

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

September 14, 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, Kris Munn, Tim Ross, Chris Klose, Doug Lee, and Chris Carney

Members Absent: Jim Hegstetter

Also Present: Victoria Polidoro, legal counsel to the ZBA, and Jim Ross, Town Board Liason to the ZBA.

PRELIMINARY BUSINESS

Minutes from August 10th, 2016 At 7:00pm Chairman Annas asks for a motion to approve the August 10, 2016 meeting minutes. Chris Klose so moves, and Doug Lee seconds. Kris Munn comments he is listed as both present and absent from the August 10, 2016 meeting, and confirms he was absent. Anne Rubin agrees to revise the minutes. There are no further comments. At 7:02pm the ZBA votes unanimously to approve the August 10, 2016 meeting minutes.

Planning Board Minutes: Chairman Annas has no comments, and asks the ZBA members if any of them wish to comment. Tim Ross comments the Planning Board has referred the Funshine Nursery School project to the ZBA Chair. He states typically this would be discussed by the board, and does not recall that it has been. Chairman Annas asks Mr. Ross to confirm this, and Mr. Ross states the Chair has replied to the applicant, to which Chairman Annas states he has given them no reply. Chairman Annas states he noted in the Planning Board Minutes, the applicant was asking for an expansion of the premises. He further comments, upon review of the ZBA Findings [and Decision] at the time, the applicant may not [expand the facility], and so he wrote a letter. Mr. Ross replies he thought this was a referral. Chairman Annas states it was not, that he has heard nothing back from [the Planning Board], and does not know if the applicant will be referred to [the ZBA], or not. Tim Ross states the applicant will probably end up before the ZBA for a different variance, based on what Michelle [Greig], has said.

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

PUBLIC HEARING

Appeal 16-05, Fred C. Cartier, application for an area variance to erect a fence, six feet in height, within the 35 foot setback, for the two front yards, on a corner lot. The Town Zoning Code § 143-28 A Fences and Walls limits fences to four feet in height when erected in the required front yard. The subject parcel is 6272-17-191168 in the R1 zoning district. The property cited above is located at 7 Adams Rd. in the Town of Red Hook.

Chairman Annas invites the applicant to present his proposal, asking if he has any additional documentation [from the review of appeal, at the August 10, 2016 ZBA meeting]. Mr. Cartier replies he has no new material. Chairman Annas asks if there is anyone present for the public hearing relevant to this application. There are no comments from the public. Chairman Annas asks for comments from the ZBA.

Doug Lee reiterates his point from the previous ZBA meeting, that there are several letters stating the fence is an improvement over the overgrown hedges that were there, which is states as a reason to approve a fence that is [non-compliant] to the code. Mr. Lee further comments this does not make sense because [the fact the fence is viewed as an improvement by some people] has nothing to do with the code [requirements]. Chairman Annas notes this happens occasionally, especially when an applicant goes ahead and builds something without a permit, in violation of parts of the code, and then makes the argument the [property] looks better than it did before. Chairman Annas agrees this should not be a rationale for [granting a variance]. Chairman Annas further comments there have also been cases, in which an applicant erred in building something. They came [before the ZBA] for a variance, in which case the ZBA stated had the applicant come before the ZBA prior to construction of, in this case, solar panels, both too close to, and over the property line, the ZBA would never have granted a variance. Chairman Annas agrees with Doug Lee, that the characterization of a [proposed structure] as an improvement [should not be under consideration by the ZBA].

Chairman Annas asks for other comments from the ZBA, regarding this application. Tim Ross notes he drove by the property in question, and considers the lot unique, in that it has two front yards. Mr. Ross notes the fence has no impact on traffic visibility, in either direction. He further notes he does not see [the proposed fence] as a detriment to the neighborhood. Chairman Annas finds [the proposed fence] is a visual detriment [not from a traffic standpoint]. He comments the [Intermunicipal Task Force] meets every Friday morning to discuss the future build out of Red Hook, in a detailed manner, including fences, setbacks, road widths, light fixtures, and siding, among other things. Tim Ross comments he is not a fan [of such discussions]. Chairman Annas comments he may not agree with everything [the Intermunicipal Task Force] proposes, but [the Town] does need [Zoning] Code, and enforcement. He notes he has lived in towns that did not have this, and he found they went downhill pretty quickly. Chairman Annas further comments he has lived on corner lots, and [the property owner] forgoes a certain level of privacy on such lots. He continues, [A property owner, on such a lot] cannot expect to do things in the same manner as a person on an internal lot, since by definition such a [property owner] has two front yards.

