

Town of Red Hook
Zoning Board of Appeals Meeting Minutes (Draft)

March 27, 2015

CALL TO ORDER

The meeting was called to order at 7:06 PM by Chairman Annas.

ROLL CALL

Members Present: Chairman Annas, Chris Carney, John Douglas, Kris Munn, Tim Ross, Trilby Sieverding.

Members Absent: Jim Hegstetter.

Also Present: Victoria Polidoro, Office of the Town Counsel, Norman Greig, Applicant before the Board, and Kathleen Karakassis, a neighbor.

PURPOSE

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

Chairman Annas states that the purpose of the meeting is to discuss an appeal for a variance for a second Special Use Permit on a parcel in the Agricultural Business District, for an inn and restaurant. Specifically the Board is to confer with its attorney, regarding her opinion on whether the requested variance is an Area Variance or a Use Variance. The Board will then discuss the opinion in a public meeting, and take a vote. There will be no Public Comment Period.

John Douglas moves to take the meeting into Executive Session. Tim Ross seconds, and all are in favor.

Tim Ross moves to take the meeting out of Executive Session. Trilby Sieverding seconds, and all are in favor.

Chairman Annas asks the Board for its comments.

Tim Ross reads from the Town Code the definitions for Area Variance and Use Variance, which the Applicant is seeking. He notes that the second special permitted use is, in fact, a permitted use, so the variance is not for a prohibited use. He also reads the definition of a Special Use

Permit in the Town Code, and concludes that it is an Area Variance, which the Applicant is seeking. He notes that the Board uses its judgement to determine how many specially permitted uses might be permitted on a parcel, and that the size of the parcel is a factor in this determination.

Trilby Sieverding agrees with his analysis.

Kris Munn clarifies his past experience on the Town Planning Board, and his familiarity with the Town Code. In consideration of additional special permitted uses, he recommends listening to what legal opinion is suggesting, that the variance should be changed to a Use Variance. He reiterates the main use of the parcel, which is agricultural, a special permitted use, which consists of an airstrip, and presently a proposed additional special permitted use involving the creation of an inn and restaurant, on the parcel. He feels that the Board would not be granting relief, if the decision were overturned, or the Board were sued. He mentions that he has seen this on the Planning Board, where an Applicant will have already spent a great sum to develop a parcel, only to have to back track in the face of the overturning of a decision. He believes an Applicant will be more protected from this if the Board proceeds the right way from the beginning. Though he sees that Board member Tim Ross is speaking about quantities in his arguments, he does not believe that the present matter of an additional special permitted use is about a quantity. He also makes the point that the size of the parcel is one factor among several, which should be considered in granting a variance, but not in considering whether it is an Area Variance or a Use Variance.

Trilby Sieverding notes that the matter is not really clear cut. The Board has not been presented with any case law that gives assurances as to which category the variance falls in. She concludes that the Town Code definitions of Area Variance and Use Variance speak most clearly on the matter.

Chris Carney does not have anything particular to add to the argument, other than stating that he can see both points of view. One, that the proposed use is a permitted use within the zoning district, and two, that the decision of whether to adopt an Area Variance or a Use Variance should come before any examination of the property.

Chairman Annas states that the arguments on both sides are unclear, and that there is no case law to support either side. He concludes that the Board should support the attorney's recommendation of adopting a Use Variance.

John Douglas references passages from the documentation presented to the Board by legal counsel stating that an Area Variance does not involve a use that is prohibited. He concludes that the variance should be an Area Variance.

Tim Ross moves to have the Board proceed with the Application as an Area Variance. Chairman Annas cautions him stating that with only six members present, if the vote is not at least 4 in favor, the motion will not pass, and the Board will adopt a Use Variance. Tim Ross goes ahead

with the motion. John Douglas seconds the motion. The motion passes with Tim Ross, John Douglas, Trilby Sieverding and Chris Carney in favor, and Chairman Annas and Kris Munn against.

Chairman Annas moves to adjourn the meeting. Trilby Sieverding seconds and all are in favor.

