

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
February 28, 2007**

CALL TO ORDER

The meeting was called to order at 7:10 p.m. by Timothy Ross, Chairman.

ROLL CALL

Members present: Kenneth Anderson, John Douglas, Robert Latimer, Corinne Weber, Tim Ross, Chairman.

Members absent: Michael Mosher

Also present: Jim Ross, Town Board Liaison; Sue Crane, Town Board Member; Christine Chale, Town Attorney

Chairman Ross announced that the agenda was being re-arranged and the meeting would begin with the review of new applications.

REVIEW OF NEW APPLICATIONS

7:15 p.m. Review of Appeal 07-01 Timothy S. Martin application for an area variance to erect two off-premises directional signs for Gigi's Market and Grandiflora Garden Center. The proposed signs would be 21 sq. ft. in area, at a height of 15.75 ft. Zoning law limits sign area to six square feet and height to 10 feet. (Chairman Ross recused himself from the discussion of this application due to the fact that he has worked for one of the businesses involved. Corinne Weber was asked to chair the review.) The discussion began with Zoning Officer Bob Fennell reviewing the zoning law requirements. The applicant then presented the Board with a drawing showing where the proposed signs would be located on his property, in relation to the existing building and the street. He also shared computer-generated pictures of how the proposed signs would look. It was pointed out that the applicant will need two variances, one for the size of the individual signs (only 6 sq. ft. are allowed per sign); and one for the aggregate area of this signs (only 40 sq. ft. are allowed; the applicant is proposing 42). John Douglas asked if the applicant knew the size of the sign of the business across the street from his property. Rob Latimer noted that was an on-premises sign, which has different requirements than the proposed off-premises signs. There was some discussion regarding possible reconfigurations of the signs to reduce their overall size (perhaps just using one arrow for both signs, thus reducing the size.) The applicant stated the original size was chosen because the size indicated in the zoning law was too small to be seen by motorists traveling at the posted speed limit of 45 mph. Rob Latimer suggested the client might obtain a variance for the size of the individual signs, but maintain the required aggregate size by changing the size of each sign to four feet by two and a half feet, which would be large enough to be seen by motorists. John Douglas suggested that the

applicant provide some different options when he returns for his public hearing. The public hearing was scheduled for March 14 at 7:20 p.m.

(Chairman Ross returns)

7:40 p.m. Review of Appeal 07-02 Peter and Joseph Scibelli Application for three Area Variances to erect a 600 sq. ft. addition to their existing auto repair facility. The maximum building coverage allowed is 15%; applicant is proposing 17%. Expansion of a non-conforming use is allowed up to 50%; applicant's proposed expansion will increase it to 85.5% ; a 25 ft. rear setback is required; applicant proposes a 16 ft. rear setback. The applicant stated that business is increasing, precipitating a need to add two more garage bays. The board reviewed a plan of the proposed addition along with photos provided by the applicant. Town Attorney Christine Chale indicated that the applicant is required to complete a short Environmental Impact Form (EIF); Bob Fennell provided them with a copy. Chairman Ross requested that stakes be placed in the ground to indicate the dimensions of the addition so that Board members could get a better idea when making site visits. A public hearing was set for March 14 at 7:40 p.m.

PUBLIC HEARING

7:50 Continuation of public hearing for Appeal 06-19 Raython Merrihew Request for Interpretation of Red Hook Farmland Protection Law and its applicability to the applicant's lot located at 7887 Albany Post Road, Red Hook. Chairman Ross stated that since the public hearing began at the January meeting of the ZBA, the board has collected quite a bit of data, including correspondence and minutes from other committees. Town Attorney Chris Chale then provided of review of the documents, as follows:

- Interpretation of Zoning Officer Robert Fennell;
- 1/10/97 minutes of the ZBA with attachments, including the 1/31/05 memorandum from Keane & Beane describing its interpretation of section 143-47 of the Town Code, and a letter from former town board member Jean Bordewich which describes her understanding of the law when she voted for it;
- 2/13/07 letter from Keane & Beane regarding their interpretation of Section 143-47, indicating they believe the legislative intent of this laws is that property can be *either* in the agricultural district *or* constitute important farmlands and be subject to the Farmlands Protection Law.
- A series of documents which are the minutes for the Agricultural Advisory Committee for the period of 12/00 -11/01. This is the committee that drafted the law. The minutes included several references to the purpose of the law, its limitations and what it was intended to do. In particular, the Committee's 1/8/01 minutes state: "Farms in the agricultural district only [their emphasis] would be included in the overlay. Agriculture would become the primary land use, with housing secondary...Acreage per house would remain the same, but for each lot one-half acre or one acre would be allowed for the house lot and (the rest to be) reserved." There are several indications in the Committee's minutes that properties in the Ag District was the defining boundary of what was subject to the Farmland Protection Law. A May 2001 recommendation from the Committee, which was a presentation of the concept (not a draft of the law) states, "The Agricultural Advisory Committee proposes that the Town's certified Agricultural District 20 parcels, which have already met NYS criteria based on soil quality, productivity, and income, be

