

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

May 11, 2016

CALL TO ORDER

The meeting was called to order at 7:00 pm by Chairman Nick Annas

ROLL CALL

Members Present: Chairman Nick Annas, Jim Hegstetter, Tim Ross, Chris Carney, Kris Munn, Chris Klose and Doug Lee.

Members Absent: No member is absent.

Also Present: Victoria Polidoro, counsel for the Town of Red Hook ZBA, Brian Ackerman, an applicant, and Rich Rock of Hunter, NY, representing the applicant.

PRELIMINARY BUSINESS

Minutes from March 09, 2016

At 7:01pm Chairman Annas asks the Board for a motion to review the March 09, 2016 Minutes. Jim Hegstetter so moves, and Chris Carney seconds. Chairman Annas asks for comments from the Board. As there are no comments on the minutes, at 7:02pm the Board votes unanimously to adopt the March 09, 2016 meeting minutes.

Planning Board Minutes: Chairman Annas notes that there is an application for a brewery before the Planning Board.

Comments from the Chairman: There are no comments from the Chairman.

Review of Appeal (*revised during the course of the meeting*)

Appeal 16-04, Brian Ackerman (the "Applicant"), application for an area variance to construct a home on a parcel that is an Existing Lot of Record, located on an unimproved, unmapped street, with a front yard setback of 40 feet, and a lot frontage of zero feet, and a lot width of 209 feet. The subject parcel is 6473-00-025078 in the RD3 zoning district. The Applicant has applied for the following variances:

1. A variance from NYS Town Law § 280A to permit a building permit to be issued for a lot that does not have access to an existing state, county or town highway or a street shown on a filed plat.
2. A variance from §143-11A of the Red Hook Zoning Law, District Schedule of Area and Bulk Regulations, to permit 0 feet of lot frontage where 160 feet is required.
3. A variance from § 143-11A of the Red Hook Zoning Law, District Schedule of Area and Bulk Regulations, to permit a front yard setback of 40 feet where 60 feet is required.

4. A variance from § 143-11A of the Red Hook Zoning Law, District Schedule of Area and Bulk Regulations to permit a lot width of 209 feet where 240 feet is required.

Chairman Annas invites the applicant, or his representation to present his project before the Board. Mr. Ackerman states that he wishes Mr. Rock to present the proposal. Mr. Rock states that he has several packets of information to present. He reads a letter to the Board: “Dear ZBA Members, please consider our application to construct a home on an existing lot of record, on an unmapped street. The variances I am seeking are a reduction in minimum front yard setback, from 60’ to 40’, as for ‘Existing Lots of Record’ 143-13 and variance for Town Law 280A Sections 1 – 5 ‘Permits for not on improved, mapped streets’. We cannot reasonably construct this residence in the allowable building envelope, due to limited lot size and terrain and the placement of the approved septic disposal system. Regarding Town Law 280A Sections 1 – 5, I am requesting a variance and will ask to continue to use [an] existing old, farm road [an unmapped, unimproved street] as the ingress and egress. As shown in the photos presented, this is an existing access. In addition, this road appears to be sufficient for passage of emergency vehicles. Sight distance seems to be sufficient in both directions when entering onto Hapeman Hill [Rd.]”

Mr. Rock then presents supporting documentation comprised of photographs, Exterior Plans, Elevations, Floor Plans for first and second floors, Site Plans with [Town of Red Hook] Area and Bulk Regulations noted on the plan, and a survey conducted by Robert L. Campbell of Rhinebeck, NY.

Chairman Annas asks the applicant if the old farm road is a private road. Tim Ross comments that [though] it is shown on the diagrams, [presented by the applicant], as “Old Farm Rd”, it is literally an old, farm road used to access farm fields with a tractor. He further notes that there is a [mapped road] in the Town called “Old Farm Road”, and clarifies that the road to which the applicant is referring is simply an old, farm road. Doug Lee asks about the location of the frontage of the parcel. Mr. Ross asks Board member Chris Carney if the parcel in question is across from his property. Mr. Carney states that he was just wondering about this. Victoria Polidoro clarifies that the old, farm road is not an actual road, which is why the applicant is before the ZBA. The Board members discuss with one another the precise location of the parcel, on the unmapped, old, farm road. The Board notes that the parcel is landlocked, and that the nearest, mapped road is Hapeman Hill Road.

