

**VILLAGE OF RED HOOK  
ZONING BOARD OF APPEALS MEETING  
April 27, 2023  
7:00 PM**

Present: Chair Erik Cuthell, Member David Javscas, Member Maarten Reilingh and Member Sherry Ou-Yang

Village Attorney, Andrew Lessig

Absent: Member Kristin Luks

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Chair Cuthell opened the April 27, 2023 Zoning Board of Appeals Meeting at 7:01pm.

Chair Cuthell announced members present and that there was a quorum for tonight's meeting.

Chair Cuthell announced that Kristin Luks was newly appointed to the ZBA but could not be present this evening due to a prior commitment.

Chair Cuthell asked the Board if there were any questions regarding last month's meeting. No comments.

***Chair Cuthell made a motion to accept and approve the meeting minutes of the ZBA dated March 23, 2023. Motion seconded by Member Javscas. All in favor. Motion approved.***

#1. Polina Malikin and Paul Sturtz	25 Fisk Street	Interpretation/Appeal
Tax Parcel ID 6272-10-493612		(Continuation & Public Hearing)

Chair Cuthell introduced agenda item #1 – Polina Malikin and Paul Sturtz of 25 Fisk Street.

Chair Cuthell advised applicants submitted last month and that the purpose of tonight's meeting is for public comment.

Chair Cuthell spoke about the ZBA and advised this Board was a quasi-judicial body and their decisions carry some weight of law and interpretation is not subjective and Board is to be disinterested and that this application is for an interpretation. Chair Cuthell said as a body defined by NYS their job for an interpretation is very limited.

Chair Cuthell advised that the Code Enforcement Officer received a complaint, looked at the property, reviewed the Code and wrote a notice of violation. Applicants are present to appeal that notice of violation and language therein, and the Code language as written, and this Board has no ability to change that, so the purpose of the public comment is to allow people to express their opinions and this Board will listen.

Chair Cuthell advised that if you are going to speak to please sign-in with the sheet provided and each person will be limited to 3 minutes. Chair Cuthell advised this is not a public forum, not a debate with this Board and is an opportunity for you to stand up and say what you feel about this particular case.

Chair Cuthell noted that the emotional appeal for cute goats and this lovely girl, and the heart strings that were tugged by the description of the circumstance, we are human beings and understand, but we are not an adversarial body and just responsible for reading a code book and determining whether or not the Code Enforcement Officer was correct when making his determination.

Chair Cuthell said he believes people will have some opinion about the greater issue involved but this Board cannot change that language and there is an opportunity for you to do so, should it work out that you don't get satisfaction from this Board that you are hoping for, in that you can look to the Board of Trustee, as they have the option and right and responsibility to try and get this Code book to reflect modern standards.

Chair Cuthell said Zoning was adopted in 1955 and things have changed, and there are words in your appeal that just did not exist, so it would be great if they could expand on that, but ultimately that is not what is going to influence this Board.

Chair Cuthell said tonight this Board will hear from people and then this Board will close the public comment period and will continue to accept comment via email for another 2 weeks, application will be tabled and you will have to come back again and by then, hopefully, this Board will have a change to confer with their attorney, but this Board cannot discuss this among ourselves outside of this room, so that won't happen. Chair Cuthell said individuals will have questions and he will try to get answers and then will have a discussion on how we feel about this interpretation which is based on the language of the Code Enforcement Officer and code as written.

Chair Cuthell advised that during this time the Village Board is actively working on trying to update some of this language.

Chair Cuthell spoke on the greater umbrella of some federal statutes that we cannot ignore not addressed.

Paul Sturtz, owner/applicant, asked if the Board could layout for everyone what is the Code for what we are interpreting.

Chair Cuthell advised a violation notice was written and that describes your activity as witnessed by the Code Enforcement Officer as animal husbandry because nowhere in our Village Code, (adding it does not matter what the Town does, or what Rhinebeck does, there is Village of Red Hook Code) and the language in that Village Code only makes somewhat oblique reference to pets and every other animal considered animal husbandry by Law the adoption of the Code is such that their hands are tied in that if it doesn't specifically allow something it's assumed to be denied.

Mr. Sturtz asked for everyone's benefit could you read the ordinance, not the index but the specific ordinance.

Chair Cuthell said there are no ordinances.

