyons: The owner affidavit was filled out in the name of Montgomery Place Orchard, which is not correct.

Victoria Polidoro and Richard DuVall: It was not an owner affidavit, it was an application.

John Lyons: Although HHV objects to farmworker housing on the property, they do many other things that facilitate the farm operation on the property. They pay the taxes and insurance, provide the Taylors with rent free housing, provide a license, free of charge, to use the name Montgomery Place Orchard. They have use of the farm stand, keep all proceeds of everything they sell, use of the small complex of barns, and the insulated, cold storage end of the Butler Building, for apples. This is a contract, a relationship, where both parties get something.

Richard DuVall: I would like to address the jurisdictional point that has come up. If you look at section 267B of the Town Law, this board has all of the powers of a ZEO and a Building Inspector. The ZEO would tell an owner farmer who came to ask if he needed a building permit for a mobile home, that he would not, since it is a farm, that he would come out and inspect it, but that it is not his job to tell a farmer, no, he cannot have a mobile home on the property

John Douglas: Are you saying the ZEO would tell the farmer he would not need a permit? That is not true. According to section 74-5-c of the New York State Fire Prevention and Building Code, a mobile home requires a building permit, for use in any category set forth in the Uniform Building Code.

John Lyons: In Exhibit B we have, from the State Building Code Regulations, Farmworker Housing is specifically not included in the definition of Agricultural Building, in terms of the exemptions that agricultural buildings have under the building code. Your Town Code expands on this even more by requiring building permits for all of those types of agricultural buildings.

Richard DuVall asks for time to review material from John Lyons.

Several members of the public in attendance read statements in support of the Taylor Appeal.

Adam Karel, a full time employee of Montgomery Place Orchards, expresses support for the Taylors, who had the old camp removed. He mentions the training exercise conducted by the Red Hook FD, and that HHV had their own workers on the site, housed in a separate cottage during the summer season, while we, from Montgomery Place Orchards, were removing the old, dilapidated structures. With regard to the permit, his statement discusses employee and lessee relationships, between HHV and the Taylors, and the existing well and utilities already at the

site, which were there even before the Taylors started working for HHV. He concludes that the current will is inconsistent with past agreements. He objects to the ZBA being used to settle a private disagreement between the parties.

Victoria Polidoro: If Montgomery Places' interpretation of the agreement is that they have the right, under the lease agreement, to apply for the Building Permit, and receive it, why not submit affidavit the Building Inspector asked for, based on their interpretation of the contract? That would moot this entire proceeding.

Richard DuVall: I have prepared thousands of affidavits, over the years, and have never asked a client to opine as to the ultimate conclusion [of a matter of interpretation of a contract]. Authorization is a legal conclusion, I would never tell Doug and Talea to say HHV has authorized me to do this, under a sworn oath, which is a legal conclusion.

Mr. Fennell wrote the Taylors a letter informing them that they had to produce such affidavit, the within a certain amount of time, or the building permit would be revoked. By making a sworn oath, [on a matter that is open to interpretation], Doug risks perjuring himself. An affirmation, on the other hand, states that a party believes they have the right to do something, under an agreement. Which is what we did in response to the letter from the Building Inspector.

John Lyons: The Taylors do not have authority under a licensing agreement to apply for a building permit without an owner affidavit.

Chairman Annas: This seems to be a private battle between HHV and the Taylors, using the ZBA as a tool. I recommend terminating the contract, rewriting it with necessary clarification, and getting on with farming. This is lots of data, lots of money in lawyer fees, just settle it.

Richard DuVall: Asserts that an effort was made, on his client's behalf to have those discussions, with Mr. Lyons and his client.

Norman Greig: a local farmer, and sitting member of the Town Ag and Open Space Committee. The New York State Right to Farm Law and Town of Red Hook Right to Farm Provisions should defend the farmer. Though it seemed unlikely to me that this matter coming before this board, I think there is enough in our local provisions to make a determination, so let the board finish it. Labor Housing is as integral to an operation as where you park your tractor, or whether you grow apples or peaches. If the tenant takes the housing away when they leave; no harm, no foul.

Mary Ann Johnson: Past Co-Chair of the Red Hook Ag and Open Space Committee, current chair of the Community Preservation Committee, and project coordinator for the Ag and Business Development Corporation., I work with many farmers. We get many phone calls regarding Right to Farm Laws, Towns overstepping their boundaries. Labor is a big issue, and these folks can't work without labor. There is a critical shortage [of farm labor]. Offsite housing does not work. I urge the Board to use all of its discretion to allow the Taylors to keep housing farmworkers onsite.

