

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

March 13, 2019

CALL TO ORDER

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

ROLL CALL

Members Present: Chairman Nick Annas, Chris Klose, Chris Carney, Kate Karakassis

Members Absent: Jim Hegstetter

Also Present: Victoria Polidoro, ZBA Attorney, Bob Fennell, Town of Red Hook ZEO

PRELIMINARY BUSINESS

Special Meeting Minutes from June 20, 2018

Chairman Annas asks the Board members present if they have had time to review the lengthy minutes from the June meeting. Anne Rubin clarifies the changes she has made to the minutes, at the request of Victoria Polidoro. Anne states she has removed the written statement from Vanessa and Dan Shafer, because it was received after the submission deadline. Anne further clarifies, since Ms. and Mr. Shafer, however, did read this statement at the June 20, meeting, she has gone back and written it verbatim, into the minutes, and removed the written statement from the exhibits.

Chairman Annas asks for a motion to approve the minutes with these changes, and those which the Board had requested at the July 11, 2018 meeting.

At 7:05pm Kate Karakassis so moves, Chris Klose seconds, and all are in favor.

Meeting Minutes from July 11, 2018

Chairman Annas asks the Board members present if they have had time to review the July 11 minutes, to which all reply they have. Since there is no comment, Chairman Annas asks for a motion to approve the July 11, 2018 meeting minutes.

At 7:07pm Chris Klose so moves, Chairman Annas seconds, and all are in favor.

Anne Rubin reminds the Board, since it has not convened for seven months, there was an indefinite adjournment at the end of the July 11, 2019, on the part of Charles Simmons, representing Bard College, in an appeal for an area variance. Ms. Rubin states she has heard nothing from the applicant, or Bard College, in the intervening seven months. Ms. Rubin further

notes, at the end of the July meeting, the Board had agreed to revisit this application in October of 2018, not realizing there would be no agenda for seven months. ZEO Bob Fennell, the Board, and Ms. Rubin discuss the particulars of the appeal, for an area variance, to permit a roughly five foot setback, in the Institutional Zoning District, where a 25 foot setback is required. Chairman Annas asks Ms. Polidoro if the Board has to act on an appeal, within a certain time frame. Ms. Polidoro states it does, however, in this case the applicant had asked for an indefinite adjournment, with the understanding the public hearing would have to be re-noticed. Ms. Polidoro recommends someone reach out to the applicant for further information, given the seven month time lapse. Chairman Annas states he understood the Board had given the applicant a specific adjournment. Anne Rubin states the minutes reflect the Board gave the applicant several options, and the option the Board chose, at the July 11 meeting was an indefinite adjournment, and then Ms. Polidoro recommended the Board revisit the matter in September or October, but there was no meeting. Ms. Rubin states she will contact Mr. Simmons for an update. Chairman Annas agrees.

Planning Board Minutes/Comments from the Chair

Chairman Annas states he reads the Planning Board minutes, regularly, but does not have any particular comment at this time. He asks for comments from the Board. There are none. Chairman Annas notes it has been so long since the Board has met, there are three sets of Code Book updates, 4-1-18, 7-1-18, and 10-1-18. Chairman Annas notes the instruction sheet on each, it states to remove [the Code Sections to be replaced] and insert [the new ones], and also states to remove the table of contents. Chairman Annas states the instructions state to remove index pages from 1-45, and recommends to Board members to put the Code Book updates in order, and only remove pages 1-45 one time, instead of following the instructions on removing it, for each update. ZEO Robert Fennell notes at one time it was possible to purchase just the Zoning Law from the Town Clerk, further noting if these are still available, the Board could use them instead of the Code Book. Ms. Rubin asks Victoria Polidoro if it is sufficient for the ZBA to just have the Zoning Law, to which Ms. Polidoro replies it is, and adds each Board member should be familiar with the Ethics Law.

Kate Karakassis asks that a statement no meetings were held from July 11, 2018 to March 13, 2019 be added to the ZBA page on the Town website, so it is clear why there are no agendas or minutes for those months.

