

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

June 12, 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

May 08, 2019 Meeting Minutes

At 7:00pm Chairman Annas asks for a motion to discuss the May 8, 2019 meeting minutes. Chris Klose so moves, and Kate Karakassis seconds. Chairman Annas notes an error at the top of page 4, in which “10,00 square feet” should read “10,000 square feet” At 7:01 all Board members present vote in favor of approving the revised minutes.

Planning Board Minutes/Comments from the Chair

There are no comments on the Planning Board minutes from the Chairman Annas, who does comment, however, on the need for a ZBA alternate. Chairman Annas further comments he would not like to see an applicant not receive a variance, if there were a 2-2 vote, with one member absent, whose vote, in which case, would count as an effective “no” vote. ZBA Clerk, Anne Rubin, asked ZBA attorney, Victoria Polidoro to clarify this. Ms. Polidoro explained an absentee vote is an effective “no”, when there are not three affirmative votes.

The Board discusses the project’s escrow balance with applicant Eberhard Trumpi prior to the public hearing, inquiring of the ZBA attorney if there were sufficient funds in the account to cover her work and the meeting. Ms. Polidoro states the Board could also choose to make the variance conditional on payment of all outstanding escrow, to which ZBA Clerk, Anne Rubin, replies this only works if the variance is granted. Ms. Polidoro states there are sufficient funds in the account to cover an hour for the applicant’s portion of the meeting. ZBA applicant, Mr. Trumpi states he has a check in the amount of the attorney invoice he received following his review meeting. Anne Rubin explains this is already covered by his initial escrow deposit, and further notes the present discussion regards whether or not there are sufficient funds to cover tonight’s meeting.

Public Hearing

Appeal 19-02, Eberhard Trumpi, application for two area variances to install one storage building measuring 288 square feet, eight (8) feet from the side lot line. Section 143-12, District Schedule of Area And Bulk Regulations, of the Zoning Law of the Town of Red Hook, stipulates a maximum building coverage of 10% in the RD1.5 Zoning District. The proposed installation would result in a building coverage of 15%. Section 143-18(2) of the Zoning Law, of the Town of Red Hook, requires a side yard setback of 20 feet, per section. The proposed installation would result in a side yard setback of eight (8) feet. The subject property is located at 8 Columbia Avenue, in the RD1.5 Zoning District of the Town of Red Hook.

Chairman Annas confirms with the applicant the accessory structure image, presented to the Board is exactly what he is proposing, to which Mr. Trumpi replies it is. Chairman Annas further comments the applicant's request is more in compliance with the neighborhood than what he currently has for storage, noting there is a hodge-podge of outbuildings in a neighborhood of small houses, and further noting the neighbor to the rear of the applicant is constructing what appears to be a commercial building, abutting the applicant's back yard. Chairman Annas states he considers the proposal does not further detract from the neighborhood, which he further notes has already been compromised, aesthetically, by the installation of too many outbuildings.

Chairman Annas asks for comments from the Board. Kate Karakassis states she has come to a different conclusion, commenting she made a site visit and noted the houses along the opposite side of the street from the applicant, and much of the rest of the development beyond it, are not similar to what the applicant is proposing, and to what exists on his side of the street. Ms. Karakassis further notes the applicant's side of the street appeared as a wall of fences and outbuildings during her site visit, which she felt was not preferable, aesthetically.

Chairman Annas asks for additional comments, and as there are none, asks the Board for a motion to open the public hearing.

At 7:07pm Chris Klose moves to open the public hearing for Appeal 19-02 Eberhard Trumpi, for two area variances, to decrease the required side yard setback from twenty feet to eight feet, and to increase the building coverage from the permitted ten percent to twenty percent. Kate Karakassis seconds and all present are in favor.

Chairman Annas asks if there are comments from the public. As there are none, he asks for a motion to close the public hearing.

At 7:08 pm Chris Klose moves to close the public hearing, Chairman Annas seconds, and all present are in favor.

Chairman Annas asks ZEO, Bob Fennell if he is aware of the apparent, commercial outbuilding to the rear of the applicant's property. Mr. Fennell states he is not. The applicant states there is an exterior staircase, to a second level, having dormer windows facing his property, and further

notes he asked the owner if the second level was going to be residential, which he states the owner replied it would be. Bob Fennell informs the Board he will check on the Building Permit for that structure. Chairman Annas reads, as follows, the six criteria for deciding to grant or deny the applicant's request for two area variances.

1. The two requested variances will not produce an undesirable change to the character of the neighborhood or a detriment to nearby properties.

Chris Carney, Chris Klose, and Chairman Annas agree there will be no undesirable change to the neighborhood, or detriment to nearby properties, since the proposed structure is in keeping with what is already present the neighborhood, and in particular with the properties on the applicant's side of the street. Kate Karakassis states the proposed structure does represent an undesirable change to the neighborhood, insofar as it increases the already excessive number of outbuildings.