Chairman Annas asks how current the photograph, showing the road [submitted by the applicant], is. The applicant responds that it was taken in the last year. Chairman Annas, looking at the documentation, presented by the applicant, asks what the closest structure to the parcel would be. He further asks if it is the one [shown in the documentation] on Hapeman Hill Road. The applicant affirms that it is. Mr. Rock indicates on the diagrams where the ingress and egress, to the parcel in question, is located, on the old, farm road.

Chairman Annas then asks the applicant if he has a deeded right-of-way. The applicant affirms that he has a deeded ingress/egress through that road. Victoria Polidoro notes that there is no supporting documentation for this in the file, and asks the applicant to obtain copies of this for the Board. The applicant presents a document, which Victoria Polidoro notes is a deeded access over the “existing woods road”. She asks the applicant to clarify what that is. The applicant comments that it is called “Old Farm Rd.” on the survey map, and “existing woods road” on the deeded, right of access. Victoria Polidoro asks the applicant if he has his title policy with him,

and asks if the title policy mentions this access at all. The applicant replies that he spoke with his title company last week, and that they said he does have the right to use [the access road, aka “old, farm road”, and “existing woods road”]. Victoria Polidoro asks the applicant to present that letter, or documentation that can attest to what he is stating. The applicant states that he obtained the information verbally, on the phone, but that he can contact them in order to get something in writing. Chairman Annas asks what the parcel size is. The applicant replies that it is .642 acres.

Chairman Annas asks the applicant if he understands how the process [of appearing before the ZBA] works. Chairman Annas explains that he is making a presentation before the Board [at the current meeting], and will return the following month, to address any objections anyone in the area might have, and then the Board will make a determination to grant or deny the appeal. He further clarifies that any information the Board asks for at this meeting, should be presented by the following meeting. Rich Rock asks the Board to clarify exactly what it is they are requesting.

Victoria Polidoro responds that the reason she is asking for additional documentation, regarding the right of access, is that Town Law 280A is a [New York] State law that says you may not get a building permit unless you have suitably improved access or frontage on a road. So access is defined as “at least 15’ frontage on a road”, and [the applicant] does not have this, so he’s asking for a variance. She further notes that this Board, in order to grant a variance, really needs proof that he has a legal right to access his [parcel], and also that said access is adequate for emergency vehicles, because there will be a house [on it].

Kris Munn asks if the Board should find out from the [Town] Highway Department and Fire Department regarding emergency vehicle access [on the old, farm road]. Doug Lee notes that the photos show tanker trucks going through [the old, farm road]. Chairman Annas notes that the applicant’s residence would not be on Town water. Victoria Polidoro replies that the matter does not regard Town water. Chairman Annas notes that [in drilling his well] the applicant will have to hire a drill rig to enter the parcel. He concludes that if a drill rig can access the parcel, then an emergency vehicle would also be able to do so. Victoria Polidoro recommends that the Board conduct a site walk to ascertain the limits of the access road. Tim Ross states that he still wants to see documentation, that an old, farm road, may presently have trees and shrubs blocking the roadway. He further notes that if the applicant wants to build a house, it will be incumbent on him to improve the road to meet the access requirements, provided he has the legal right to do so. Victoria Polidoro notes that if the Board were to grant the variance, it would have to be conditioned on the applicant improving the road.

Tim Ross asks the applicant how far the access road extends [from Hapeman Hill Road] to his parcel. The applicant replies that it is about 1000 feet. Victoria Polidoro asks how the access road is surfaced, presently. The applicant replies that it is compacted stone. Mr. Rock states that it is macadam. He further states that there is frontage [on the access road] of approximately 80 feet, on which a full sized tractor trailer is parked, which comprises at least 100 feet of pavement. Mr. Rock states that this shows frontage, and demonstrates the applicant’s legal access. Victoria Polidoro clarifies that the frontage [of the parcel in question] is on someone else’s lot [and not on the access road]. Chairman Annas asks the applicant to confirm whether or not the access road is paved. The applicant replies that it is not. Victoria Polidoro states that Mr. Rock characterized [the access road surface] as macadam. Mr. Rock states that he misspoke, that the surface is item four. Tim Ross asks if this was recent, and the applicant replies that it is, and that it was done about six years ago, by the previous owner [of the parcel]. The applicant further states that there