Review Meeting

Appeal 19-01, Thomas Markunas, application for an area variance to construct one deck measuring 281 square feet, and one deck measuring 295 square feet, and an addition to a dwelling measuring 428 square feet on a parcel of .52 acres. Section 143-12 of the Zoning Law of the Town of Red Hook stipulates a maximum building coverage of 7% in the RD3 Zoning District. The proposed construction would result in a building coverage of 13.7%. The subject property is located at 161 Country Club Drive, in the RD3 Zoning District of the Town of Red Hook.

Chairman Annas notes, for [Chris Klose and Kate Karakassis, as newer Board members] on the history of the parcels on Country Club Drive, remarking the ZBA has entertained appeals from this neighborhood in the past. He describes the area around the lake as consisting of small lots, with small summer cabins. Chairman Annas further notes more recent home buyers have insulated, and, in some cases, expanded the existing structures, in size and [lot] coverage. He further notes the area was developed prior to zoning in Red Hook. Chairman Annas further comments he believes some of the existing structures, at the time the Town adopted the Zoning Law, already exceeded their [lot] coverage. Chairman Annas states these [existing, non-compliant] structures were grandfathered in with the Zoning Law. Chairman Annas concludes the Board has recognized this particular neighborhood is evolving from summer cottage [colony] to larger, year-round residences. He further states the Board has traditionally been lenient in granting variances, since anyone wishing to make changes to their home is very likely going to have to seek one or more variances to do anything at all, as [the homeowner] would need variances on setbacks, and probably on lot coverage as well. Chairman Annas states it is his understanding there is a Homeowners Association in the neighborhood, but he does not know how active it is. Chairman Annas states he thinks the Homeowners Association can block anything the ZBA could grant, but he is not aware they ever have done so.

Mr. Markunas states the HA has an annual meeting, and describes it as a very loose group, and identifies himself as the applicant in the present appeal.

Chairman Annas asks the applicant to present his proposal. ZEO Bob Fennell interjects the applicant actually needs two variances [as opposed to the one stated on the application]. Mr. Fennell states the applicant needs the stated variance from Section 143-12, for lot coverage, and also from Section 143-126, which states, according to Mr. Fennell, no non-complying building can be expanded or extended. Mr. Fennell states he has changed his denial letter to reflect this, and states he will provide copies to the Board, and will change the application. Mr. Fennell also states the date of the application should be March 5, 2019, instead of January 8, 2019, and notes he is also informing the applicant of this. Victoria Polidoro states the applicant should initial these changes to the application.

Ms. Polidoro asks the applicant to initial one copy of the application, and Anne Rubin to make copies for the Board. Chairman Annas notes the Board will have to grant the variances in order, since one is contingent on the other [permission to expand or extend the existing, non-conforming structure is contingent on the variance for exceeding the permitted lot coverage]. Ms. Polidoro recommends considering the two variances together, arguably the variance for coverage subsumes the one to expand the building.

Ms. Rubin asks ZEO Bob Fennell if she needs to change the date on the application, which she states she received on March 6th, 2019. Mr. Fennell notes this procedure has been done before, in granting a variance for the [latter] Code Section as well. The Applicant initials the application and the Board duly takes note. Victoria Polidoro asks Anne Rubin to send the Board copies of the initialed application, when she is next in the office. Ms. Rubin notes the copier/scanner is presently not working, but she can copy and scan it through the Planning Office, if need be.

Chairman Annas again asks the applicant to present his proposal. Mr. Markunas notes he has supplied drawings to the Board, and notes he has some printed images for the Board to review. He notes the first image is of the existing house. ZEO Bob Fennell asks when the house was built, and Mr. Markunas replies it dates from 1940, and 1961. Mr. Markunas states the second image shows illustrates what the proposed addition will look like, and further notes the