2. The needs of the applicant cannot be achieved by other than the two, requested area variances.

Chris Klose, Chairman Annas, and Chris Carney agree the needs of the applicant cannot be achieved by other than the two requested area variances, due to the location and configuration of his leach field, and size of the parcel. Kate Karakassis does not agree, stating the applicant already has a shed, and does not need a newer, larger one, further characterizing the applicant's request as a want, rather than a need.

3. The two requested variances are not substantial.

Chris Carney, Kate Karakassis, Chris Klose and Chairman Annas agree the requested variance is substantial, in particular, with regard to the side yard setback.

4. The two requested variances will not affect the physical or environmental conditions in the neighborhood.

All Board members present agree the two requested variances will not affect the physical or environmental conditions in the neighborhood.

5. The hardship for which the two requested variances are sought is not self-created.

Kate Karakassis, Chairman Annas, and Chris Carney agree the hardship, for which the two requested variances are sought, is, in fact, self-created. Kate Karakassis states the applicant chose to have more belongings than he has storage. The applicant argues he was bequeathed a tractor, mower and tools by his late father, and further comments the property will be more attractive without all of the items currently stored on his front porch. Chairman Annas informs the applicant he does not have to pass all six criteria, and further notes the Board must adhere strictly to conditions for granting a variance, and further notes, under said conditions, the hardship is nearly always self-created. Chris Klose states he does not agree the hardship was self-created, because the neighborhood, as a post-war subdivision, should have been placed on

the National Register of Historic Places, and since it was not, the neighborhood underwent a wave of outbuilding construction, due to the fact that the houses are small, and people buy more stuff, than they did when the subdivision was built. Chris Carney states he agrees the hardship is self-created, but also comments the applicant's proposal was precipitated by a natural event, the tree limb falling on the current shed, and damaging it. Victoria Polidoro states, in most cases, the hardship is self-created, but also provides the example of a change to zoning, as a hardship which would not be self-created. The applicant states there are seven garages on his street, for which he believes variances were given, or they were somehow grandfathered in. He further states everyone else on the street has an outbuilding.

6. The two requested variances being granted are the minimum variances to meet the needs of the applicant.

Kate Karakassis, Chris Carney, and Chris Klose agree the two requested variances are the minimum variances to meet the needs of the applicant. Chairman Annas states he is not convinced the two requested variances are the minimum variances to meet the needs of the applicant.

At 7:21 pm Chairman Annas asks for a motion to grant the two requested variances, to reduce the side yard setback from the required twenty feet to eight feet, and to enlarge the building coverage from the permitted ten percent to fifteen percent. Chris Klose so moves, and Chris Carney seconds. Chairman Annas comments he would vote to deny the requested variances if the applicant's proposal were the first such building in the neighborhood, and further commented he felt it was unfair to deny the request, since there were already so many similar buildings in the neighborhood.

At 7:23 pm Chris Klose, Chairman Annas, and Chris Carney vote to grant the two requested variances. Kate Karakassis votes against granting the two requested variances. The two requested variances are granted 3-1, with one Board member absent.

Review Meeting

Appeal 19-03, Fred and Madeline Delgrosso, application for an interpretation, regarding Town of Red Hook ZEO, Bob Fennell's denial letter of April 2, 2019, denying the applicants' Application for a Building Permit, dated April 1, 2019, to construct a fence, four feet in height, along the applicants' property line. Said Building Permit Application included a Boundary Survey Map by John H. Decker, LS, which shows the applicants' property line extends into large portions of Williams Road, a user road, maintained by the Town of Red Hook. Mr. Fennell's determination states he is denying the issuance of a Building Permit, to construct a fence along the applicants' property lines, since the fence would be located in the user road, and further states "said user road cannot be intruded upon, and a fence cannot be built within it".

Sarah Cafran, of Silverberg, Zalantis, LLC, attorney for applicants Fred and Madeline Delgrosso introduces herself, and asks the Board if it wishes to hear a summary of her clients' appeal. Chairman Annas asks her to state where the applicants want to place the proposed fence. Ms. Cafran states the applicants wish to place the fence along their property line.

ZBA attorney, Victoria Polidoro informs the Board there is a potential jurisdictional issue with the applicants' appeal. Ms. Polidoro further comments the ZBA has no authority to determine the boundaries of a user road, which she states comprises the traveled way, and the necessary boundaries for maintenance. Ms. Polidoro states this is not a Zoning Issue, but an issue for the courts and Highway Superintendent. Kate Karakassis notes the applicants' house is directly on the road, and the applicant wants a fence on either side of the front door. Ms. Karakassis suggests the applicants have a surveyor mark it.