Mr. Cartier states he was never aware of that distinction, of two front yards. Chairman Annas replies he finds many people are unaware of everything in the [Town] Code, and states he himself is not aware of everything. Chairman Annas asks Mr. Cartier to confirm he put up the fence for privacy, which Chairman Annas states is in violation of the ordinance. Chris Klose reads a passage in the [Town Code], *“No fence or wall or other structure in the nature of a fence shall be erected for the sole or dominant purpose of annoying neighboring properties or preventing passage of light, air or view to or from such properties.”* Chairman Annas states he can’t believe this passage is in the Town Code. Kris Munn states he believes the intent of this passage is to prevent someone from

building a fence to block a neighbor's view of something intentionally. Tim Ross concurs, and states this [passage's] purpose is to avoid spite fences. Kris Munn further comments if someone wished to complain about a neighbor's fence which blocks his or her view of, say, the mountains. Chris Klose notes the passage states the view is to be regarded as from the property [containing the fence] to [something else], which Mr. Klose finds a little strange. Chairman Annas comments he feels this passage needs to be rewritten, especially since a property owner might not build it out of spite, and Kris Munn notes the impact of such a fence on a neighbor [could be different from the intention of the fence builder].

Doug Lee asks the ZBA, in a case like the present one, in which [a fence has already been constructed], is the Board supposed to consider the applicant's cost in undoing it? Kris Munn comments this is a well-known, and often-used tactic [on the part of some applicants], but states he does not believe this to be the case with the present applicant. Mr. Munn further comments, in theory this is not supposed to have an impact on the ZBA's decision. Ms. Victoria Polidoro concurs, and states the ZBA is supposed to regard [a non-compliant, built structure], as if it is not yet built. Chairman Annas comments on the above cited application with the solar panels, in which the ZBA required the applicant to move three out of four solar panels. He further notes two of them were not even located on the applicant's property, and the third was too close to the [property line], and the applicant, at the time, found this a hardship, which Chairman Annas states cost the applicant six or seven thousand dollars. Chairman Annas concludes the ZBA regarded the application as if the panels in question had not yet been constructed.

Chairman Annas asks for further comments or questions from the ZBA. Chris Klose comments he has looked at the fence, and notes it is one of two on the same road. He further notes they appear to be the same height. Mr. Klose comments the [two] fences are not a traffic concern, but also states ignorance is no defense under the law, and from the law. He states he understands the position of the applicant, but does not necessarily agree with him. Chairman Annas mentions three other, similar fences in the area, which encroach further [into front yards] than the [Town] Code allows. He states the first fence is on Rokeby Rd. and, he believes, Adams, or Jefferson Rd., and states the applicant should not use this example to support his appeal. Chairman Annas states the two other fences are past the applicant's property, down [Rokeby? Rd.]. He further states he has seen other, non-compliant fences in the neighborhood, which the Zoning Enforcement Office is looking into. Chairman Annas finds people have the tendency to build in violation of the law, out of ignorance of the law. He tells the applicant the person who built his fence should have known [about local ordinances].

Chairman Annas states if there are no comments from the public, the ZBA can close the Public Hearing. Ms. Polidoro states the public hearing was opened, insofar as discussion is concerned, but the ZBA should conduct a motion and a vote to open and close the public hearing.

At 7:16pm the Tim Ross motions to open the public hearing. Kris Munn seconds, and all are in favor. Chairman Annas notes there is no public comment.

At 7:16pm Kris Munn moves to close the public hearing. Tim Ross seconds, and all are in favor.

Chairman Annas declares the action, for Variance Resolution 16 – 05, a Type II, under SEQR, and states no further SEQR is necessary. He reads from the ZBA Variance Resolution, stating *Whereas, said application requests a variance or adjustment to the strict application of the Zoning Code, specifically regarding a fence exceeding the maximum height of four feet, to permit a fence with a height of six feet, Whereas the Board held a Public Hearing, notice of which was duly published in the Poughkeepsie Journal and the Daily Freeman on, August 26th, 2016, and posted as required by law, and Whereas, at said Public Hearing all who desired to be heard were heard and their*

testimony recorded, and Whereas, on September 14, 2016, the Board determined that the application would not result in any significant adverse environmental impacts and adopted a determination of non-significance, and Whereas, all testimony has been carefully considered and the following pertinent facts noted:

Chairman Annas further states some ZBA members conducted a site visit, and determined the proposed fence was not a visual impediment to traffic. Chairman Annas and the ZBA discuss the 30' rule, in the Town Code, for traffic visibility, on corner lots. Chairman Annas states the proposed fence is behind this boundary, and, as such, does not create a safety concern.