is electric[al power installed on the parcel], drainage pipes, and that it is a built road. Chairman Annas asks if there is anyone else who shares that [access] road. The applicant replies that he does not know, that he is actually in the process of purchasing another parcel on the access road, and that he has a title search, presently going on regarding who has the right to the access road. Kris Munn asks the applicant to indicate which lot he is speaking of. The applicant states that it is the lot all the way at the end of the access road, between Shookville Road and Hapeman Hill Road. Mr. Munn asks if the lot the applicant is looking to purchase is contiguous with the parcel in question. The applicant replies that it is not, that there is one parcel between the parcel in question, and the one he is in the process of purchasing. Victoria Polidoro asks the applicant if he intends to develop the parcel he is trying to purchase. The applicant states that he is buying it so that it won't get developed. Doug Lee asks the applicant if the parcel he is trying to purchase is on the same side of the old, farm road as the parcel he currently owns. He states that the old, farm road extends down to the northern third of the property, and then cuts away [from it] and runs parallel. Chris Klose asks if the parcel the applicant is trying to purchase is farmland, to which the applicant replies that it is not, that it is vacant land.

Kris Munn reviews the documentation and asks the applicant to state whether or not the septic [system], indicated in the plans, is [Board of Health] approved. The applicant states that it is. Doug Lee asks the applicant if he is planning to build [a residence] regardless of whether or not he is able to purchase [the above mentioned] lot, and the applicant affirms he is. Chairman Annas asks what the architect's name is. Mr. Rock speaks up and states that he is not an architect. Chairman Annas asks why there are two different measurements for the parcel in question, in the documentation the applicant has submitted. Mr. Rock replies that he sketched the outline of the parcel [on an aerial image] with a marker. Chairman Annas asks Mr. Rock if he can confirm that the [longest line of the parcel] fronts the [access] road. Mr. Rock states that it does.

Victoria Polidoro notes that the deed states that the direction is southerly from Hapeman Hill Road. She asks the applicant if that corresponds [with the documentation the applicant has submitted]. Ms. Polidoro states that she is questioning the wording to understand exactly what the right-of-way refers to. Tim Ross, reviewing the documentation, states that it is more precisely south-west in orientation, but that, yes, it is southerly. The Board reviews the documentation, and Doug Lee states that the [access] road runs southeast.

Victoria Polidoro states that it is necessary for the Board to ascertain that the applicant has a legal right-of-way on the access road. Chairman Annas asks the applicant if he has any objection to the Board members visiting the property. The applicant states that he does not. Victoria Polidoro states that the applicant must also provide confirmation the access road is either already accessible, or can be made accessible for emergency vehicles. Doug Lee asks if this is something the Board should have the fire department confirm.

The applicant states that there are storm drains on either side of the access road, that his parcel has already been cleared. Chairman Annas asks if there are survey pins on the lot. The applicant replies that he was going to sell it, so there are survey pins, and that he had it resurveyed approximately one month ago. He further stated that though he was going to sell it, he decided to keep it and build on it, and that there is a driveway, and a realty sign on the lot.

Victoria Polidoro asks the applicant if he can confirm that he has the right to install utilities along the roadway [of the access road]. The applicant states that they were already installed by the previous owner. Victoria Polidoro asks the applicant to confirm that electricity and cable are

already installed. The applicant confirms that there are conduits all the way back from Hapeman Hill Road, approximately 1500 feet, to his parcel. Tim Ross notes that the previous owner did all of those improvements, but never appeared before the ZBA, and instead sold the lot. Rich Rock states that the reason the applicant is before the ZBA, is that Steve Cole did not feel that the [access road] constituted a setback off a road. Chairman Annas informs the applicant that the frontage of his parcel faces Hapeman Hill Rd. under the Town definition of frontage, and that he has no direct frontage on Hapeman Hill Rd.

Victoria Polidoro asks the applicant to remind the Board of his lot size [.6 acres, approximately], and asks if he has done tests to determine if there are adequate soils on the parcel for a septic system. The applicant replies that he has an engineer's plan and Board of Health approval. Ms. Polidoro notes that both of these documents are missing from the plans the applicant has submitted, and asks the applicant to present them. The applicant states that he will bring them in. Tim Ross notes that this documentation will have to have the stamp of the Board of Health. Kris Munn asks Victoria Polidoro if the applicant will need to appear before the Planning Board, if the variances are granted. Ms. Polidoro states that, as a single family home in the RD3 district, she does not think this will be necessary. Kris Munn states that he is thinking about street access, and Doug Lee notes that the access road is essentially a driveway.