Wint Aldrich: Town Historian. Montgomery Place Orchards are among the oldest fruit farms in the county, 210 years and going strong. They comprise a feature that has been placed by the Secretary of the Interior on Register for National Historic Landmarks. The farm operation is vital to maintaining the integrity of the whole historic site. In 2012 the Town held its bicentennial there. I am a neighbor, supporter and enthusiastic customer. We are lucky to have the Taylors,

who have run a successful operation for the past 28 years. They are part of a revived agricultural economy in Red Hook, and also foster tourism. When I was shopping at the farm stand recently, there was a tour bus from North Carolina, full of tourists who filled the farm stand. Events like this are good news for Red Hook. I ask that the board take no action that would hamper the Taylor's operation at Montgomery Place. I urge you to do all you can to find out why the landlord does not want the worker housing on site, and do all you can to overcome this objection.

Chairman Annas: Why does HHV not want the structure?

John Lyons: Mr. Parsons feels it affects the attractiveness of the historical site, is concerned about potential liability issues, and has no information from the DC DOH as to whether the hookups were done properly. There may be other reasons that HHV is privy to that I am not privy to. HHV is the owner and have the right to decide whether or not they want farmworker housing on this property. The Taylors do not have the right to circumvent Town Code in the name of a right to farm.

Chairman Annas: The health reasons are not an issue, they have to be in compliance with DC BOH.

Ken Anderson: We have a letter from the BOH; it is in compliance.

They have to be in compliance to get the C of O

John Lyons: That letter has not been provided to us. We were told it would come under the NYS Dept. of Labor.

TS: Section 143-3 of our Building Code, does permit farm labor housing onsite in the Ag Business District, and for all parcels in the town in the NYS certified Ag district, the housing shall be supported by, and compliant with DC BOH, and it shall be compliant with the New York State Uniform Fire and Building Code.

Richard DuVall: We submitted, at the last meeting a letter from the NYS Dept. of Labor, certifying the compliance. It is under the Dept. of Labor for the number of occupants living in the building.

John Lyons: asks for a copy of the letter.

Chairman Annas decides for a continuation of the Public Hearing and puts it on the docket for the next meeting, on December 10th, 2014. He and VP start the process to set up an attorney client session to prepare for the next meeting.

Dave Fraleigh: Rose Hill Farm. If they really want to foster farming, and maintain the property in an historically correct manor, they should realize what an asset Doug and Talea are. They should stop harassing them. It is a travesty.

Chairman Annas: You can criticize policies and decisions at these meetings, but not people.

Mary Ann Lasher: Hearty Roots Farm. I am a farmer, I pay my taxes. There is a saying "No good deed goes unthanked". We are not talking about leaving a John Deere out in the rain.

We are talking about human beings. Human beings need to be treated with dignity. Doug and Talea built the mobile home to treat their workers with dignity. If we can't find the will in our code to support them, then our codes are wrong.

Tracy Kellogg: a lawyer for another applicant. This seems to be more a landlord/tenant contract issue than a land use issue. You might ask the parties to submit a memorandum to you, as to why the landlord has the right, or doesn't have the right to deny the farmworker housing, so you can move beyond the issues of the Town of Red Hook paying their lawyer to do this for them.

Chuck Mead: Mead Orchards. He house 15 Seasonal workers. Confirms what was mentioned above by Doug and Talea's lawyer, regarding the State DOH does not having jurisdiction to inspect the building based on the number of workers. Doug and Talea have met this threshold, and it is the NYS Dept. of Labor which issued a certification of compliance.

John Douglas: The Taylors and HHV need to have a meeting to reach a compromise and resolve the issue reasonably. So that each side understands the other side's issues, clearly. There has been a lot of communication to us, but you need to sit down with each other. They need to conclude this matter in order to remove the ZBA from the middle of it.

Ken Anderson: Should this issue even be before the ZBA? New York State is very clear about what we can and cannot do in the Ag and Markets documentation. We should go by the Ag and Market regulations, and if we do, the issue is moot.

John Douglas motioned to adjourn the Public Hearing. Trilby Sieverding seconded the motion. All are in favor.