Chairman Annas reads the first statement of the 5 pronged balancing test for the ZBA – *The variance requested will not produce an undesirable change to the character of the neighborhood or a detriment to nearby properties*, and asks the Board to comment. Chairman Annas finds the proposed six foot high fence will change the character of the neighborhood, since there is no legal precedent [for such a fence], in that neighborhood. Tim Ross comments the neighbors with the most impact sent [the ZBA] letters stating they were not adversely impacted, and in fact, they liked it. He comments [the proposed fence] may change the character, but it is an improvement in the neighbors' eyes. Chris Klose comments the proposed fence is in keeping with what is already [in the area], but it is not legal, and nor is the other [nearby fence]. Chairman Annas disagrees, and notes no one [in that neighborhood] has a six foot high fence in their front yard. Chris Klose states the fences in question are in the side yards, and finds people don't generally distinguish between a front yard and a side yard [regarding fences]. Victoria Polidoro asks if the proposed fence is six feet high on both frontages, or just the side frontage. Kris Munn replies the entire fence is the same height.

Chairman Annas restates his finding that the proposed fence is an undesirable change to the character of the neighborhood, and asks the Board to state their findings. Kris Munn states his concern if this proposed fence is authorized, it will open the door to anyone in the area who wishes to put up a [non-compliant] fence. He states this will certainly change the character of the neighborhood. Doug Lee comments [the granting of this variance] will also set a precedent for anyone with a corner lot. Kris Munn notes this specific, lot, [and proposed fence] are far enough off the street, [such that every non-compliant fence application need not be granted], but he further notes, the reality is if there are similar situations, with a non-compliant fence, already in place, it will be harder for the Zoning Enforcement Officer [to issue a denial of permit], if the ZBA grants a variance for this proposed fence.

Chairman Annas looks at the documentation, submitted by the applicant, and notes the proposed fence would be compliant if the applicant moved it back 15' – 20', thereby reducing the size of the [fenced area] in the [front] side yard. Victoria Polidoro concurs, if the proposed fence is set back to 35', it is allowed to be taller [than the 4' height, stipulated in the Town Code]. Mr. Cartier states he would lose half of [what he considers] the back yard, if he did this. Chairman Annas states this is a consequence of buying a corner lot. Mr. Cartier states he was unaware his property contained two front yards, by law. Chris Carney reminds the ZBA of a similar case, regarding a fence on a corner lot. Chairman Annas notes this was on Metzger Rd. Tim Ross notes there is another on Old Post Rd., at the Rockefeller Lane extension. The ZBA discusses other corner lots with higher fences, in the Town, one of which is a hazard to road visibility. Regarding the wording of the first statement on the 5 pronged balancing test, Kris Munn and Chris Klose note the statement “will not produce an undesirable change” cannot be clearly predicted, since other property owners will have the opportunity to build higher, non-compliant fences, if this one is granted a variance. Victoria Polidoro reminds the ZBA they must consider the proposed, non-compliant fence as if it is not there, and the other, suspected non-compliant fences as well. Chairman Annas comments the [building] permit was pulled, for a non-compliant fence on Rokeby Rd., and questions the issuing of a [building] permit for

it in the first place. He surmises this is a newer fence, constructed within the last few years. Mr. Cartier states he thinks it is about 4 years old.

Tim Ross asks Mr. Cartier when his proposed fence was built. Mr. Cartier states it was about 4 months ago, July, 2016. Tim Ross states he does not find the proposed fence will change the character of the neighborhood. He states property owners in developments, like this one, with smaller lot sizes have more difficulty if they want a fence for privacy in their back yard. He cites the College Park, Linden Acres, and Willow Park developments, as neighborhoods with similar situations, in which there is more fencing, since people there want more privacy in their back yards.

Kris Munn states he has serious concerns about [granting a variance for a 6' high fence, in the applicant's neighborhood], and notes he has not yet made a site visit. As such Mr. Munn states he would like to hold off on further comments, until he can look at the neighborhood more closely. He notes he was not present at the ZBA meeting in which this application was reviewed. Chris Klose asks the applicant to confirm his neighborhood was built in the early 1960s, which Mr. Cartier does. Kris Munn comments he wants to see all of the yards in the neighborhood, in order to imagine what it would look like if everyone had six foot fences in their back yards. Chris Klose notes there are four foot high chain link and wooden fences in the neighborhood, in addition to mature trees. Mr. Munn states he might be hesitant to approve a six foot high, stockade fence, which would potentially close up a neighborhood, having, historically, a more open, suburban feel to it. He tries to imagine what the Village of Red Hook would look like if there were many six foot high fences on the small lots there. Mr. Munn further comments he would like to see the other, suspected non-compliant fences in the neighborhood, to determine when they were built, whether they were grandfathered in, and as such, a part of the neighborhood. Chairman Annas states the fences in question are newer, and illegal, and recommends Mr. Munn take a look at the neighborhood.