mapped as the Farmland Protection section of the Environmental Protection Overlay District”;

- Letters from Woody Klose, who was part of the committee and presenting recommendations to the Town Board;
- Copies of those recommendations;
- Memorandum from Art Brod to the Ag Committee, which includes the proposed local law (at the time) along with a summary and how it was created;
- Oct. 2001 presentation from the Ag Advisory Committee to the Town Board, summarizing the law. At the time there was a Farmland Protection Overlay District proposal summary; an amendment to the Red Hook zoning law offered by the Agricultural Advisory Committee describing the density changes they were discussing, taxation, and mapping. In particular the presentation states, “The Environmental Protection Overlay District already includes regulations for protecting farmlands. Up until now, these regulations have not been applicable because the important farmland has never been identified as an official Overlay District Map approved by the Town Board. We are asking the Town Board to approve a ma showing the farmland protection overlay district. The farmland protection overlay district is made up of the parcels in the Town’s Agricultural District. Agricultural District certification is voluntary. Farmland protection plans can be reviewed every eight years when Agricultural District parcels are recertified by the State”;
- Oct. 2001 Planning Board minutes in which the proposal is reviewed and discussed;
- Oct. 16, 2001 memorandum from Planning Board Chair Marcy Appell to the Town Board making a recommendation;
- May 15, 2002 memo from Chair Appell to the Town Board indicating it cancels and supersedes the Oct. 16 memo. In regard to the Planning Board’s recommendations regarding the law, this memo indicates some PB members were supportive of the law and some were not and discusses the reasons. The memo also states, “This amendment will directly affect only those areas or establishments in the town which are in the Environmental Protection Overlay District, i.e., those lands certified for inclusion in Dutchess County Agricultural District 20 by the State of New York Department of Agriculture and Markets pursuant to the NYS Agricultural District Law.”;
- A handout provided to the Town Board and prepared by the County Planning Department that discusses the purposes of the Farmland Protection Law, “...not to promote full density development—it allows the landowner to determine how many (or how few) lots...to subdivide.” This document provides a sense of what the purpose of this law, which was to be supportive of farming.
- Public Hearing Notice and record of the first hearing, which appears to have been held in May, 2002;
- Copy of law that was adopted at the time;
- Public Hearing Notice and record of the hearing that was held in July 9, 2002;
- Draft of law adopted at that time;
- Oct. 18, 2003 memo from Marcy Appell and Ruth Oja regarding proposed amendments to the Environmental Protection Overlay District. These amendments included changes in the Important Farmlands provision which would have changed the “and” to “and/or” in statute in question.
- A document from the Ag & Markets web site summarizing Article 25-AA, which

restricts what municipalities can do with regard to regulating properties within the agricultural district.

Note: These documents are on file in the office of the Zoning Board of Appeals.

Chairman Ross then opened the floor for public comment.

Dick Franklin, Red Hook: Asks if the applicant's property is not an agricultural property, why would restrictions be applied to it? It seems many people want to tie-up everything so it can't be developed, if it could possibly be farmed. There are rules and regulations stipulating what are farms and what is agricultural income. To go beyond that point may impact people unfairly.

(Chairman Ross responds, that is the question before the board: to what properties does section 143-47 apply?)