Susan Ezrati, a Village Trustee from Tivoli, submitted a letter on the Van Dijk Appeal, which had been withdrawn.

REVIEW OF APPEAL

Appeal 14-10, Norman Greig application for an area variance to obtain a Special Permit for an Inn with an 80 seat restaurant on a town road (Pitcher Lane). Parcel already contains one Special Permitted use. **Section 143-39 C limits the number of Special Permitted uses to 1 (one) in the ABD zone.** The applicant's property is located at 160 Pitcher Lane in the ABD zoning district, Tax Grid #6273-00-896812.

REVIEW OF APPEAL

Appeal 14-11, Noman Greig application for an area variance to obtain a Special Permit for an Inn with an 80 seat restaurant on a town road (Pitcher Lane). Parcel already contains one Special Permitted use. **Section 143-39A requires egress and ingress on a state road.** The applicant's property is located at 160 Pitcher Lane in the ABD zoning district, Tax Grid #6273-00-896812.

REVIEW OF APPEAL

Appeal 14-12, Noman Greig application for an area variance to obtain a Special Permit for an Inn with an 80 seat restaurant on a town road (Pitcher Lane). Parcel already contains one Special Permitted use. **Section 143-93 B limits the number of seats in an Inn to 30.** The applicant's property is located at 160 Pitcher Lane in the ABD zoning district, Tax Grid #6273-00-896812

Victoria Polidoro to Applicant, Norman Greig (NG): Since Robert Greig is the owner, you will need a notarized affidavit to accompany your Building Permit Application.

Norman Greig: I understand.

John Douglas: I don't want to be in the position that I am approving something, thinking the applicant has the right to apply for it, just like the situation here (referring to the previous Public Hearing). You should have taken care of this prior to the meeting.

Victoria Polidoro: I'll talk to the Building Department about the forms, and verify what needs to be submitted [by the Applicant].

Chairman Annas invites the Applicant to speak on the entire project, and clarifies that the Appeals are separate, so that the Board has the opportunity to rule on them individually.

Norman Greig: Speaking generally on the project. We are proposing an Inn in an 1850s barn, located behind the garden shop. It is located at 160 Pitcher Lane, and is approximately 9500 square feet in size. We would like to turn it into an inn with 14 rooms and an 80 seat restaurant. The barn is on 93 acres, the portion where the barn and Garden Shop is located would be for the inn/restaurant, and parking. The Garden Shop would cease operation in order to provide parking for the inn/restaurant.

The site where the barn and garden shop is about an acre and a half of the [total] 93 acres. The Town Code says that an inn is allowed in the Town of Red Hook, but it must have access from a State Highway. I respectfully suggest that the traffic situation on Pitcher Lane would be not be changed by an adaptive reuse of this type, i.e. Agritourism, It would generate much less traffic than by our Pick-Your-Own operation, or by the summer day camp, and farm education project, which operated in this barn, for 18 years in the past. We had schoolteachers come in and teach in weeklong programs, with a different age group each week. I don't think it would adversely affect Pitcher Lane by having this traffic there.

The second issue raised by the Town concerns who is can come and eat at the restaurant. When I asked, Steve Cole, if someone from town could come for lunch, I was told that the restaurant could only serve guests who were also staying at the inn. Bob Fennell concurred. I told them I am not going to do that, because that is not what Greig Farm stands for. I see us as an agricultural park, open to the public. We have been open to local people and people from far away for years and years. This barn sits in the middle of 93 acres, with incredible agricultural views, and no houses nearby. There is a house across the street from the Garden Shop and a house next door, but aside from those two, there are no houses within a 1000' of this site. The truth is if we have 14 room inn, and someone wants to have an event there, we want to be able to host it; whether it is for an event associated with Bard College, or a rehearsal dinner.

The third issue raised by the Town regards only being allowed one Special Use Permit per parcel. The permit in place there is for a 2 acre mowed grass strip that is a landing strip for small planes. It is a half mile away from the barn. When I took members from the Town Board up

there to see it, I asked them “What do you think of it?” and they replied “Think of what?”. It is just 2 acres of grass.

Trilby Sieverding: If you subdivided this 2 acres from the farm, you would not have the problem of the additional Special Use Permit.

Norman Greig: We do not want to subdivide, or break up the farm.

Trilby Sieverding: That is just the irony of the situation, isn't it? You have this 93 acre parcel that is one big thing. You would be more likely to [succeed with your application, if you did it].