After some discussions, Attorney Lessig advised the Board that they don't have to entertain.

Mr. Sturtz said for this discussion we need to understand the definitions of the violation and want to hear what the ordinance is.

Attorney Lessig addressed the public and advised what the folks here were cited for, and appealing is having engaged in animal husbandry which is a use defined by the Village's code but not specifically allowed in a zoning district in which their property happens to be.

Chair Cuthell said the only reference to animal husbandry is in definition.

Mr. Sturtz said the actual words are not used in any ordinances.

Attorney Lessig said we do not have ordinances and it is the Village's zoning code that defines what animal husbandry is.

Mr. Sturtz said a definition is not the same thing as an ordinance.

Attorney Lessig advised that the definition comes from Local Law and that is what the ZBA has to interpret.

Attorney Lessig read aloud the definition of "animal husbandry".

Mr. Sturtz asked are those words for animal husbandry ever used in an ordinance or law.

Attorney Lessig said we cannot get into a debate. Mr. Sturtz said this is not a debate. Attorney Lessig said that is the definition and the law. Mr. Sturtz said those words are never used in any ordinance. Attorney Lessig said that is the Local Law.

Member Javsicas said that is the definition of an allowed use but not in the zoning district in question here.

Attorney Lessig advised that is what is being alleged here, and obviously at the end of the day the question before the Zoning Board is whether or not that interpretation, and what they were engaged in was animal husbandry and that it is not an allowed use, is what they have to pass on as a Board as being a correct understanding of the Law or not.

Mr. Sturtz said to be clear the Village is equating a definition in index with it being an ordinance.

A person of the public started to speak and Chair Cuthell asked them to hold off speaking until which time it was their turn.

Chair Cuthell said he understands their question but was not prepared for the question and this book is confusing and the language is arcane.

Attorney Lessig said the Village isn't making any decision and here this evening to hold the public hearing which is required by Law. The Code Enforcement Officer issued his opinion which is being appealed by these folks and they have not made a decision.

Mr. Sturtz said this was just to give a context and wants to help, but the words animal husbandry is not used in any code here.

Attorney Lessig said it is defined as a use in the Local Law and that was applied here, and where or not it is applicable is the question.

Chair Cuthell said because the R10,000 district does not specifically allow for it that the default is that it is not allowed. Chair Cuthell said when this Board has their deliberations, we have to put on record exactly why they have come to their decision, so they will have chapter and verse, and apologized for not having it this evening.

Member Ou-Yang said in Chapter 200-9 it doesn't expressly prohibit the use but does not include it.

Attorney Lessig recommended that the public hearing be opened.

Attorney Lessig advised all present that they were being recorded.

Attorney Lessig referred all to the sign-in sheet provided.

**Chair Cuthell made a motion to open the public hearing for 25 Fisk Street listed under Tax Parcel ID 6272-10-493612 at 7:22pm. Motion seconded by Member Ou-Yang. All in favor. Motion approved.**

Attorney Lessig offered to call all persons in order as listed and keep track of the 3 minutes.

#1. Polina Malikin. 25 Fisk Street, Red Hook, NY

Recognized and thanked the Board as volunteers and never meant to break the law and hopes for all to live together in harmony, spoke about all the positive feedback and that the Code should be to serve the people and the Community and hopes to find a resolution to keep the goats.

#2. Matthew Fass. 206 Newkirk Street, Kingston, NY

Mr. Fass spoke and said he was in favor of the goats.

#3. Perry Allen. 20 Elizabeth Street, Red Hook, NY

Mr. Allen said he lives down the street from this wonderful family and expressed his love of the goats in the neighborhood and spoke about the emotional factor and asked about the goats serving as emotional support animals and with his limited understanding of human rights law he wonders how that plays into animal husbandry.

#4. Milo Haggard. 36 St. Paul Road, Red Hook, NY

Mr. Haggard said he feels if not expressly allowed - not necessary and that there are more worse issues and other things to be changed.

#5. Nestor Sokolov. Annandale on Hudson

Mr. Sokolov spoke about being born and raised in Russia and moving to the United States and that he has spent time with the goats as emotional support and that he is in support of the goats.

#6. Sasha Pearl. 24 Fisk Street, Red Hook, NY

Ms. Pearl spoke about her family living at 24 Fisk Street and that the goats are not disturbing anyone and should be considered pets.