Chris Klose states this is a difficult case, even though, in some cases, good fences make good neighbors, because [granting a variance for this proposed fence] is a precedent setter, the law is clear, those two fences are outside of the law, which leaves the ZBA with the question of how to proceed. Chris Klose asks Chairman Annas to confirm 5 fences in the neighborhood are under scrutiny by the Zoning Enforcement Officer, which he does. Mr. Klose then asks if fences in the other, similar, neighborhoods, mentioned above, will also come under scrutiny. Victoria Polidoro comments the ZBA should, in regard to this application, be considering the particular neighborhood in which the proposed fence is located. Kris Munn notes Zoning Enforcement is complaint based, but homeowners should be aware of the law, [in order to comply with it]. He further notes there are cases in which a non-compliance is not noted, or complained about, and so no enforcement action is taken. Chairman Annas states if he had built something like this on a corner lot, he would cite all of the other, nearby, apparently non-compliant fences to make a case for his fence.

Victoria Polidoro asks the ZBA if they want to come back to this question later, and go on to the next ones. Chairman Annas suggests the Board consider doing this, and reads the second statement of the 5 pronged ZBA test: *The needs of the applicant cannot be achieved by other than an area variance.* Chairman Annas states the applicant can achieve his goal by reducing the yard space. Doug Lee concurs, Tim Ross disagrees, equating the term "needs" as desires, and states what an applicant wants is what they need. He states in this case the applicant's need is to have privacy in a back lawn that is actually usable, not chopped right in the middle, with a fence, so half of the back lawn is out by the road, and the other half is behind the house. Chairman Annas states the [increase in setback to make the fence compliant] would not be the middle of the yard, it would not result in the yard being cut in half. He further notes it would be substantially less than half. Chairman Annas asks the ZBA for further comments. Chris Klose states the desired results can be achieved by other means.

Mr. Cartier asks to submit further documentation to the ZBA, to which Chairman Annas assents. Mr. Cartier presents a drawing made by Lou Fiorese, [Assistant Zoning Enforcement Officer], in which he illustrates where the fence should be located to be compliant. Doug Lee notes there need be no reduction [in the fenced yard space], if it is four feet in height. Chairman Annas reviews the drawing, identifying a 24 foot, grandfathered in setback, stating he believes the applicant can do other things in that area, in which the applicant cannot exceed the 24 foot setback. He reminds the ZBA of an appeal on Metzger Rd. in which an addition on a house could not exceed further than the furthest protrusion on the house. Chairman indicates on the drawing the furthest corner to which a six foot high fence could extend, in relation to the 24 foot, grandfathered in setback. He further illustrates, using the drawings and photographs, submitted by the applicant, how much the applicant would have to reduce his fenced area, in order to be compliant. Chairman Annas estimates this at 25% of the back yard.

Victoria Polidoro asks the applicant if he has clarified to the ZBA his reasons a four foot high fence would not be adequate. Mr. Cartier replies he would have to chop off two feet from the proposed fence he has installed, that it would loosen the fence up construction wise. Mr. Cartier further states a four foot height would not afford him enough privacy. Chris Klose describes two solutions for the applicant. The first involves chopping off two feet from the installed, proposed fence, capping it, and subsequently installing bushes, or landscaping that would extend six feet or more in height. The second solution involves moving the fence to the required setback to make it compliant. Mr. Cartier asks Chairman Annas to indicate which parts of the fence would have to be four feet in height to be compliant, which he does. Mr. Cartier asks Chairman Annas if he could keep at least five feet in height, to which Chairman Annas replies anything over four feet in height would not be compliant.