Norman Greig: (presents a map to show location of barn, Garden Shop and air strip.) It is more than a half mile from [the barn] to [the airstrip]

Ken Anderson: (referring to map) Is that the barn on the South side of the road?

Norman Greig: Yes, that's it, behind the Garden Shop

John Douglas: So Bob or Steve told you no one from the general public could come to the restaurant, anytime? Because under 143-93(b) of the Town Code, an inn may provide dining facilities open to both guests and the general public as an accessory use.

Trilby Sieverding: Is that in the Ag Business District?

John Douglas: No, that is under Inns.

Norman Greig: That is for a restaurant up to 30 seats, and I don't see how this 30 seat restaurant is viable.

John Douglas: My point is you can feed the general public, as long as you do it with a 30 seat restaurant.

Chairman Annas: I think the 4 room limit refers to a B&B.

Norman Greig: Right. A B&B is fewer rooms, very limited.

John Douglas: (reading from the Town Code) An inn, [on the other hand, shall] be limited to 10 guest rooms, except in the Ag Business District, where it shall be limited to 16 rooms. It must, [however,] have an ingress to and egress from a State Highway. You want 14 correct?

Norman Greig: 14 is what fits in the building.

Chairman Annas: If you claim to be in the business of farming, how do an inn and restaurant qualify as farming?

Norman Greig: Well, you know, the old farm buildings only survive if they have a use. When we were a dairy farm all of these buildings were in use. We are no longer a dairy farm, so we have to find an adaptive reuse. I have always wanted to share the farming experience with the general public. If you look at Europe, *Agriturismo* is the fastest growing thing. They do it for breakfasts, lunch, country inns. They come from the city, they stay for the weekend and

participate in those agricultural views that we cherish. This site is all agriculture as far as you can see, from here, all the way to the water tower. It's rural. To stay in a second floor bedroom and look out at that view is priceless. For me it's a way of sharing what I do with the general public. It's about showing them, the people who work in the city, who all want a country space, this is my corner office.

John Douglas: Have you ever been to the Biltmore, Nick? Have you seen what they have there?

Chairman Annas: The one in North Carolina?

John Douglas: Yes. They have a working farm, and a winery. A hotel and a beautiful mansion.

Chairman Annas: I have concerns about the commercialization of these farms. Pretty soon they won't be farms anymore.

Norman Greig: I would agree with you if I were going to subdivide the property and take out 5 acres to have an inn, and sell it to some third party. We have a total of 400 acres being farmed, and so I respectfully suggest that is not where we are going. We have always been open to the public, since 1952, sometimes with a higher customer count, sometimes with a lower.

I just put a roof on that barn, on order to save it. When I came to the farm, that foundation was not good. I had 3 guys, working over 2 summers to fix it. My father asked what I was doing with that old barn, since I could put up a shed, that would hold anything I needed it to, for less than the cost of fixing the barn. I said it will never have the character of an 1850s barn. This farm is where I come from, and I want to maintain that history. The barn has needed a roof for 10 years. It cost \$75,000 to put a roof on it. We had no use for that barn. If you don't use them, they fall down. The taxes are the same, whether you use them, or not.

Chairman Annas: I appreciate the argument for adaptive reuse, and I see these barns fall down every year.

John Douglas: Nick, have you read 143-93(d)? and (f)[of the Town Code]?

Chairman Annas: (Asks to see the architectural rendering.)

Norman Greig: (Points out, and describes features of the project on the architectural rendering.)

John Douglas: We will need one set of these for the file.

Norman Greig: (Continues presentation of project according to the rendering)

Chairman Annas: Are you changing the footprint?

Norman Greig: Not at all.

John Douglas: The kitchen seems small.

Norman Greig: It is a small restaurant, with enough seating [to make it viable].

Norman Greig: (continues presentation)

Chairman Annas: I can understand adaptive reuse, but don't tell me that looks like an 1850s barn.

Norman Greig: We are leaving the beams exposed in order maintain certain characteristics on the interior.

Ken Anderson: (referring to the 2nd floor on the rendering) What is up there now, the hay mow?

Norman Greig: Yes, that is where the bedrooms will be.

Ken Anderson: Are you using the existing floor [on the second floor]?

Norman Greig: As much as we can, but some of it has to be built back, since it is rough. The rendering shows the beams that are there, and everything that will be exposed.