subsequent images illustrate in 3-D what the house will look like with the proposed addition. Chairman Annas asks the applicant who will do the construction. Mr. Markunas states it will be Bill Tillou of Hudson Valley Interior/Exterior, and further states he has been working with a Mr. Mike Mayhew, who is part of Bill's crew. Mr. Markunas states his current house is approximately 1100 SF, with two tiny bedrooms, and one tiny bathroom. Mr. Markunas describes it as inadequate for practical use. His proposed addition adds one bedroom, and a bath in the proposed addition, which he notes is 428 SF. Mr. Markunas further notes the way in which the addition is situated, it sits right in the middle of the lot, and does not encroach any more. He adds the closest neighbor is, and further notes there are fields behind his parcel, and concludes the visual impact is probably nothing to any [surrounding neighbors]. Mr. Markunas notes his closest neighbor is to the west, and his proposed construction is to the east, and concludes there would be no [visual] impact for them, either. Chris Klose notes the proposed construction does have a visual impact, implying it is for the better.

Chairman Annas asks Mr. Markunas if the garage still exists, and to indicate the location of the garage in his drawings, which Mr. Markunas does. Victoria Polidoro comments she asked the applicant to confirm compliance with the front yard setback zoning requirements, because his proposed construction will expand the existing structure into the front yard, and no [setback] value was provided in the drawings.

Mr. Markunas states the garage is right on the property line, and Ms. Polidoro interjects, stating it is an existing structure. Chairman Annas asks Mr. Markunas to confirm he is not doing anything with his garage, which Mr. Markunas confirms. The Board reviews the drawings, presented by the applicant, identifying the existing building, the proposed addition, the two proposed decks. Kate Karakassis asks Mr. Markunas to identify the location of the proposed bedroom and bath, in the drawings, which he does. ZEO Bob Fennell notes the applicant is not encroaching on the side yard. Victoria Polidoro comments there are no numbers indicating distances from lot lines, to verify setbacks, in the drawings, and states, generally the Board asks applicants to show these values, so it can verify whether or not the proposed construction would be encroaching on required setbacks. Ms. Polidoro notes the drawing shows 27' in one location. Mr. Markunas states the actual measurement may be closer to 35' in that location. Mr. Markunas asks Ms. Polidoro to confirm the existing building is not encroaching [on required setbacks]. Ms. Polidoro states the proposed construction does, in fact, encroach [on required setbacks]. ZEO Bob Fennell states the [proposed construction] does not encroach any more than what already exists. Ms. Polidoro replies [the proposed construction], however, is increasing the [overall, setback] encroachment. ZEO Bob Fennell notes the location, at which the existing structure encroaches on required setbacks, and notes it is already encroaching within one foot.

Mr. Markunas asks ZEO Bob Fennell to confirm he had shown him something in the [Town] Code stating an existing encroachment, Ms. Polidoro interjects, stating she and Bob Fennell are discussing a point at which the proposed construction is less than 35 feet from the lot line, and indicates it on the drawing, stating Bob has determined since there is a house to the rear, the proposed construction would not require a new variance, and Bob notes it is not increasing the encroachment. Ms. Polidoro states she is questioning whether or not it was increasing [the overall encroachment]. Kate Karakassis asks Ms. Polidoro if this is possible because the existing structure is grandfathered in, and Ms. Polidoro replies if that were the case, the applicant could build the entire lot. Mr. Markunas asks Bob Fennell to review the Code Section discussing existing encroachments, to which he agrees.

Chairman Annas states he would prefer, if it is not explicitly stated in the Code, the Board to consider a third variance. Victoria Polidoro asks the applicant if he meets the required 35' side yard setback requirement, and states if he does not he will need a variance. Mr. Markunas asks Ms. Polidoro what she is considering the side yard, which she indicates on the drawing. Mr. Markunas notes the 27' is the rear yard setback measurement. ZEO Bob Fennell reads the relevant Code Section as follows:

“Any non-complying building in existence of this chapter may be indefinitely maintained in accordance with all applicable codes, ordinances, regulations, and other requirements, but shall not be enlarged, or extended, maintained, altered, or reconstructed, in such a manner as to increase the degree of existing non-compliance with the minimum requirements set forth for the zoning district, in this chapter, or to create any new, non-compliance.”

