Town of Red Hook Zoning Review Committee
Meeting Minutes
April 9, 2015

CALL TO ORDER

The meeting was called to order at 7:06 p.m. by Susan Simon - Chairperson

ROLL CALL

Members Present - Susan Simon-Chairperson-Zoning Review Committee
Steve Cole-Code Enforcement Officer
Ann Rubin-Conservation Advisory Committee
Ken Migliorelli - Ag. & Open Space Committee
Michael Robertson - Community Representative
Chuck Simmons – Community Representative
Christopher Klose- Economic Development Committee
Sam Phelan - Planning Board
Bill O'Neill - Town Board Liaison

Members Absent – John Douglas - Zoning Board of Appeals
Brent Kovalchik-Village of Red Hook Trustee

OLD BUSINESS

The Minutes of February 12, 2015, meeting were reviewed. Anne Rubin made a motion to approve minutes as submitted; seconded by Steve Cole.
ALL IN FAVOR. OPPOSED - None. Minutes approved as submitted.

Spite Fences

Steve Cole presented some ideas that the Committee could use to come up with a definition of Spite Fence.

1. A fence or other structure in nature of a fence which unnecessarily exceeds 6' in height and is maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance.

2. A wall or fence erected solely to annoy one's neighbor or lower the value of his or her property, which is of no beneficial use or pleasure to the owner and which is erected for the purpose of annoying his neighbor.

3. A fence or other structure which is of no beneficial use or pleasure to the owner which is erected for the purpose of annoying his neighbor.

Steve suggested the Committee use portions of the 3 ideas above and take another look at the Webster definition of Spite Fence and pull some wording out of that to put into our definition. Steve noted that the Committee has discussed the words for this definition

over and over and over and we still do not have what we need for a definition.

Chuck Simmons asked what is meant by “we don’t have what we need”.

Steve responded that the first definition that he came up with, the Town Attorney said it was not enforceable. That was the Webster definition. That being said, Steve is not sure how it should be worded. It was not explained to Steve why it was not enforceable and he was not given any advice as to what enforceable wording should be.

Anne Rubin noted that there are elements of #1 and #2 that are very important because when you look at Webster’s definition and the wording provided by Steve, you are trying to legislate someone’s intent. That is very difficult and then you move right into lawsuits. Anne pointed out that height restriction and the lowering of property value is evidence that can be brought in to support and you are not just saying that it is malicious and then it is one person’s word against another. These types of proof factors are very important to have in the definition so it is something that a person can come in and demonstrate as being a Spite Fence more easily than coming in and saying my neighbor is being spiteful.

Susan is supportive of #3 which states “a fence or other structure” because it could be a wall, a pile of cars.

Chuck asked if vegetation would be classified as a structure. Steve clarified that vegetation falls under landscaping which comes under site plans.

Steve explained if it is called a structure then the definition of a structure would have to be referred to, which does not include shrubbery.

Sam noted that there is a definition for structure which does include fences and fences are defined as: an enclosing structure erected for the purpose of preventing passage or view or delineating property or lot lines. The regulations state that it cannot exceed 6 feet and cannot exceed 4 feet in the front.

Sam asked what problem we are trying to solve.

Steve replied that we are trying to come up with a definition for Spite Fence.

Sam questioned Steve as to what problem has he encountered.

Steve replied that there has only been one problem and that situation was Kathy Stewart on Spring Lake Road and a construction fence that did not meet all of the regulations. Kathy said the fence was put there for the containment of animals and it was lying down on the ground. It was done for spite. Steve stated that is the only one he has ever had in 13 years at the Town. Steve would like to come up with some wording and create a definition and put it into our Zoning Code.

Susan commented that the possibility of that situation on Spring Lake Road ever happening again is probably no but you never know and asked Steve if he was ever in a situation like that again and have to encounter something like that, would it be helpful to have something specific in the Code so that he has something that is enforceable. That is the premise of this.

Bill O'Neill stated that it did not arise from the fact the ZRC was asked to eliminate Agricultural Fencing from Regulation. It was proposed but the ZRC did not want to finalize that until and unless they came up with a definition of Spite Fence so the Building Department would have something to work with.

Ken Migliorelli commented that he does not like the use of a height of 6 foot and he does not like the use of "pleasure" so he would like to come up with something simple. He took some of #1 and basically would like it to say "a fence or other structure that serves no useful purpose. It is maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance".

Chris commented that that's intent and if you took these definitions and took out all of the prior words, what would you have? Take #3: A fence or other structure which is on no beneficial use". That would be a Spite Fence. That is the cleanest definition.

Ken said "a fence or other structure that serves no beneficial use or pleasure". Ken likes the useful or no useful purpose. If you look at all the structures a farmer puts up, they all have a useful purpose. A deer fence could be 8 to 10 feet, a trellis system for apples or grapes and now a trellis system for hops which can be 16-18 feet high.