John Douglas: You should do it as much as possible, people love that stuff.

Norman Greig: Here (on the rendering) you can see the footprint. This is koi pond that is there now, the barn, the Garden Shop and the house across the street. Here is the existing parking lot, and overflow will go over here.

Ken Anderson: What about this house [across the street]?

Norman Greig: That is a separate lot. That's one acre.

Ken Anderson: Is it part of the plan?

Norman Greig: No.

Chairman Annas: Who lives in that house?

Norman Greig: I don't know the name.

John Douglas: Isn't that part of the farm property?

Norman Greig: No, I lost it in my first marriage.

Ken Anderson:(looking at rendering) So this is for a 14 room inn and 80 seat restaurant?

Norman Greig: I don't anticipate having an 80 seat restaurant, in this location, busy every night. If you are on a side road, without street lights, you are not getting passersby. I see it as mainly serving lunch and for special events and inn guests, in the evening.

Chairman Annas: What are you seriously envisioning in terms of special events? Lots of weddings, parties?

Norman Greig: No, more events in concert with Bard College. We are less than 2 miles from them. They keep growing and looking for places for people to stay. They end up sending most of the people across the river for things like Parent's Weekend.

Chairman Annas: What comes to mind is Ham House. It is really an event center, disguised as an inn. That's why I'm wondering what your real intent is.

Norman Greig: What I intend is to bring people to the a country inn, to experience the farm; it's really an *Agriturismo*. I have a beautiful old barn, I want to celebrate it.

John Douglas: [You] can't have a nightclub.

Norman Greig: No dancing girls, I understand. On a side street, it's a quiet operation. We did the farm stand for 15 years always during daylight hours. When we opened at night, no one would come, no matter what kind of program we were offering. You can go to downtown Red Hook, or downtown Tivoli, but on a side street it is very quiet at night. Even if you imagine all of that happening, the location doesn't support it.

Chairman Annas: I can see a 30 seat restaurant supporting the inn, but the 80 seats seems like it is something beyond the inn, a secondary purpose, or maybe it is even the primary purpose.

Norman Greig: The problem is, if you have a chef, who does a good job and a couple of other people in the kitchen, you can't support them on 30 seats. I just want an economy of size. You tell me, how many seats do you want?

Chairman Annas: I'm not in the business of doing that.

John Douglas: You've got your request here, and it's your request. You would not be in front of us if you wanted to do 10 guest rooms and a 30 seat restaurant. The only hiccup, then is the special use permit issue.

Norman Greig: But then you have to be the proprietor yourself don't you?. I'm[too] old and lazy[to run a B&B].

Chairman Annas: For a B&B you have to be the proprietor yourself.

John Douglas: I'm talking about an inn. An inn shall be limited to 10 guest rooms.

Norman Greig: But you have to still be on a State Highway for an inn.

John Douglas: No, with 10 guest rooms you can be on a State, County or Town road, just not a residential subdivision street, and you are not on one, so that's ok.

Trilby Sieverding: Is this for the Ag Business District?

John Douglas: Yes. You want 14 rooms, you want to go 4 over 10. Now you want egress/ingress of of a Town Highway. But you could do 30 seats and 10 rooms, and not be before us. Except for the Special Use Permit issue.

Chairman Annas: (to John Douglas) Are you on the Zoning Review Committee? Do you go to the meetings?

John Douglas: Yes, yes I do.

Chairman Annas: On problem I see is when zoning is drafted, there is no appendix explaining how they arrived at a given set of rules. Why is it 10 rooms, and not some other number? Why only one Special Use Permit per parcel. So you subdivide it off, and get another permit. In the end it does not change the look of things. The thing is if we have no idea as to the purpose behind these things, we can't begin to understand how we can vary them. It would help if we understand why the requirement for ingress/egress onto a State Road. So let's say Norm can get rights of way to construct an access road all the way to Route 9, how does that make anything better? Right now he is allowed one Special Use Permit, so he can subdivide the airport, but what is it going to change. A lot of times we give a Variance because it is going to change something. If you see no visual impact, what is the point?

John Douglas: Think of this concept. In terms of just the cars. Norm is talking about an 80 seat restaurant. Are they all going to arrive and leave at the same time? Probably not. Think about the Fisher Center, a concert. I think they seat 850 people. They may not all arrive at the same time, but they all pretty much leave at the same time. They egress onto a county road. We are talking about some 250 cars. All of the sudden there is a surge of cars for 45 minutes merging onto the egress road, onto Annandale Road, and from there they go onto Route 9G, or 199, both State Highways. Now Norm is going to have 80 people, some of who are going to spend the night, rather than get in their cars. People will come and go at different times.