Marie Welch, Red Hook (representing the applicant): Believes the law is written the way it was intended. People have option be in, or not to be in, the Ag District. At the last meeting people state several benefits of being in the Ag District. Therefore, they know they are in the Ag District and that there are certain requirements expected of them should they decide to develop their land. Those not in the Ag District take no benefit and are being presented with an unfair taking. Platt's Law Dictionary defines a taking as, "To lay hold of; to gain or receive into possession; to seize; to deprive one of the use or possession of; to assume ownership." To apply this law to those things that are not specifically designated in the agricultural district is an unfair taking of their land rights. Believes the law was written to apply only to those people in the Ag District because they knew they were setting themselves up for certain requirements, regulations, etc. that people not in the Ag District are unaware of, but are still being required to adhere to. (Quoting again from Platt's Law Dictionary), "...permanent or temporary deprivation of use to owner if such deprivation amounts to abridgment or destruction by reason of actions of state of lawful rights of individual to possession, use or enjoyment of his land." That's a taking.

Christine Kane, Red Hook, Planning Board Chair: The materials that Chris Chale reviewed represent the thoughts, at the time, of various committees that may or may not have been thoroughly involved with the iterations the law was going through as it was being developed. Additionally, minutes are only a summary of what happened at a meeting; depositions or actual reports from people who were involved in the meeting would supercede what is represented in the minutes. At a recent meeting on Ag Districts it was stated that there are benefits for people enrolled in the district and the role of the Ag District is to ensure town laws do not impede or encroach upon actual or acceptable agricultural practices on farms. The Farmland Law does not deal with that; it deals with the property if it is developed out of farming, how it could be developed so that the prime and statewide important soils are not built upon and be available for farmland or agricultural use as it may develop in future years. Quoting from the recent Keane & Beane memo which references the Rules of Statutory Construction, "It is a well established rule of statutory construction that a law should be construed so as to 'avoid absurd, unjust, or other objectionable results.'" The interpretation proposed by the applicant would lead to such results and render the law useless for at least two reasons: environmental review may be circumvented by an applicant [because membership in the Ag District is voluntary, thus the law could be

circumvented by choosing not to be in the Ag District], and requirements are redundant if both are necessary to trigger review under [the Farmland Law]. Once a property is included within an Agricultural District it is already deemed to contain viable agricultural lands. Therefore, to add a requirement that the property also contain important farmlands would be redundant...In light of the purpose for which Section 143-47 was enacted it could not have been the intention of the Town Board to create an environmental review procedure which imposed redundant requirements and was entirely voluntary at the election of the applicant. Construing Section 143-47 as such would lead to illogical results.” She also points out the section of the Keane & Beane letter dealing with the terms “and” and “or” being interchangeable, and notes that one can depart from the literal intent of the wording to uphold the intent of the law. “Intent of the lawmakers prevails over the literal meaning of the law and the words “and” and “or” are convertible where necessary. It is clear that the Town Board’s intent when enacting Section 143-47 (d) (4) was to protect and preserve agricultural soils within the Town of Red Hook, whether or not they are currently utilized as farmland. The agricultural industry is an important part of Red Hook’s history and the enactment of Section 143-47 provides a critical tool for the reservation of Red Hook’s rural character...The boundaries of the Agricultural District change as parcels within the District are reviewed to determine whether [they]...meet the requirements necessary...” Thus, it doesn’t seem to make sense for the town to have adopted this law if it was totally voluntary.

Marie Welch: Heard Christine Kane say that it pertains to farmlands that may not be in the Ag District because they do not have good soils; why should they be included in the law. But, that is a provision in the law (quotes from law): “The regulated farmland overlay area consists of those farmlands certified for inclusion in Dutchess County Agricultural District 20 by the New York State Department of Agriculture and Markets pursuant to the NYS Agricultural Districts Law and which have been determined by the Town Board through their inclusion within the Environmental Protection Overlay (EP-O) District to be of special significance to the Town.” The reason for the second part of the Request for Interpretation is that there are lands remaining in the Agricultural District that do not have prime or statewide significant soil, yet they would still fall under this law because they are in the Ag District. Believes intent was to have the law apply only to those parcels in the Ag District with prime soils. To quote further from the law, “A current copy of the Certified Agricultural District 20 Map and a list of corresponding real property tax map parcel numbers shall be maintained on file in the office of the Town Clerk.” That paragraph would not have been needed if the law was meant to include every parcel with agricultural soils; all they would have needed to do was to go to the agricultural soils map.

Chris Kane: Does not believe there was a soils map at the time the law was adopted.

Chairman Ross stated that the maps have been around (since at least the 1930s).

Chris Kane: Yes, but referring to the law there wasn’t one drafted and done for the town at the time.