Victoria Polidoro asks the applicant if he is modifying his request to the ZBA, and states that the applicant may do this. Mr. Cartier asks Chairman Annas if he would consider a five foot high fence, in order for Mr. Cartier to maintain privacy from people looking in. Chairman Annas states if the yard is meant to contain small children and pets, four feet is adequate. Mr. Cartier replies he does not want people looking in. Chairman Annas comments the applicant can use landscaping to this effect, and there are no height limits for that. Mr. Cartier comments the former hedge, [which the fence replaced], was about 30' wide, and 35' high. He indicates this in the photographs he presented. Doug Lee notes Central Hudson removed the tops from parts of the hedge. Chairman Annas asks Mr. Cartier if he wants to modify his request, commenting the applicant might not fare any better, [in terms of a variance], with a five foot high fence, than with a six foot high fence], based on the comments by the ZBA. Chairman Annas states if the applicant went to a four foot high fence, in the areas he indicated, using landscaping as screening, the applicant would not need a variance, just a [building] permit for the fence. Chairman Annas asks the applicant if he would like to postpone a decision on what he would like to do, until next month's ZBA meeting. Mr. Cartier states he would like to do this. Chairman Annas recommends any ZBA members who have not seen the neighborhood, to make a site visit, especially stating aesthetics play a role in this nice, neat, little neighborhood. Chairman Annas places Mr. Cartier's appeal first on the docket for the October 12, 2016 ZBA meeting. Victoria Polidoro notes the Board has 62 days from the date of the Public Hearing. She further states the ZBA should be prepared to act on this appeal at the October ZBA meeting, or ask for an extension.

Review of Appeal

Appeal 16-07, Lynda Dunckley, application for an area variance to construct a Cottage five feet from the side yard lot line. **Section 143 Attachment 2 of the Town of Red Hook Zoning Law requires a thirty-five foot, side yard setback, and Section 143-68 B does not permit a Cottage, when an accessory unit already exists within the principal dwelling.** The subject parcel is 6172-00-625810, located at 32 Old Route 199, in the RD3 zoning district, in the Town of Red Hook.

Chairman Annas asks the applicant to come forward and present her case, asking for the precise location of the parcel. Mrs. Dunckley states the location as left of Route 199, before the intersection with 9G, and behind the Kingdom Hall Jehovah's Witnesses Church, on Route 9G.

Ms. Dunckley states she and her husband own a one acre buildable lot, predating zoning, and the adjacent four acre lot, on which the two family house, and cottage sit. She states they purchased the property in 1988, and converted the house to a legal two-family in 1990. Ms. Polidoro asks the applicant if she got the approvals to convert to a two family, in 1990, to which the applicant states she did, and also she has used the two family house as a boarding house. Chairman Annas asks the applicant to confirm she sought and obtained permits for her two family house, which she confirms. Chairman Annas asks about the cottage. Ms. Dunckley states the pole barn, which they have converted into a cottage, without changing the footprint, was built in 1972. She further states what the Town is calling a cottage has been used as an office by her and her husband, and they did not contract the work out to create it from the pole barn, but rather did the work in stages by hiring people they needed to do various work

Chris Klose asks the applicant to describe the foundation of the structure, to which Ms. Dunckley replies the structure is a pole barn. Mr. Klose asks her if it sits on the ground. Ms. Dunckley's husband states he put a foundation around it, which Ms. Dunckley describes as floating footings. Mr. Dunckley further states he put footings down, bricks, a concrete floor, and subflooring, and a crawl space in between. Chris Klose asks Mr. Dunckley to confirm if he put a rat slab in there, which Mr. Dunckley confirms, and further states he dug out the space...Ms. Dunckley interjects they did minimal work. Chris Klose asks them to confirm they dug down four feet to create the foundation, which Mr. Dunckley confirms he did for the concrete, and states there is no concrete under the siding. Chairman Annas asks Ms. Dunckley to state the square footage of the structure. Mr. Dunckley states it is 31' x 24'. Chairman Annas asks them to state what permits they obtained to do the work on the pole barn, to which Ms. Dunckley states she did not get a permit to do any work on the structure. Mr. Dunckley states they were going [to the Town Planning Board] for the permit, because they did not realize they were out of compliance. Ms. Dunckley states they did not change the exterior of the building. Mr. Dunckley states they did not change the footings, or anything [else], so they did not think they had to obtain a permit, and further states he simply put some secure flooring for the office, put some walls up, insulated them, and then someone made an anonymous complaint. Mr. Dunckley states they then came to the [Building and Zoning Office] to see Steve [Cole], to get a permit, to get the building before the Planning Board. Mr. Dunckley further states they then found out, because of the [lot] line, they had to go to the Zoning Board [of Appeals], and then they will go back to the Planning Board.

Ms. Dunckley states the two-family house has been used as a [single] family [dwelling] for years and years. Chris Klose examines the drawings, submitted by the applicant, and asks Ms. Dunckley to confirm

the location of the two family house, and the cottage, with habitable space, which she does, confirming the cottage is located five feet from the property line of their other, [smaller] lot.

