

Town of Red Hook
Zoning Board of Appeals Meeting Minutes (revised, approved)

December 13, 2017

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, Chris Klose, Chris Carney, and ZBA Alternate Kate Karakassis, installed as a full voting member by Chairman Nick Annas

Members Absent: Tim Ross, Jim Hegstetter

Also Present: Victoria Polidoro, ZBA Counsel, Patrick Garrity, assisting Ms. Polidoro, Jim Ross, Town Board Liaison to the ZBA, and Bob Fennell, Zoning Enforcement Officer, and Assistant Building Inspector, to the Town of Red Hook.

PRELIMINARY BUSINESS

Minutes from October, 2017

At 7:00pm Chairman Annas asks for a motion to approve the ZBA meeting minutes from October 11th, 2017. Chris Klose so moves, and Chris Carney seconds. There is no discussion. All are in favor.

Planning Board Minutes/ Comments from the Chairman:

There are no comments on the Planning Board minutes.

At 7:03pm Chairman Annas installs Kate Karakassis, a ZBA Alternate, as a full voting member, for the meeting, and asks for a motion to move the Board into executive session.

At 7:04pm Chris Klose so moves, Kris Munn seconds, and all are in favor.

At 7:26pm Kris Munn moves to resume the meeting from executive session, Chris Klose seconds and Nick Annas, Kris Munn, Chris Klose, and Chris Carney vote AYE. ZBA Alternate, Kate Karakassis is momentarily absent, and does not vote.

At 7:29pm Chairman Annas asks for a motion to waive attorney-client privilege regarding the October 11, 2017 Meeting Memo from Victoria Polidoro to the Board. Chris Klose so moves, Kate Karakassis seconds and all are in favor.

Review

Appeal 17-08, Charles Simmons, Director of Physical Plant, Bard College, representing Bard College, application for an area variance to use an existing residence as a small office, for the John Cage Trust, as part of the Bard College Educational Use, on a parcel of 5.04 acres. Section 143-82 A of the Town of Red Hook Zoning Law requires 25 acres for an Educational Institution in the RD3 Zoning District. The subject property is located at 15 Whalesback Road, in the RD3 Zoning District.

Mr. Simmons states he is here because the Town of Red Hook Planning Board is reviewing the proposed Bard College Master Plan, and has cited this parcel, at 15 Whalesback Road, as a non-conforming [parcel], stating Mr. Simmons needed a variance from the ZBA. Chairman Annas asks Mr. Simmons to confirm, specifically, the variance is needed because the parcel is [about] five acres, which Mr. Simmons confirms. Chairman Annas reviews the parcel map. Kris Munn comments it is his understanding that the Planning Board is looking at the GreenPlan Memo, which states a use variance is needed, and not an area variance. ZEO Bob Fennell confirms this, and clarifies, however, Bard College can't get a use variance for something like this, and further states they can't prove that they would not otherwise get a reasonable return from the [allowed uses] in the zone. Kris Munn states he understands. Mr. Fennell further clarifies "Educational Uses" are allowed in the RD3 Zone, and that is what they are applying for. Mr. Fennell further clarifies, since the subject parcel is only 5.04 acres, the applicant needs an area variance to have an "Educational Use" on that parcel.

Victoria Polidoro notes that Mr. Fennell issued a memo, on November 7, 2017, to the Planning Board agreeing a use variance was required, for a change of use of the John Cage Trust facility, so this was stated in writing. Mr. Fennell confirms this. Ms. Polidoro further notes Mr. Fennell issued a Letter of Denial, on December 7, 2017, stating only an area variance is needed. Ms. Polidoro comments this last document did not explicitly overrule the prior determination. Mr. Fennell states he was in agreement [with requiring a use variance], at the time of the November 7, 2017 memo, and states there are two methods for solving this problem, one is a use variance, and one is an area variance under the stated section of the law. Mr. Fennell further states he was unaware of what the application was all about when the memo was written. Ms. Polidoro asks Mr. Fennell to confirm he did not yet have the application, which he does. Ms. Polidoro asks Mr. Fennell if his December 7, 2017 Letter of Denial overrules the memo he issued on November 7, 2017, which Mr. Fennell states it does, further commenting that even if it were not the case, there is no reason Bard College cannot apply for an area variance for the parcel, [since the use is already permitted in the Zone]. Chairman Annas concurs stating it is similar to the fence ordinance, in which an applicant can either move the fence back [to the allowed setback], or reduce the height to four feet – there are two options.