Mr. Fennell states he understands this to mean if [the existing building] is already encroaching to the side yard, or rear yard, one foot, the [applicant] is not increasing the degree of existing non-compliance. Kate Karakassis states the proposed construction adds a new area of non-compliance, and asks if an applicant is non-compliant on one side, does that mean they are permitted to [be non-compliant] on the other side. Bob Fennell states the Board interprets the law, so it is up to the Board.

Chairman Annas asks Mr. Fennell to draft a third variance, [in order to account for the encroachment of the proposed construction into the required, side yard setback]. Ms. Polidoro states a fourth variance might be necessary as well, and indicates the point, in the drawing, at which the existing structure is 27 feet from the rear lot line, and uses this measurement to question whether or not the side yard setback is, in fact, 35 feet. Chairman Annas notes the applicant should have shown is the measurement from the corner of [the existing, or proposed??] structure out, perpendicular to the lot line. Chairman Annas asks the applicant if he has that dimension, to which Mr. Markunas replies he does not. Chairman Annas asks him to supply it to the Board, by the next meeting, to which Mr. Markunas replies he can get it. Chairman Annas clarifies one variance would be for the [side yard] setback, one variance would be area coverage, and the third would be to permit the expansion of an [existing], non-conforming structure.

Victoria Polidoro looks at the drawing with the applicant, stating the measurement he needs to supply to the Board consists of the distance at 90 degree angles to the corner, to the lot line. Chairman Annas states the measurement would instead be measured from the corner of the [existing or proposed] structure in a line perpendicular to the lot line. Ms. Polidoro counters there is a rear yard and a side yard [off of the corner of the structure], and notes the two locations in the drawing, to which the shortest distance from the corner of the structure to the lot line would be measured from each. Chairman Annas asks Bob Fennell to confirm rear and side yard setbacks in the RD3 Zoning District are the same. Bob Fennell and Victoria Polidoro both confirm the required rear and side yard setbacks, in the RD 3, are each 35'. The Board reviews the drawings with the applicant, regarding the corner of the [existing or proposed] structure and the shortest line to the rear and side lot lines. Ms. Polidoro notes there is another corner of the [proposed construction] that encroaches into required setbacks. Bob Fennell notes this corner is part of the existing structure. Ms. Polidoro asks Mr. Fennell to confirm whether or not the applicant is adding on to the back of the existing structure, to which Mr. Fennell replies the applicant is not.

Ms. Polidoro asks the applicant to identify the two white polygons in the drawing, which Mr. Markunas identifies as an enclosed porch on the existing house, and the two proposed decks.

Chairman Annas informs the applicant he is going to need three variances for his proposal. Chris Klose asks the applicant if he has a building schedule, to which Mr. Markunas states he hopes to start in June. Bob Fennell asks Mr. Markunas if the drawings are to scale, to which he replies they are not. The Board, Bob Fennell, and Victoria review the larger drawings on the table. Anne Rubin verifies with Bob Fennell the application will need to be amended to include the three variances. Victoria Polidoro interjects Mr. Fennell [and/or the applicant] need to go and measure the property, since the Board will need the actual size. Bob Fennell asks Victoria if the Board will need to postpone the Public Hearing, to which she replies the Board has two options. The Board can schedule the Public Hearing, with the understanding that, [the application will be amended], since the Board knows the applicant needs a variance, but he needs to provide the values [of the setback distances, lot coverage, and dimensions of the expansion of an existing, non-compliant structure]. Victoria Polidoro states if [the applicant, and/or Bob Fennell] can supply this information to the ZBA Clerk, for the [public hearing] notice, it would be sufficient, in her opinion. Ms. Polidoro continues, stating, the Board knows the applicant is requesting three variances, and it just wants the applicant to verify the number[s].

Chairman Annas asks Bob Fennell to amend the application, and Victoria Polidoro notes it is the applicant who has to change his request for a variance to include three variances, but he can do this with Bob Fennell. Anne Rubin states she will need the amended application a week from today's date. Mr. Markunas arranges with Bob Fennell to come to the Building & Zoning Office the next morning. Bob Fennell verifies it is [the measurement from the outer corner] of the smaller deck to the rear property line that will require a variance. Ms. Polidoro states it is, and adds it appears the applicant will need a variance for the side yard setback from the same corner, as well, or that the applicant will need to state to the Board what the distance, from the outer corner of the smaller deck, to the side yard lot line is. Mr. Markunas verifies with Ms. Polidoro the rear and side yard setbacks [from the outer corner of the smaller deck], and states he will give the Board those two values. Chairman Annas verifies with ZEO Bob Fennell both side and rear yard setbacks are required to be at least 35 feet, which Mr. Fennell confirms.