Ms. Dunckley states they have owned these lots for 30 years, and they are not separated on the deed. Chairman Annas asks Victoria Polidoro for her interpretation of this from a legal standpoint. Victoria Polidoro states this is not uncommon, and they remain two separate parcels, unless there is language in the deed merging them, or some kind of map, filed with the County, merging them. She further states, this means they purchased both with one instrument, and they can legally sell one lot. Chairman Annas asks Ms. Polidoro if the applicant can legally sell the four acre lot, and retain the one acre lot. She replies she has not seen the deed, so she does not know if there is some restriction which would not permit this, but generally the answer is yes. Doug Lee asks Ms. Polidoro how hard it would be to combine the lots, to which she replies the applicant would have to go through subdivision approval to combine the lots, so a non-conforming lot can be

Victoria Polidoro states she is looking in the application materials for a letter from Steve Cole, since she has some questions regarding the classification of the converted pole barn. She further states the section of the [Town] Code, regarding cottages, states you cannot have a cottage if there is another, accessory apartment, on the property, but if [the applicants] have a legal, two-family use, why is that being considered an accessory apartment? Tim Ross states [the applicants] have an accessory apartment. Ms. Polidoro states she needs clarification from Steve [Cole]. Chris Klose asks the applicant what is in her [two family] house currently, to which she states there are two kitchens... Chris Klose interjects asking the applicant to confirm they have a legal two family house, in which one family, the applicant, and her husband reside, which Ms. Dunckley affirms, and also states they could pull out one of the kitchens. Mr. Dunckley states they originally built [the accessory apartment] for his in-laws, stating they put an add-on for them, because they did not want to share kitchens with them. Mr. Dunckley asks the Board to confirm its concern is the pole barn, which Chris Klose replies, no,[the Board is] not only concerned with the pole barn. Kris Munn states [the Board] is [also] concerned with the permitted uses on the [two-family] house. Ms. Dunckley states her property was granted permits pre-zoning, and she also has a permit for a rooming house, and her business Continuous Care there, in which they were permitted to take care of elderly people [in the house]. Ms. Dunckley states [dates to] 1985.

Kris Munn ascertains the applicant is potentially making a change to the use of the pole barn, so the current set up of other things on the lot has an impact [on what would be permitted with the former pole barn], so since the applicant does have a permit for a two family [house], it impacts what other things can be done on the property. Mr. Munn further states, were the [current configuration of the lot] to change, that could impact what [would be] permitted on the property. Mr. Munn states, [if an applicant] has a two-family house, and/or an accessory apartment, then, perhaps, a cottage [on the same parcel] should not even be considered, with, or without a variance, and that is what our attorney says we need clarification on, from the Zoning Enforcement Officer. Mr. Munn also suggests if the applicant wants to give up the rights to a two-family house [on the subject parcel], then the ZBA would be able to consider the variance, if that was [the] disqualifying [factor], then one possibility might be that. Ms. Polidoro states the two issues are can an applicant have a cottage with a two-family house, without the need for an [area] variance, and that may be a possibility. Ms. Polidoro further states she does not know why it is being classified as an accessory apartment, if [the CO] is for a two-family [house]. Chris Klose asks her to confirm that [classification] of a two-family [house] [is different from a house with] an accessory apartment, which she does. Ms. Polidoro states the other issue is if this cottage is not permitted by virtue

of the two-family house [on the parcel] is this a [change in use requiring] a use variance, which is a game changer.

Chris Klose asks the applicant to confirm she took a pole barn, and created a legally permissible office building. Ms. Dunckley states she has a home office [in the former pole barn]. Mr. Dunckley states the structure is not quite legal, because they went through the process to [get a permit]. Ms. Dunckley states Steve Cole visited the structure, on a site visit, and she asked him what they would have to do, to classify the structure as an office, and not have to take out the kitchen, because it has a kitchen. Ms. Dunckley further states she uses the kitchen for canning, and as a summer kitchen. Ms. Dunckley reports Steve Cole informed her she would have to remove the kitchen to comply with the classification as a home office. She further states Steve Cole also informed her she could apply [to the ZBA] for a variance, and have the cottage. Chris Klose asks the applicant to confirm she is looking for the easiest way to classify [the former pole barn] in order to bring it within compliancy, which she does.