Chris feels it should read "or other structure which is of no beneficial useful purpose". That gets you around all of the intentions as well as the height issue.

Ken asked in the case of a fence issue being challenged, would it be challenged in a Court of Law.

Steve replied that it would be challenged before the Zoning Board of Appeals for interpretation.

Ken asked if someone gets a warning about their fence, what would it take to have someone take down a fence.

Steve explained that the Court cannot have the person remove the fence. In the Zoning Law they can continue to fine them for having it there but the Court cannot order them to have it taken down.

Steve reiterated that in his 13 years working for the Town he has *never* had a problem. People come in, they get a permit, and he goes and looks at where they are putting the fence. The fence can go on the property line, they build the fence, it is in accordance with the

Zoning Law, he issues a Compliance Order and it is done. He has never had a problem until this one instance on Spring Lake Road.

Ann commented that if it is going to go to the Zoning Board of Appeals, the ZBA does need to have something to base their interpretation on and right now there is not anything to base it on.

Sam said then it would not go to the Zoning Board of Appeals.

Susan asked if it is an instance where it could not go to the ZBA, could the neighbor then sue the other neighbor and then take it to a Court of Law and nothing would happen anyways.

Steve said then maybe it could be moved into a Civil Matter. Bill said the Town could take someone to Civil Court based upon a filed Complaint.

Sam said the only that way that you typically deal with this kind of judgment about the look of something is via some kind of review by a Board of where it is constructed and we do have that in the hamlets. If you try to put up a fence around your place, you are going to have to get a review by the Planning Board. That covers the hamlets. You could change the Law so that it requires a review by a permitting body before it's constructed.

Bill noted that every fence needs some kind of a review.

Sam responded that fences only need a review by Steve Cole to make sure that it applies to the Zoning Ordinance.

Bill stated that that review by Steve is enough. The ZRC is taking away the review for the Agricultural Fence and there was a sense that there should be some definition of a Spite Fence in the case that a farmer wants to put a fence up as a spite fence and it does not have to be regulated unless there is a definition in the Zoning Law. The Town Board would like to have a definition of a Spite Fence to go along with saying that we are not going to regulate Agricultural Fence. The general sentiment was that all fences should be regulated whether Agricultural or not but the farmers made enough of a case to not regulate Agricultural Fencing and the idea was that if that is what was going to be done, there has to be some kind of a Zoning Law available to the Zoning Enforcement Officer in case someone puts up a fence that is a Spite Fence.

Bill explained the reasoning behind the subject is that if there is going to be an elimination of Agricultural Fencing from the regulations then there should be something that suggests that you can't put up a Spite Fence. No longer would you be regulated putting up fences in the Agricultural District. Farmers do not need a permit to put up a fence. The Zoning Enforcement Officer could apply the Spite Fence definition to a parcel which is a farm parcel or residential parcel. When a neighbor is going to put up a fence, Steve would go out to inspect and would be able to see if it is going to be a Spite Fence because they have to get permission to erect it.

Michael said it seems like you don't need a definition of Spite Fence to cover all of these cases independent of the exception for Agricultural Fencing so what is the point of having a definition if that problem is already taken care of. It seems like if the problem is just with farmers, why not put it into the Agricultural law.

Steve responded that if could carry over to the homeowner also on a residential parcel. They could build a fence on the property line for spite.

Bill replied that the simple solution is to have a definition of a Spite Fence and then a sentence saying spite fences are not allowed in the Town of Red Hook, then Steve has something to work with.

Susan noted that the definition will be submitted to the Town Attorney and she can give the Committee feedback.

Bill explained that the Town Board wants the Zoning Enforcement Officer to have the ability to tell a farmer that an off-base fence is not permitted.

Bill noted that the Committee will have tell Christine Chale where this will have to be fitted into the Zoning Code. Sam replied that it will go into Section 143-28 Definitions.

Ken requested that the Ag. & Open Space have the opportunity to review said definition.

After much discussion, the Committee agreed on the following Amendment to the current Zoning Ordinance, Section 143-28, insertion of subdivision D:

> **"No fence or other structure in the nature of a fence shall be erected for a purpose other than as defined for fences, under Section 143-4, or Agriculture Fences under Section 143-4.**

Sam made a motion to send the above definition to the Agriculture and Open Space Committee for review; seconded by Chuck Simmons. **All in Favor.** Opposed - **None.**

Once the Agriculture & Open Space Committee reviews and sends their comments back to the ZRC, it will then be sent to the Town Board for Approval.

NEXT MEETING - July 9, 2015 - 7:00 p.m.

ADJOURNMENT

A motion to adjourn was made by Ken Migliorelli, seconded by Steve Cole –all in favor. The meeting adjourned at 8:15 p.m.

Respectfully submitted,
Susan Simon
Susan Simon, Chairman
Zoning Review Committee