Rich Rock asks if the document [the agenda] will carry binding, legal weight going forward. Victoria Polidoro states that it is just the ZBA agenda, and notes that the Board discussed making an abridged agenda for the public, [without the entire text of NYS Town Law 280A], and a more complete version, when there is information that needs to be shared. Mr. Rock states that there is language in the document, in reference to the variances, that is not accurate. Ms. Polidoro states that if it is not accurate, it should be corrected, and asks Mr. Rock to explain what he sees as the inaccuracy.

Mr. Rock states that the agenda, in the first paragraph, states that the applicant is asking for a setback of 40 feet – that is good, and a lot frontage of 209 feet. So our lot frontage is either 50 feet, from the photos, or zero. So this 209 number that is listed on this map is my lot width, indicated here [on the plan]. And lot width is calculated with the minimum front setback. Anne Rubin states that she drafted the agenda based on the application she received from Steve Cole, and shows this to Victoria Polidoro, Mr. Rock, and the applicant. Mr. Rock states, upon reviewing the statements in the application, that what is called “lot frontage” on the application would actually be minimum lot width. Mr. Rock states that he printed the definition [in the Town Code] of lot frontage, and [in this case] it corresponds to how much frontage the lot has abutting Hapeman Hill Rd., which is zero, so it's not 209 – 209 was confused with our lot width. Chairman Annas notes that it states 203 feet on the plan submitted by the applicant. Victoria asks who completed the application form. Anne Rubin states that the applicant and Steve Cole worked on it together, that this was the document on which she based the agenda.

Mr. Rock further notes that the agenda refers to a required lot frontage of 240 feet, and notes that in the RD3 zoning district, in the Town Bulk Regulations it is 160 feet for that district. Doug Lee clarifies that the last page of the application states that required lot width is 240 feet, and that required lot frontage is 160 feet, [which does not correspond with the first page]. Victoria Polidoro reads from the Town Code that existing lots of record may have reduced minimum side and rear setbacks, but that all other requirements comply with the bulk regulations, and asks the applicant if his side and rear setbacks are compliant. Tim Ross notes that if an applicant has a landlocked lot, he or she will need access, but that parcel will be no frontage, and that the Town Code could be clearer on this matter. Mr. Rock states that they are, and asks if the language will

be modified. Victoria Polidoro replies the Board will modify the application right now, and the applicant will need to sign the modifications to the application. Rich Rock indicates to Ms. Polidoro the correct measurements of the lot, with regard to lot frontage and lot width, in the supporting documentation, and that the applicant considered the old, farm road the front of the parcel, and it was only when Hapeman Hill Rd. was deemed the front of the parcel that the applicant had to appear before the ZBA. Chairman Annas comments that the requested lot width is 209 feet at the [60] foot setback. Doug Lee notes that the Board must also determine which border of the parcel is the front. Kris Munn replies that the front of the parcel, [as defined by “lot frontage” in the Town Code], faces Hapeman Hill Rd. Victoria Polidoro and the Board review the documents and she asks if the applicant needs a variance for lot frontage and for the lot width, since those two requirements do not necessarily correspond to the same aspect of a given parcel. Kris Munn states that it seems to be the case that the applicant would need both variances, since there are two separate requirements [in the Bulk Regulations].

Tim Ross notes that the parcel is essentially a flag lot over an easement, or a flag lot without a flag pole. The Board reviews the orientation of other flag lots in the Town, and notes that the flag pole is the lot frontage. Chairman Annas asks how the Board can calculate frontage if a lot does not front on a [mapped, developed] road. Victoria Polidoro replies that this is why [the Town Code] does not permit the creation of these [landlocked] lots anymore, and it is not possible to build on one, unless an applicant can prove access. She further notes that there are many of these [older] lots around Dutchess County, that is why New York State passed the [Town Law 280A]. Chairman Annas asks the applicant if he understands what the Board is discussing, and he replies that he does. Victoria Polidoro and the Board change the application to read “lot frontage of zero feet where 160 feet is required, and lot width of 209 feet, where 240 is required”. The applicant signs off on the above modifications.