Mr. Klose asks Ms. Dunckley to state her intention for the cottage – is it to run a kitchen for her garden, or is it to have a boarding house, or an apartment, or what? Ms. Dunckley states the two family house has six bedrooms and five baths, and they used to have elderly people there, and comments the house is way too big for her and her husband. She states when she and her husband came back four years ago they started renting it as a vacation rental, through the RBO. She states they started out with a four bedroom side, and she and her husband would occupy the two bedroom side. She further states, since Red Hook is an incredibly popular area, in which there are lots of farm weddings, they were getting many requests for large groups, because they can sleep up to 20 people, and it doesn't impact anything. Ms. Dunckley states she and her husband would sleep in their RV in such cases, and further states they spent quite a bit of time in the RV. Chris Carney asks if they used the RV in this way, in the winter, which Ms. Dunckley confirms. Victoria Polidoro asks the applicant if she is planning to make the cottage into a dwelling unit, to which Ms. Dunckley replies it was always a place for them to go instead of their 24' camper. Chris Klose asks Ms. Dunckley to confirm her intention of moving out of the big house, and make that a commercial operation, for all intents and purposes, whether it's Air BnB, or whomever, and live, while you are here, and Mr. Klose states he is unaware of where they come and go from, and live in the cottage, because it is more suitable to you. Mr. Dunckley states this is correct.

Mr. Klose further states this is a whole different kettle of fish where the ZBA process is confirmed. He further states the question to him becomes what are the rules governing a boarding house, with two kitchens in it, and then a cottage that can also be a rental unit, because the applicants do have the camper. Mr. Dunckley states they no longer have the camper. Victoria Polidoro states either way the cottage needs a special use permit approval, so the applicants have to go before the [Town] Planning Board. She further states the question is how many variances does the applicant need from the ZBA. Ms. Polidoro further states if the applicant volunteered to get rid of the two-family use of the house, then she would not need a variance from the ZBA, for the cottage, or if we went back to Steve [Cole] and asked him to review his determination [regarding the accessory apartment], the applicant might not need a variance from this Board. Kris Munn states there is also the setback issue, to which Ms. Polidoro agrees the applicant would need a variance for that.

Ms. Dunckley states they could remove the lot line, [separating the two lots], and get rid of the two-family [house], and then there would be no issue [before the ZBA]. Kris Munn states if the applicant was apply for an [area] variance, for the setback, one question she would have to answer regards the existence of other ways in which she could meet her needs, not involving obtaining an [area] variance. Mr. Munn further clarifies the Board could suggest she move her lot line, or combine the two lots, in order to eliminate the need for a setback variance. Mr. Munn states this would require the one acre lot to get

larger, not smaller. Ms. Dunckley states she was told if she changed anything, she would lose the grandfathered in one acre buildable lot. Ms. Polidoro confirms this. Mr. Dunckley asks the Board to confirm if they moved the lot line, the pole barn would still have to be 35' from the adjusted lot line, which the Board does. Mr. Dunckley further states this would be impossible because they would need to maintain a right of way to the two lots. Kris Munn states this application needs more development – the applicants need to determine what variances they need, and what they need to do with the [Town] Planning Board. Victoria Polidoro adds the applicant needs figure out how she wants to proceed. Ms. Polidoro also states to have a cottage on their property, the applicants need [Town] Planning Board approval, and the [Zoning] Enforcement Officer has not written a letter, regarding their application, explaining why the application has been referred to the ZBA, so the Board is, to some degree, hypothesizing on why the applicant is before the ZBA. Ms. Polidoro adds the [Town] Code allows cottages, unless a [property owner] already has an accessory apartment. Ms. Dunckley asks Victoria Polidoro if a two-family house is the same as [a house with] an accessory apartment, to which Ms. Polidoro replies it is not. Ms. Dunckley states her vision for the future is her [adult] children could occupy the two family house, and she and her husband could occupy the cottage. Chris Klose states the Board is trying to figure out how to accommodate the applicant's needs, and Kris Munn states the applicant needs to figure out what those are. Ms. Dunckley states it would not make sense to give up the one acre, grandfathered in, buildable lot, because they can build a single family house on that lot. Ms. Dunckley states she wants to find out how to make it all legal. Chairman Annas asks the applicant if she wishes to retain [the current] two parcels. Ms. Dunckley states she does. Mr. Dunckley asks the Board, if they maintain the two parcels, as they are, can they still have the pole barn, in its current location, and use it as an office. Victoria Polidoro states that is what the ZBA would determine, whether or not to grant a variance for the pole barn.