Chairman Annas: When you had the strawberry fields, how many people would come and go on a given day?

Norman Greig: We had 5000 a day, on a good day.

Chairman Annas: I think that's a few more than an 80 seat restaurant could handle.

Norman Greig: I think if we are allowed to build this it will be an asset to the community, it will be good for the farm, and for the building. It is a substantial capital investment.

Chairman Annas: That's what the people at Ham House said, but not what the neighbors claimed.

Trilby Sieverding: But that's a totally different situation. And a different district.

John Douglas: He's not in the AB District, and on a knoll, where sound really carries if you are doing events.

Chairman Annas: My concern is the noise that might be created as a result of your inn/restaurant.

Norman Greig: When I say events I am thinking about Bard College doing a retreat with a guest lecturer, we want to be able to accommodate them.

Chairman Annas: So you are talking about indoor events, not outdoor events.

Norman Greig: We do have a number of outdoor events at the farm, and have had them over the years. We have specific places for those that are far enough away from other people, so we don't disturb anyone.

Chairman Annas: I had to listen to a concert that took place in Saugerties, while I was at home. Be careful about how far sound travels.

Norman Greig: When you have a concert, with 10,000 people you put the sound straight up, so everyone hears it equally. If you face the sound forward, it blows out the eardrums of the first hundred people, and everyone else can't hear it.

Chairman Annas: We are putting you on the docket for December 10th, as the second[appeal]. We will send out a certified letter to all (13) of the neighbors for the public hearing. Please get us a copy of the maps and rendering.

John Douglas: Be sure to have the notarized affidavit from Robert [Greig].

Ken Anderson: Do you expect to fly in people?

Norman Greig: My airstrip is grass, and most of the guys I know, who have a lot of money in their plane do not like to land on grass, since they don't know what kind of farmer it is. It could be a woodchuck hole, or something else. They don't want to damage their plane. I have trees at the end of my runway.

Chairman Annas: We need a check for the cost of the mailings. (Jackie Fenaroli hands NG a receipt).

We will vote separately on each issue, but will be hearing all of them as a bundle.

We will move on to the next appeal.

REVIEW OF APPEAL

Appeal 14-13, Fred Delgrosso application for an area variance to place a pre-fab storage building, 14' x 24'. Section 143-18 (A)-2 requires a side yard setback of 20'. Applicant is requesting a 1.9' side yard setback. The applicant's property is located at 132 Williams Road in the RD3 zoning district, Tax Grid #6374-00-899356

Chairman Annas: Everyone is familiar with this. We had granted him a [side yard setback] variance from 20 feet to down to five. Apparently the applicant has already poured the slab, and I have seen it. The slab is closer to the boundary than we had granted. Why is the slab in a different location?

Tracy Kellogg: [Attorney for Mr. Delgrosso] This is for 2 reasons. One, it is only one corner of the slab, the back corner. The front [of the slab] is not five feet off the property line, it is farther off. There is a combination of factors [contributing to the position of the slab]. Currently, the septic field also is too close to shift the [slab to a position] farther away [from the property line] by two and a half feet. So the question is whether [or not] we can

Chairman Annas: Did you knowingly move the slab?

Tracy Kellogg: No, there was no knowing

Fred Delgrosso: It was 5 feet off the mark - the survey.

Chairman Annas: I don't understand how you missed it, you had the survey.

Tracy Kellogg: And then, when he went to reshoot it for the as build, it wasn't correct.

Chairman Annas: Who reshot it?

Tracy Kellogg: The surveyor

Chairman Annas: The surveyor erred the first time?

John Douglas: [to Jackie Fenaroli and Anne Rubin] Do you have the paperwork from the original variance?

Tracy Kellogg: The septic field is also too close, it appears, to allow shifting the back corner [of the slab] over.

Ken Anderson: Is the slab still entirely on your property? It's not infringing on your neighbors, is it?

Trilby Sieverding : How far is it [the slab] off [from the five feet]?

Tracy Kellogg: Instead of it being five feet [from the property line], it is one point nine feet. We are asking for a three point one foot shift.

John Douglas: Who poured the slab?