Robert McKeon, Red Hook, Chair of the Agricultural and Open Space Committee: Although not a member of the Ag Advisory Committee when it drafted the law, did sit in on most of the meetings involving deliberations and drafting of the law. There was a significant period of time between 2001 and 2002 when the committee was not involved in revisions as the law was

bounced around between the Town Board, County Planning and the town planner. Does not believe the board has all of the versions of the law. An earlier version of the law dated October 2002 was incorrectly filed with the state. The proper version of the law was found and subsequently filed. (Chairman Ross notes that information is included in some of the Keane & Beane correspondence.) Believes the essence of the law is conservation subdivision, specifically designed to protect one type of resource. This law does not speak to density, only to arrangement. This law tries to identify where resources exist and where we should build. Red Hook farmland is surrounded by mixed uses, sometimes compatible, sometimes not. Can not just focus on protecting a farm while ignoring what goes on around it. If everyone was allowed to develop their parcel as they saw fit, we would end up with a burden on the existing farms. Encourages board to look at impact of decision it will make and the disagreement between a town board member who voted for the law and admittedly very old memos from the Agricultural Advisory Committee.

Christopher Klose (brother of Woody Klose), Washington D.C. and Red Hook: Woody said that, “farming is the highest and best use of land and Red Hook got it right with the Farmland Protection Law.” The board has an enormous strategic responsibility for the future of this township. Deeply opposed to the changing of a comma, the imposition of an “and” or an “or” to get at the heart of what my brother’s intention was, and those of his neighbors and friends who worked for many years with him, to capture the future in the law, which is simple in its intent: that farmland and farming comes first and that we can and should make accommodations, working together.

Dick Franklin: Supports agricultural laws that pertain to protecting Red Hook but does not support laws that can arbitrarily be changed to include other properties and place burdens on people outside of the agricultural area. Law has got to be law. Also need to be concerned with other aspects of the community. Our present area is only 4.6% commercial; that’s the lowest reported commercial tax to resident and agricultural ratio in the state. As a result, we pay much higher tax rates and will lose population as a result. The farm is an important economic base in the community, but law that can be interpreted any way any particular entity wants to interpret it is problematic.

Sue Crane, Red Hook, Town Board Member: Served as liaison to the Agricultural Advisory Committee when it was first formed and struggled with the issues of how to preserve soils and farming in Red Hook. It was a very serious intent of the law to say whenever practicable the law should stand as is. But, if it is not practicable, allowances should be made for that particular issue. When working with the County planner our intent was to protect good farm soils in Red Hook, knowing once they were gone they were gone forever. There are many ways to erode good soils and one of them is to sell good farm land, lot by lot. Our intent was to protect good farm land while at the same time giving the owner the opportunity to develop to the maximum allowed by zoning; whereby cluster development came into play. Doesn’t believe that “and” in the important farmlands definition meant that characteristics one, two and three were needed. The statement prior to it says “important farmland is characterized by one or more of the following characteristics,” and defines what important farmland is. Those characteristics are reiterated in 143-47. On page 143-90 of the zoning law it states: the Board, insofar as practical shall mandate that residential lots and related subdivision improvements be clustered on those

portions of the applicable tract of land least suitable for agriculture, to accomplish the following objectives: 1) Preservation of prime ag soils; 2) the preservation of soils of statewide importance; [no *and*] 3) the maintenance of active agricultural land.” Worked on the law for two years and although it isn’t perfect, hopes the board will help protect it and not throw the baby out with the bath water.

Chris Kane: Red Hook has cluster regulations, but under the Farmland Law there is a requirement that even if you only want to look at part of the property, the Planning Board has the ability to work with the applicant to do a farmland protection plan to guide the overall development of the property, when it should happen. If the baby is thrown out with the bath water, an applicant can easily apply for sections of the property or for subdivisions on one lot at a time and it would be quite difficult for the Planning Board to make an overall plan for the entire property.

Robert McKeon: This particular application is for a parcel of land that is not going to compete with Grieg Farm for its agricultural possibilities. Believes the cluster section of the regulations covers this applicant very clearly. Section 143-47 references the cluster objective. In 143-33 part A2(a) it states, “The Planning Board shall...mandate application [of the] cluster subdivision technique when the Board finds that its application would benefit the Town, for one or more of the following objectives would be better attained through its use than through application of a conventional lot-by-lot subdivision design technique: (a) The preservation of active agricultural lands and/or the guidance of development away from agricultural lands. This is particularly important when adjacent parcels are in active agricultural use and use of clustering will maintain or enlarge the total land area available for contiguous agricultural use.”