#7. Jim Rogers. 5 Fisk Street, Red Hook, NY

Mr. Rogers advised he was the Co-Chair of the Planning Board and thanked this Board and said he feels their pain and thanked them for doing this. Mr. Rogers said the notion that if something is not expressly permitted then it is prohibited is so off, and that rule isn't actually written anywhere, and thinks from a US Constitutional perspective the opposite is true and in US Constitutional Law liberty is so prized that it is not expressly prohibited it is permitted, and the whole Country was warmed under that exact rule. There is no truer thing can be said, in boiling down to one idea, is we are free people unless the government presents a prohibition and that that prohibition is well reasoned and narrowly tailored. In this case, obviously we all agree that the law is super vague, we are flipping through books and scrolling our phones, and our very fine Village Attorney is here, but we don't know really know where we fit. Mr. Rogers said in getting a little deeper to the extent that there is a rule, the rule is no animals of a certain kind unless they are pets, so he feels the question is what is a pet. – not in the past people would think of goats as things other than pets, therefore we are going to use that notion to define what we are doing now, but instead ask how is being raised, treated, is it for a commercial interest, and thinks the evidence in this case is pretty clear that all evidence points to a pet; and since pet isn't defined, and in one way we are in debate with this, but in another way we have a way out with clarity that the Law expressly excludes pets, so the notion of pets is really where we should be looking; and has changed so incredibly, referencing seeing someone walking a pig, which is not crazy anymore, subway in NYC and dogs everywhere. Mr. Rogers said our notion of what is a pet and the roles of what pets play in our lives, as a friend to the family, or as an emotional support animal, or animal that can detect an on-coming epileptic fit, our whole notion of how we spend time with animals has changed since this rule was written and urges this Board to consider what is a pet.

#8. Elena Erber. 24 Fisk Street, Red Hook, NY

Ms. Erber thanked the Board as volunteers and thinks the point just made, they are pets and not there for any sort of farm type commercial space and having spent some time on Instagram it supports having goats as pets and is for goats as pets.

Attorney Lessig again advised the public if they wished to speak to sign the sheet and they will be called to speak.

#9. Michael Rohayan. 178 Shookville Road, Red Hook, NY

Mr. Rohayan thanked the Board for their service and said he comes from Milan but relates to this Village and is baffled by the zones of control. Mr. Rohayan felt the goats are kept in a beautiful place, in harmony and bring charm and history to the rural areas. Mr. Rohayan said he was pro goats.

#10. H. Silverman. 20 Fisk Street, Red Hook, NY

Ms. Silverman spoke about an experience the day before with neighbors 1 ½ year old and it made her realize how special the goats were and she is pro goats.

#11. Agnes & George Odak. 30 & 40 Thompson Street, Red Hook, NY

Ms. Odak said her and George have 2 properties that border the owners property and she walks everyday and goats are a pleasure, they don't wander, they are not loud, they are bringing joy and that her and husband can relate to the recent trauma and feels those animals are emotional support animals to that family and many animals are such and we need to pay attention to mental health and lets put out actions where are words are, and feels the language needs to be updated and that there are a lot of other things that are so much more important than this.

#12. Margaret O'Callaghan. 26 Fisk Street, Red Hook, NY

Ms. O'Callaghan said she lives across the street and feels this is an ag area and said there were previously goats in a backyard next to this property and goats behind Vin's service station. She said there are animals all over the Village and upset over this being an issue living as a native and that residents should be to do what they want within reason.

#13. Tim Davis. 101 Norton Road, Red Hook, NY

Mr. Davis said he was from Tivoli and spoke about a friend from childhood who is a stone worker and went into this overrun area and made stone bridges, etc., and that he was as lovely as this family is, and finds it hard to believe that whatever improvements done, which were incredible, he was still fined and a violation of Code and as a person who believes in government oversight, he had to say he was sorry, but felt it was not right and feels in this case, there maybe should be a chart of what is allowed, and he is pro goats.

The Board exhausted all other names listed on the sign-in sheet and repeatedly called for others in the room who did not sign up on the sheets to come to the podium to be heard if they were there.

Following persons came forward:

#14. Agatha.