Chairman Annas confirms there are two options for the subject parcel – either a use variance, or an area variance. Mr. Fennell states he is uncertain why a use variance would be needed, asking the applicant to explain the proposed change in use. Mr. Fennell further notes there are a number of parcels which Bard College owns, in the Hamlet of Annandale, and uses for educational purposes, that are not on the Bard College Campus itself.

Chairman Annas asks if anyone knows if there is a precedent for the requested variance. Mr. Fennell states there is a precedent in the Two Boots Restaurant, which is in the RD3 Zone, which is not on the Bard College Campus, and they received an area variance under this same rubric. Chairman Annas asks Mr. Fennell to confirm that they received an area variance from the Town for a proposed, small pizzeria. Mr. Fennell clarifies there was a restaurant in that location, which was a special permitted use, in the Zone, but half of the building was used for educational offices, and that was not a use that was already in place. Mr. Fennell further clarifies they needed an area variance [for the offices] because the parcel was very small. Chris Carney confirms that parcel is about three acres.

Chairman Annas reviews the parcel map, and asks what facility is on a neighboring parcel, triangular-shaped like a small island, bounded by Route 9G and Whalesback Rd? Mr. Fennell states it is a private, residential property. Chairman Annas notes there is a semi-truck parked there. Chris Klose comments it is used to haul water, about 18,000 gallons. Chairman Annas states he is trying to get a sense of who might object to the project.

Chairman Annas asks Mr. Simmons to estimate how many people will be in and out of the facility, on a daily basis. Mr. Simmons states there are currently two people using the facility: One is the office manager, who is there 5 days a week, for 7 ½ hours per day, and the other is the program manager, who is lucky to be there maybe 3 times a week, in the midst of her travels. Chairman Annas asks if the facility will have visitors and students using it. Mr. Simmons replies only once in a great while does someone want to come and research the [John Cage Trust] history. ZEO Bob Fennell notes, eventually this office will move, in the course of several months, to another location, on campus, now being prepared for it. Mr. Simmons states the facility will move to a dwelling that is in the Institutional Zone, on campus. Victoria Polidoro notes the applicant may not get approvals in that time frame, and asks why this is before the ZBA? Mr. Simmons refers her to the Planning Board.

Kate Karakassis and Victoria Polidoro ask Mr. Simmons what the facility will be used for after the current office's move to another location. Mr. Simmons states it will probably be used for some overflow from the other residences the College owns. Victoria Polidoro confirms the use will be residential. Chris Klose notes it was used as a dorm for years. Chairman Annas asks if this will be converted to a residence for students, and Mr. Simmons replies no, it will be used for guests. Mr. Simmons further notes the nearby 51 Whalesback Road is a large parcel, owned by the College, and is used as a guest house. Chris Klose asks Mr. Simmons to specify to which parcel he is referring. Mr. Simmons indicates the subject parcel, and the nearby parcel, at 51 Whalesback Road, on the parcel map. Chairman Annas asks Mr. Simmons to indicate the location of the Two Boots parcel, which he does. Mr. Annas indicates other, nearby lots, and asks Mr. Simmons if they are owned by the College, and if they are developed. Chris Klose indicates the parcel with the semi-truck, and the parcel that was once the Old Whalesback Inn, and Mr. Fennell indicates the subject parcel in relation to these. Victoria Polidoro notes the variance runs with the land, and so even if College would not be using it for offices after three months, the College could use the facility for offices at some future time, unless the Board chooses to limit it in some way, so that the variance would only be granted for offices. Bob Fennell states the applicant could always use the parcel for permitted uses in the Zoning District, even after the variance was granted, with which Ms. Polidoro concurs.

Chairman Annas asks why the Planning Board is pushing this if it is going to be moot in three months. Mr. Simmons states the Planning Board wants movement on this because it was out of compliance. Victoria Polidoro asks Mr. Fennell if there is a Notice of Violation on the parcel, to

which Mr. Fennell replies there is not. Chairman Annas states, based on the variance running with the land, if it is not necessary, he would rather not grant the variance. Ms. Polidoro states it is up to the applicant whether or not to pursue a variance, but once he has submitted an application, the Board must process it. She further states an applicant can withdraw an application. Mr. Simmons asks what would happen in the future, should the College want to use the facility as offices. Chris Klose asks Ms. Polidoro to confirm an area variance granted for an educational use, as an office, would not preclude a return of the facility to residential uses, which she states it will not. Ms. Polidoro states the only reason she mentioned it was by the time the applicant has the public hearing, it will be practically moot. Mr. Klose concurs, noting the costs to the taxpayers.