Ms. Cafran states the term "User Road" is not defined in the Zoning Code, and further comments the applicants' appeal represents a safety issue for them, in terms of cars, and anything flying by as a result of traffic. Victoria Polidoro informs the Board many property deeds give property owners rights to the middle of the road, and asks the applicants if they are proposing to build the fence in the middle of the road. She further notes it is not clear where the road ends, and the ZBA cannot determine this. Ms. Polidoro also informs the Board the applicants are in litigation with the Town on a separate matter. Ms. Cafran states the applicants have a right to put a fence along their property line, and further states the applicants are within their rights in asking to ZBA to affirm, reverse, or modify the ZEO's decision regarding their request for a building permit to put a fence along their property line.

Victoria Polidoro asks ZEO Bob Fennell if his denial to the applicants is based on the Zoning Law, or something outside of the Zoning Law. Mr. Fennell replies his decision is not based on the Zoning Law, but on Town Code Section 117-09 Streets and Sidewalks, and 117-05, at the bottom of the page, and Mr. Fennell reads "...fences, hedges and plantings shall not be placed on the right-of-way (ROW), ...grass may reach the roadway...". Chairman Annas comments the applicants cannot just ignore what the ZEO has said. Ms. Cafran responds the applicants' property line is not within the roadway, and asks, rhetorically, if the Town can widen the road and take someone's property with no compensation. Chairman Annas replies roads can widen with age. Kate Karakassis comments that is what is in litigation at this point. Victoria Polidoro comments the applicants are suing the Town for damages, over the question did the Town take the applicants' property.

Kate Karakassis asks what is the width in question and notes the pavement is right in front of the applicants' house. –responds the applicant has stated the distance from the edge of the building to the property line is seven and a half feet. Victoria Polidoro asks rhetorically, if the ZEO's decision is not based on the Zoning Law, does the ZBA have jurisdiction. Chris Klose comments there is a case here, with two sides, which may be legitimate and within the ZBA's purview, but further notes the litigation is over where the road is, and asks why. Chairman Annas asks how ROW is defined. Victoria Polidoro responds ROWs and property lines are two different things, and further comments many people have deeds to the middle of the roadway. Ms. Polidoro further comments a ROW is not defined in Chapter 117, of the Town Code, but is defined through case law, and is generally understood to be the traveled way plus sufficient space for maintenance, which would be a shoulder, a ditch, or something similar. Chairman Annas asks if this is typically ten feet in width, to which Ms. Polidoro replies there is no set number, and that the width is based on a historical pattern of use, in other words, what is historically necessary. Chairman Annas tells the applicants he does not think the ZBA has the

authority to interpret or give a variance from a section of the Town Code outside of the Zoning Law. Sarah Cafran responds the ZEO also does not have this authority, since the section on which he based his decision is outside the Zoning Law. Victoria Polidoro notes Sections 117-06 and 117-09 state the ZEO, Building Inspector, and Highway Superintendent have jurisdictional decision over driveway construction permits, and notes the permit for fences and driveways is the same.

Chairman Annas and Victoria Polidoro agree the ZBA cannot be involved. Chris Klose comments there are two interpretations of the issue. Ms. Cafran states there are two separate legal issues, the fact of the ROW, and the location of the ROW. Victoria Polidoro responds the ZBA has no authority to determine the location of a ROW. Ms. Polidoro further notes Section 143-28 of the Zoning Law deals with fences and walls, but does not establish ZBA jurisdiction to determine a ROW.

The applicants' attorney asks the Board if the applicants' request for an interpretation can be placed on the August 14, 2019 ZBA agenda. Kate Karakassis states no public hearing is necessary at this time, as the Board needs more legal advice on the matter. Ms. Cafran states the applicants just want the opportunity to present additional information to the Board. Victoria Polidoro also states the Board will not set a public hearing at this time, since it is not ready. Chairman Annas states the Board will grant this request, and asks Ms. Polidoro what she suggests in terms of escrow, in order to review and comment on additional documentation from the applicants. Ms. Polidoro states \$2000.00 would be a recommended, initial amount.

Chairman Annas informs the applicants they can do this, but also states the ZBA may well have no jurisdiction over their requested interpretation. He agrees to extend their review meeting to the August 14, 2019 meeting. Ms. Polidoro informs the applicants of an Article 15 proceeding, in which the bounds of a roadway are determined in County Supreme Court, as an appropriate venue for the matter at hand.

At 7:58 pm Chairman Annas asks for a motion to request \$2000.00 escrow for ZBA attorney fees. Kate Karakassis so moves, Chris Klose seconds, and all present are in favor.

Chairman Annas asks the applicants if they have any objections to a site visit. Madeline Delgrosso states she would like to be notified first, via telephone. Kate Karakassis states it is not necessary to go onto the property, since everything is visible from the roadway. Chris Klose asks the applicants if they built the house, to which Mrs. Delgrosso responds they did not, and further states it was originally a carriage house for the house across the street.

Victoria Polidoro states there is no need for the Board to call a special meeting, and further notes review of the submitted documentation can happen with a memo, and an attorney – client session.

At 8:01 pm Chairman Annas asks for a motion to adjourn the meeting. Chris Klose so moves, Kate Karakassis seconds, and all present are in favor.

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