Chairman Annas asks Victoria Polidoro if there is anything else the Board needs from the applicant. She states that the Board should classify the action as Type II [under SEQRA], because it is area variances for a single family home. Rich Rock asks the Board, if there is anything else the applicant needs to provide. Chairman Annas replies the critical document is the one that proves that the applicant has access on the old, farm road. Mr. Rock states that the applicant can provide this. In addition, the Board asks for the BOHA approval for the septic. Ms. Polidoro comments that this is necessary, because if the parcel in question is not a buildable lot, there is no point in granting variances. She notes that the Board would be granting variances, because the lot does not meet [Town] dimensional requirements, so the Board needs to confirm that the lot can support a septic system. Jim Ross, Town Board liason to the ZBA interjects that the ZBA can [also] grant the variances contingent on Board of Health approval, since, in many cases, an applicant may not have yet gotten that approval, or hired an engineer, prior to appearing before the ZBA.

At 7:40 pm Victoria Polidoro asks for a motion to declare the action a Type II [Action, under SEQRA]. Tim Ross so moves, Kris Munn seconds, and all are in favor. Victoria Polidoro notes that the parcel is in a County Ag District, and that she needs to review the rules for notification in an Ag District. Anne Rubin asks if this notification is different from the public hearing notices that go out. Victoria Polidoro states that it is a form, to be completed by the applicant, and that it goes out with the public hearing notices. Anne Rubin further asks if this notification is to be sent to everyone in the Ag District, or just the immediate neighbors. Victoria Polidoro replies that if the Ag District notification is required, in this case, it would go out to every [property owner] within 500 feet of the project. Anne Rubin notes that she may need to recalculate the fee to the applicant for neighbor notification, since she only counted the parcels abutting the parcel in

question. Jim Hegstetter asks how many parcels abutt the applicant's property. Anne Rubin replies that there are three. Tim Ross notes that the calculation would require a 500 foot buffer, rather than the usual 300 foot buffer. Victoria Polidoro states that she will review this and inform the applicant and Anne Rubin. Rich Rock states that this is the first time he has heard an Ag District mentioned, [in conjunction with the applicant's parcel], and asks Ms. Polidoro what the applicant will need. Ms. Polidoro states that the applicant will need to fill out an Ag Notification Form, and because the applicant's project is a single family home, he may be exempt. She further notes if notification is required, the applicant fills out the form, and it is then mailed to the neighbors within 500 feet [of the parcel]. Mr. Rock asks Ms. Polidoro where the applicant may obtain the form, and who is responsible for mailing it [to the neighbors]. Ms. Polidoro states that the ZBA will send the form to be completed to the applicant, who will then complete it and return it to the Board, and the Board will mail it to the neighbors. Kris Munn notes it is the applicant who pays for the postage. Rich Rock asks if the applicant needs to provide the septic plans, and [BOHA] approval prior to the next meeting, or bring them to the meeting. Victoria Polidoro states that the Board needs them prior to the meeting. The applicant states that the Board can send him the notification form, or inform him that it is not necessary via email. Kris Munn notes that the title documents [demonstrating a right-of-way on the old, farm road] also need to be submitted prior [to the next ZBA meeting]. Chairman Annas notes that there will be a public hearing at the next meeting, and that the applicant will be on the docket at 7:05pm. The applicant asks who he needs to leave the documentation with. Victoria Polidoro states that Anne Rubin should receive the documents. Tim Ross asks who should receive it if Anne is not in the office. Anne Rubin states that Town Clerk, Sue McCann, can receive the documents [requested by the ZBA].

Chairman Annas states that the applicant will be notified if any additional documentation is required by the ZBA. He then asks the applicant if he anticipates any neighbors will oppose his project. The applicant states that he does not. Chairman Annas comments that there is no provision [in the Town Code] requiring maintenance of a right-of-way. Tim Ross replies that it would be worthwhile to make that a condition of the variance. Chairman Annas also asks Victoria Polidoro if the applicant needs to obtain approval from the fire department. She replies that the Board can stipulate this, if it wants to. Chairman Annas asks the Board to visit the parcel. The applicant states that he is planning to have an excavator, transported on a large, flatbed truck, come to the parcel [implying that if this vehicle can access the parcel, via the old, farm road, than a fire truck would be able to].

At 7:48pm Chairman Annas asks for a motion to adjourn the meeting. Tim Ross so moves, Chris Klose seconds, and all are in favor.