Fred Delgrosso: (says a name, but it is unintelligible, I will call him to find out) And John Decker [the surveyor] put in his mark [to show the 5 foot margin from the boundary]. Before I poured the slab, I had to put it on an angle for the leach fields. I called him up, but he never came out. Three weeks later [after I had poured the slab] he came out, to reshoot it, because he had to do that for Steve [Cole, the ZEO], and told me I had a problem. He said you areoff your mark

Chairman Annas: I assume you had a Building Permit for this, and you had a pre-pour inspection.

Fred Delgrosso: Yes.

Chairman Annas: What was the result of the pre-pour inspection? Why didn't you notice then, that there was a problem.

Fred Delgrosso: When I called Steve, that the concrete was going to be poured, he says just tell Decker to put it on a map. The planners want it on a map. So I called him, and he never showed. We came off the mark in the field, it was a piece of wood, and Dave was there. That corner was five feet and the back was seven. When Decker [the surveyor] did show up, he said I had a problem. I said you used a camera the second time, but not the first time. So I called Steve

Chairman Annas: Why did Decker come out the second time to do a survey?

Tracy Kellogg: No, it was to put it on a map to do the as build, to show it on a map. The shed has not been installed, and now the field has shifted, and it is very close

Fred Delgrosso: But the back end is 7 feet and the ---is five feet

Ken Anderson: So is it parallel to the lot line?

Fred Delgrosso: No, it is not because I had to do this way for the leach field. I had to angle it a certain way, to access the leach field.

Chairman Annas: Are you far enough off the leach field to satisfy the County [Dept. of] Health?

Fred Delgrosso: It's fine.

Chairman Annas: What is the property to the east of you, is it wetland?

Fred Delgrosso: It was always like that. That back corner. For 50 years, we always squared it off. When the tree company came to clean my property lines, they dumped [the tree cuttings] back there.

Chairman Annas: Is that area buildable land?

Fred Delgrosso: I don't think so, Decker[the surveyor] says no.

Tracy Kellogg: Do you mean is somebody going to be building close to that [property]line? No I don't think so. It's also narrow.

Chairman Annas: Do you have a map showing [where the shed will go]?

Tracy Kellogg: We have a map, [spreads it out on the table], but the shed isn't built yet.

Chairman Annas: [Identifying various elements on the map] My question is, what is this land[closest to the property line where the proposed shed will go]?[indicates on the map], It is actually to the south of you, not to the east. Is that wetland?

Fred Delgrosso: It was always wet.

Tracy Kellogg: This area *is* swampy.

Chairman Annas: So more than likely it will not be built up. And this is Decker's map?

Tracy Kellogg: Yes

John Douglas: This is wrong too. It's supposed to be 68' from the center line. I see 40' back [from the center line], and then they went to 57'. So you pushed it back 17'?

Tracy Kellogg: That was probably for the leach field.

Tracy Kellogg, FD to Board Members: Discussion of why the shed could not be located in front of the house.

Chairman Annas: Alright, so what he wants to do is extend his variance from 15' to 18.5', basically. You are talking a boundary that lies up against wetlands. I think the critical thing here is the space between structures, and not the space between a boundary and a structure.

Tracy Kellogg: This is not going to change the character of the neighborhood, or anything like that.

Chairman Annas: No, it won't. The only thing that aggravates me is that people put in something permanent, and we ok it. Then we find out it is in another location.

Fred Delgrosso: Don't get me wrong, I could have dropped[ignored] it, but I let Steve know, after Decker came the second time, that it was off.

John Douglas: Is there any way ---[contractor who poured the slab] could push the slab?

Ken Anderson: What are you putting on the slab?

Fred Delgrosso: A shed for my lawnmower. I have a two car garage, but I can't put gas in there.

Chairman Annas, FD, TK discuss the size of the shed, which is 14 x 24.

Trilby Sieverding: Has anyone talked to the neighbor, does he care?

Fred Delgrosso: They don't care.

Chairman Annas: The only two people who have any concern, are fine with it.

Trilby Sieverding: If the applicant has a letter from them, it makes it better.

Chairman Annas: Asks for a check to cover the costs of the certified mailings to [Mr. Delgrosso's neighbors] for the Public Hearing. We are putting you the docket for a Public Hearing at the next meeting, third in line.

Christopher Carney moves to adjourn and Ken Anderson seconds. All are in favor.