Ms. Dunckley states she is willing to pull out the kitchen, and make it an office [instead of a cottage]. Kris Munn asks her to confirm this, which she does. Victoria Polidoro states the applicants appear to be seeking a variance, because they do not wish to combine the two lots. She further states what the Board appears to be hearing is if the applicant is willing to remove the kitchen from the cottage, and make it an office, or if the applicant is willing to remove one of the kitchens from the two-family house, or if the Board goes to Steve Cole regarding his classification of the main house as a house with an accessory apartment, or a two family house. Chairman Annas asks Ms. Polidoro to clarify the mechanism by which the applicant would lose her ability to construct a dwelling on the smaller lot, at some time in the future, were she to move the lot line now. Ms. Polidoro states she has not seen the deed, but in most cases, when a property owner starts moving lot lines, they lose the grandfathered status, if there is one, making it a buildable, non-conforming lot. She further states a property owner can only move a lot line to make it conforming, or more conforming.

Ms. Polidoro reminds the applicant if the ZBA sets a public hearing, at this meeting, it will be regarding exactly what the applicant has proposed in her application, and further states the current application would require a use variance. Tim Ross recommends the applicant conduct further study of her project, since placing the pole barn on the one acre lot would require a separate well, and separate sewage, on that parcel. Kris Munn asks the applicant if her driveway [on the four acre lot] is crossing the property line [on the one acre lot], to which she replies she does not think so. He also recommends the applicant take more time to think about her various options, and discuss them with Steve Cole. He also suggests if the applicant chooses an option requiring a variance, she would have to submit a new application to the ZBA, based on that proposal. Ms. Polidoro adds, if the applicant wants to use the pole barn as an office, Steve Cole would have to review the configuration of the structure to determine if the applicant would still need a setback variance. Chris Klose notes the applicant currently has a buildable, one acre lot, a property she

has used as a boarding house and an AirBnB, and she needs to communicate her intent for the property, whether she intends to use it as a commercial property, or what, since this will have an impact on how the [Town] Planning Board considers her proposal.

Ms. Polidoro states an accessory apartment and a cottage shall not be permitted on the same residential premises, [according to the Town Code]. Ms. Dunckley asserts the apartment is over 1000 square feet, and accessory apartments are under 600 square feet. She further asserts she got permission for a legal, two-family house. Ms. Polidoro states she tends to agree with this interpretation, but she also refers to the decision of the Zoning Enforcement Officer, who sent this applicant to the ZBA, and states she needs to clarify his decision with him.

Chairman Annas asks Ms. Polidoro to explain the difference between a two-family residence, and a single family residence, with an accessory apartment. Tim Ross states an accessory apartment is less than 650 square feet, and clearly subordinate to the main residence, and a two-family [house] has two, essentially, equal units. Chairman Annas asks Mr. Ross to identify the area of the Town Code which states, this. Town Board Liason, Jim Ross, adds, the classification of two-family dwelling also appears on the tax bill. Chairman Annas notes there is no definition, for two-family units, in the Town Code. Victoria Polidoro reads Section 143-66 of the Town Code *Accessory Apartments*: through adaptive reuse requires a maximum of 650 square feet of habitable space. She further states any [square footage] greater than this would be considered a two-family [dwelling]. The Board and the applicant agree to speak to Steve Cole, and the applicants are placed on the October ZBA agenda, but no public hearing is set.

Chairman Annas reads the proposed Escrow Guidelines, based on the language adopted by the Town Board in May, 2015. Said Guidelines also advise an applicant his/her variance will not be approved until the final escrow bill is paid. Ms. Polidoro clarifies her review of ZBA applications results in a bill the Town does not receive until after the ZBA Public Hearing, at which a variance might be granted. Kris Munn clarifies the ZBA is voting on the Guidelines for Applicants document, not on the question of escrow itself, which Ms. Polidoro affirms. Tim Ross reads the language of the Town Board determination that the ZBA *may* charge escrow, and asks Chairman Annas if the Board is charging escrow to every applicant. Victoria Polidoro states she has been asked to attend every meeting, and review all appeals, which the escrow is meant to cover. Town Board Liason, Jim Ross explains the Town Board adopted the language so that the Chairman of the ZBA could determine if an application needed attorney review, and some of the simpler applications may not require it. Chairman Annas reiterates the ZBA needs for one of the Zoning Enforcement Officers at the monthly ZBA meeting. He further notes many questions at the present meeting could have been answered, had there been someone from Building and Zoning present. He also comments Ms. Polidoro's time could be reduced, if the Town provided for Zoning Enforcement representation at the meetings. He reminds the Board Bob Fennell attended ZBA meetings for years, and was always a great help in providing answers to the questions that come up at meetings.

At 8:34pm Kris Munn moves to authorize the Escrow Guidelines for Applicants to be sent to each applicant. Doug Lee seconds, and all are in favor.

At 8:35pm Kris Munn moves to adjourn the ZBA meeting, Chris Carney seconds, and all are in favor.