Chairman Annas notes this is the first time he has encountered an applicant coming to the Board for a potential, future use. Ms. Polidoro counters most uses are, in fact, proposed, future uses. Chairman Annas comments by the time the applicant is through the ZBA process, the offices will be relocated to a site on campus. Mr. Simmons states he has been sent this far, by the Planning Board, and in consideration of the future, he intends to see it through. Kate Karakassis states perhaps Bard College would like to use the facility, at some point in the future, for offices, and educational uses. Mr. Simmons states this is a possibility, but at this time there is no way to know for certain. Ms. Polidoro states the difficulty with this proposal is it is difficult to calculate the impacts of future uses, if the Board does not know how many employees will be there, etcetera. She suggests the applicant agree to stating something general to the effect the facility will never house more than a certain number of employees. Mr. Simmons states the facility consists of a three bedroom house, and as such it is limited. Kate Karakassis asks Mr. Simmons what would happen if the College decided to enlarge or replace the facility, at some future time. Mr. Simmons states he would have to go through site plan approval. Bob Fennell states the facility measures 1240 square feet.

Kris Munn reviews the definition of “Educational Institution” in the Town Code as “Any public or private school, or other organization, or institution, conducting a regularly scheduled, comprehensive, curriculum of academic and/or alternative, vocational instruction, similar to that furnished by kindergartens, primary or secondary schools, or institutions of higher learning, and operating under the Education Law of New York State. Mr. Munn states, as such, Bard College qualifies as an “Educational Institution”. Mr. Munn asks if the proposed office use, [by an educational institution] qualifies as an “Educational Use”. Ms. Polidoro states this is a determination made by ZEO Bob Fennell, which has not been challenged. Mr. Fennell counters educational institutions have myriad uses. Kris Munn notes an “Institutional Zone” is different from [an “Institutional Use” in a Residential Zone]. Mr. Fennell replies he does not think [the stated difference] disqualifies [the applicant from seeking a variance]. Chairman Annas comments the Board, some three or four years ago, granted an area variance for office space, with the condition limiting occupancy to the owner and one other employee. Chairman Annas further comments he believes this is not enforceable. Chairman Annas asks how the Board can grant a variance if it does not know what the property owner will do in the future.

Ms. Polidoro comments [this problem can be at least somewhat addressed] if the applicant proposes parameters, [within which any future use would be limited], for example “educational use, for 1200 square feet, which would probably have 10-12 employees”, then there is something the Board can review. Chairman Annas asks if it is an acceptable practice to come before the Board to get a variance for potential, future uses. Ms. Polidoro replies the way the Board would review it would be for the applicant to convert [the facility] to this [proposed] educational use.

Bob Fennell notes most applications are for future uses, for example, an applicant who wants to put an addition on his/her house. It is not yet done, but is being proposed. Chairman Annas notes other variances must be acted on within a certain time frame – Ms. Polidoro states it is a year. Ms. Polidoro states if the applicant used it, during this time, for the educational use, then he would have the variance, with the option of continuing that educational use. Chairman Annas asks if a variance lapses if the use [for which it was obtained], is discontinued. Mr. Fennell replies it does not, and further clarifies if an applicant does not institute the use within one year, it is null and void. Chairman Annas refers to an issue with the commercial establishment “Sidelines”, in which the business was discontinued, and the property owners had 18 months to re-establish the use, [or it would expire]. Ms. Polidoro states this is the case for Special Use Permits. Mr. Fennell notes restaurants are permitted in the RD3, so that is a permitted use, in that Zone, so even if it did expire, the property owner could re-establish it.

Ms. Polidoro asks Mr. Simmons if he wants to re-state what he said earlier, referring to Bard College seeking to convert the facility. Chairman Annas asks Mr. Simmons if he wants to withdraw the application. Mr. Simmons asks the Board how he would address the Planning Board, [if he were to withdraw his application to the ZBA]. Victoria Polidoro asks Mr. Simmons to confirm that Bard College wants to convert the facility to an educational use, which he does.