(Chairman Ross interrupts, noting this is not the section of the code the board is interpreting.)

Robert McKeon: Contends that 143-47 is only attempting to further describing how to achieve 143-33. Just because a parcel has only a few acres of prime soil, or belongs to a residential lot, does not mean that in the future in cannot be merged into a larger parcel with different owners in a different situation. That is why all of the best soils are to be protected.

Marie Welch: A portion of the applicant’s parcel borders an actively farmed parcel. However that section of the farmed parcel has not been farmed in 20 years. Since this law has been enacted, and since Red Hook pays people for their development rights to farm, how many more farmers do we have in Red Hook? Or, how many less?

Christine Kane: At a recent Ag District workshop it was reported that agriculture is growing in Dutchess County. (Chairman Ross interjects that the figures showed increases in Milan and Rhinebeck and a slight decrease in Red Hook.) Who knows what it will be in 20, 30 or 40 years? We need to keep the good soils available for the future.

Robert McKeon: The current Ag Committee has been working to assess what is currently being farmed. Ag District enrollment figures do not accurately reflect this.

Paul Vosburgh, Red Hook: The issue is that the law should be interpreted as written, not as intended, otherwise how could any law be interpreted? It’s very clear, the discussion of “and”

and “or” is inclusive. The committee knew what they were doing when they used the word “and”—it has a very clear meaning in the English language.

Christopher Klose: My professional career has been as an editor and a writer. With regard to section 143-4, in the section that reads “...land characterized by one or more of the following characteristics: (1) presence of prime agricultural soils, (2) presences of soils of statewide agricultural importance, and (3) active agricultural lands.” The “and” is only in there as an editorial comment in a series of three items.

Paul Vosburgh: The intent of “and” and “or” was discussed in 2003. There are many parcels of prime farmland with soils of statewide significance that are currently woodlands. Certainly it is not being suggested that they be cleared and re-farmed?

Christopher Klose: The issue here is what should Red Hook look like fifty years from now? Hope the farmlands will be left for future generations to feed off of.

Paul Vosburgh: Concurs. But feels the law should be corrected.

Marie Welch: Two different “ands” are being discussed. The debate is on the sentence that says, “The regulated farmland overlay area consists of those farmlands certified for inclusion in Dutchess County Agricultural District 20...and which have been determined by the Town Board through their inclusion within the Environmental Protection Overlay District...”

Robert McKeon: Curious if there is any case history where text supercedes definition.

Toni Trippi, Red Hook: Our property borders the applicant’s parcel. Looked at the area and noted how close the construction would be. Have concerns about because they already have little control back there with people using their property. Is it true when building near a farm a 200 ft. buffer is required?

Chairman Ross said no, and is part of the review process of the Planning Board.

The public hearing was closed at 8:35 p.m. The Chair noted that the board will review all materials collected and render a decision at its March 14th meeting.

BUSINESS SESSION

The minutes of the January 10, 2007 meeting were unanimously approved.

There were no comments on the Planning Board Minutes.

Building Inspector/ZEO permits and letters: There was some discussion pertaining to a letter sent to Ronald Clancy regarding the display and sale of construction equipment in a residential zone.

Comments from the Chairman: Noted a memo from Bob Fennell which clarified that a group site visit by the board is legal under the open meetings law.

At 8:45 p.m. the board went into executive session to review applications to fill the position of Clerk of the Board, which was being vacated by the current clerk.

At 8:52 p.m. the board returned from executive session.

On a motion by Corinne Weber, seconded by Rob Latimer, the board moved to appoint Sheila Franklin as Clerk of the Zoning Board of Appeals.

At 8:55 p.m. the board went back into executive session to confer with Town Attorney Christine Chale regarding the Merrihew application.

At 10:00 p.m. the board returned from executive session.

IN REMEMBERENCE

The entire Board acknowledges with sadness the recent passing of its long-time member, Gordon Denegar. Gordon faithfully served the Town of Red Hook, and in particular, the Zoning Board of Appeals, for many years. Board members will miss his participation in the monthly meetings and wish to extend their deepest sympathies to his family.

The meeting was adjourned at 10:05 p.m.

Respectfully submitted by,

Lea Cassarino

Clerk of the Board
Zoning Board of Appeals