Chairman Annas states the meeting tonight was for the applicant to present his case, and in April the Board will hold a public hearing for the applicant's proposed construction, and the Board may, at that time, vote on the variance requests. Mr. Markunas states the [proposed addition] will result in a measurement of 1600 SF total, for the house. Chairman Annas verifies Mr. Markunas is going to meet with Bob Fennell to amend the application, to which both Mr. Fennell and Mr. Markunas assent.

Victoria Polidoro notes under SEQRA, modifications to a single family home is a Type II Action, and further notes no subsequent action from the Board is required for SEQRA. At 7:40 pm Chairman Annas declares the Action a Type II, and asks the Board to vote, and all present are in favor.

At 7:40 pm Chairman Annas asks for a motion to hold the Public Hearing on April 10, 2019. Chris Klose so moves, Chairman Annas seconds. At 7:41 all Board members present vote in favor.

Victoria Polidoro asks Anne Rubin to check with the [Dutchess County] GIS mapper, with a 500 foot buffer, to verify whether or not the Board must notify DC Planning.

Chairman Annas asks the applicant to identify what rooms the proposed addition will include, to which Mr. Markunas replies one is a bedroom, one is a bathroom, and notes the location of the

dining room, living room, kitchen and existing bedroom and bathroom on the drawing. Mr. Markunas also indicates the location of the portion of the original structure built in 1940, and the location of an addition, constructed in 1960.

Chairman Annas asks the applicant if he has any further questions for the Board, to which Mr. Markunas replies he does not. Chris Klose asks the applicant if his neighbors are aware of the applicant's proposed construction. Mr. Markunas notes he has lived on the subject property for almost 30 years, and does not imagine any issue with the neighbors regarding the proposed construction on his property. He further notes not all of the property owners in the neighborhood live there full time. Chairman Annas comments it appears the house on the subject property has not had any work done recently, and Mr. Markunas replies he has deferred this renovation for 30 years, and also the current home is not Code compliant. He further notes the proposed construction will include bringing the entire structure up to Code, including electrical and plumbing. Bob Fennell asks the applicant if the insulation will be brought up to Code, to which Mr. Markunas replies it will, and adds the renovation will include a total gut renovation of the existing structure, with the creation of a new home in the same footprint. He further comments he will be removing a beautiful stone fireplace, since the flue is shot, and it is not high enough. Mr. Markunas also notes he is putting in radiant heating in the floors. Chris Klose asks the applicant if he will be installing any solar power, to which Mr. Markunas replies he will not, due to the many trees around the property.

Anne Rubin asks Victoria Polidoro if she still wishes the Board to convene for an attorney-client meeting. Ms. Polidoro states it is up to the Board, since it has just received the Tampone decision, and wanted to address any specific questions from the Board in an attorney-client session, because it is subject to appeal. Ms. Polidoro states the [Dutchess County Supreme] Court did not make a determination on the Zoning Board's decision, because it was moot, once the Town Board amended the Zoning Law. Chairman Annas asks the Board if it wants to have an attorney-client session, to which all Board members present reply no.

Mr. Markunas asks about writing a check to [cover the cost of the certified mailing to his neighbors]. Anne Rubin gives Mr. Markunas the memorandum for the cost of certified mailing, pursuant to his appeal. Anne Rubin verifies with the applicant he will meet with Bob Fennell in the morning, to which Mr. Markunas replies he will, and will change the drawings, and supply the measurements requested.

At 7:47pm Chris Klose moves to adjourn the meeting. Chairman Annas seconds the motion, and all Board members present are in favor.

The next ZBA meeting will be held on Wednesday, April 10, 2019, at 7:00pm, in Town Hall.