Kate Karakassis confirms with the applicant he is applying for an area variance, based on the size of the property, and because the facility is limited in size, the five acres is adequate [for the proposed educational use]. Ms. Karakassis asks Mr. Simmons what would happen if the variance were to be granted, and Bard College suddenly wanted to erect a five-story building on the parcel. Ms. Polidoro states in that case the variance would have to be amended for a larger building. Mr. Simmons states he would probably not be able to do that due to the setback requirements, and lot coverage limitations. Bob Fennell concurs. Ms. Polidoro states the applicant would have to come in for amended approvals, if he decided to expand the building, because the Board is basing its decision on what exists now. Bob Fennell states the Board can condition its approval on the existing building. Ms. Polidoro also states the Board could make it clear any expansion on the building would require additional approvals.

Chairman Annas asks Mr. Simmons if the current building meets code and setback requirements, which Mr. Simmons states it does. Kris Munn reiterates the applicant was sent to the ZBA because of a non-conforming use, due to the size of the lot, and it needs to be conforming in order for the Bard College Master Plan to be approved. Chairman Annas asks if the facility is being used for a residence currently. Mr. Simmons replies it is being used as a business office. Chris Klose confirms this non-conformity is due to the parcel size, and not the use, which is permitted in the District. Chairman Annas asks if a variance would be needed if the two, current employees also lived in the facility. Bob Fennell states it would not be needed, as a home occupation. Chairman Annas asks if there are any plans to alter the exterior of the building. Mr. Simmons states there are none. Chris Klose notes part of the question consists of the long term impact if the variance is granted, for the applicant to go from a 25 acre requirement [for an educational use, in the zone] to a 5 acre requirement. Ms. Polidoro identifies two long term impacts: 1. The subject parcel will be allowed to be used as an office for the educational use, in perpetuity, and 2. Should there ever be another educational use, on 25 acres, next to a large educational campus, it would be a precedent to allow that, in this zoning district. Kris Munn gave an example, if the [Red Hook] school district came to the Town and said “we have a 5 acre parcel near the High School, and we want to use it as an office, and it might have some similar characteristics...etcetera. Chairman Annas notes some years ago the School Board was looking

into something similar, and further comments if he were a neighbor of the subject property, he would prefer two office people who were not occupying the space on evenings or weekends.

Ms. Polidoro asks Mr. Simmons if there are any other structures on the parcel, since the proposed variance would be for the size of the parcel, and would include the current setbacks. Mr. Simmons states there is a garage. Ms. Polidoro asks if it is attached. ZEO Bob Fennell states there is a requirement that all buildings meet the 200 foot setback requirement from a residence, and 100 foot setback from the property line. Mr. Fennell states the parcel meets the setback requirements. Ms. Polidoro states she wants to know if there are any other structures on the parcel which will need to meet setback requirements. The Board, Mr. Fennell, and the applicant all concur the structures on the parcel meet the setback requirements. Chairman Annas asks Mr. Simmons if he knows the neighbors near the subject parcel, and what the response to the proposal will be. Mr. Simmons states he knows one of them, and there will be no change.

Ms. Polidoro states the Planning Board has classified this as a Type I Action, under SEQRA, and did not circulate to this Board, for Lead Agency status. She further notes this Board cannot do its own SEQR review, so she recommends the Board preemptively consent to the Planning Board serving as Lead Agency, and Ms. Polidoro states she will follow up with the Town Planner, for the Planning Board to formally acknowledge this.

At 7:55pm Chairman Annas asks for a motion to consent to the Town of Red Hook Planning Board serving as Lead Agency, for environmental review on the proposal. Kris Munn so moves, Kate Karakassis seconds, and all are in favor.

Ms. Polidoro notes the application will need to be sent to Dutchess County Planning.

At 7:56pm Chairman Annas asks for a motion to set the Public Hearing for Appeal 17-08, on January 10th, 2018, first on the agenda following preliminary business. Chris Klose so moves, Chris Carney seconds, and all are in favor.

ZEO Bob Fennell, and the Board heartily commend Town Board Liason to the ZBA, Jim Ross, for his long tenure serving the Town as a Town Board Member, as ZBA Liason, and ZBA member.

At 7:58pm Kris Munn moves to adjourn, Chris Klose seconds and all are in favor.