Agatha said she was the new Executive Director for the Chamber of Commerce and spoke about what makes Red Hook a destination for locals and it always comes up that it is an ag area. Agatha said she spoke with Greig Farm about any issues and said they responded that they don't feel it would draw attention to the property and that the goats were not a threat.

#15. Collin O'Callaghan, 26 Fisk Street, Red Hook, NY

Mr. O'Callaghan said if rules exist for a purpose and to protect unwarranted undue experience and feels this is a large property possibly 50 yards from the street, goats are a trouble to no one, friendly goats, extremely well cared for, a lovely decoration to the Community and that he had more concerns about the 70lb dog pulling a 50lb girl down the street.

The Board having called for others in the room who had not spoken who wished to be heard to come forward, none did, so at this point Chair Cuthell made a motion as follows:

**Chair Cuthell made a motion to close the oral public comment portion of the public hearing for 25 Fisk Street listed under Tax Parcel ID 6272-10-493612 at 7:51pm but leaving open the opportunity to submit written/email responses to Secretary Hart from now until May 11, 2023 at 4:00pm. Motion seconded by Member Ou-Yang. All in favor. Motion approved.**

Chair Cuthell thanked all for their comments.

Attorney Lessig handed Secretary Hart the sign-in sheets from the public hearing.

**Chair Cuthell made a motion to table the interpretation/appeal application for 25 Fisk Street listed under Tax Parcel ID 6272-10-493612 to May 25, 2023 at 7:00pm. Motion seconded by Member Javsicas. All in favor.**

Chair Cuthell thanked everyone for their patience in this process.

**Chair Cuthell made a motion to break at 7:55pm for a quick bathroom recess. Motion seconded by Member Javsicas. All in favor.**

**Chair Cuthell made a motion to return from break at 7:58pm. Motion seconded by Member Ou-Yang. All in favor.**

#2. 26 Elizabeth Street LLC  
Tax Parcel ID 6272-10-445629

26 Elizabeth Street

Interpretation/Appeal

Present: Attorney Sean Kemp (representing applicant)

Chair Cuthell said this is for a violation written by the Village's Code Enforcement Officer dated 2/12/2023 being notified to be found in violation of 200-9 and 200-19 regarding activities of illegal 3-family use and applicant is appealing the violation as written and applicant has provided this Board with their submission.

Attorney Lessig advised this Board will need to schedule a public hearing for this application.

Mr. Kemp spoke at this time and said he represents 26 Elizabeth Street, LLC and that their position is that this is a pre-existing non-conforming use and tried to keep his letter straightforward. Mr. Kemp advised that Margaret Mondello was present but left and will appear next month with more information on history.

Mr. Kemp advised that they had requested from the Village copies of old Code but does not think it has been located and possibly on file in State archives.

Chair Cuthell said he has a number of questions for our attorney and just found out this evening that he can spend time with the attorney without requesting escrow, and with that mind any discussion would be premature. Chair Cuthell said with the concept of burden of proof and where it lies and the fact that something didn't get a violation for a long time, if in violation, and there is no record, you have to prove something somewhere. Attorney Kemp said he understands and respects that condition.

Member Ou-Yang asked if there was proof that it has been continually rented. Attorney Kemp said the proof is Rose Rider's Affidavit. Member Ou-Yang asked about leases. Attorney Kemp said he does not believe so and month to month.

Member Reilingh asked about evidence pertaining to the date of the unit's construction.

Mr. Kemp advised that they submitted an affidavit from the prior owner, Rose Rider, who owned the property since the 70's and was in her husband's family since the 50's that this was always a 3-family unit.

Chair Cuthell said this appears to be a complete submission to the notice of violation and we have to have public comment.

Attorney Lessig asked that the Board motion on submission to entertain.

**Chair Cuthell made a motion that the ZBA Board accepts interpretation/appeal submission as complete for 26 Elizabeth Street, LLC. Motion seconded by Member Ou-Yang. All in favor. Motion approved.**

**Chair Cuthell made a motion to set a public hearing for the interpretation/appeal application of 26 Elizabeth Street, LLC listed under Tax Parcel ID 6272-10-445629 for May 25, 2023 at 7:00pm. Motion seconded by Member Reilingh. All in favor. Motion approved.**

Attorney Kemp asked about mailings for the public hearing. Secretary Hart said she is preparing a public hearing notice for the local newspaper. Attorney Lessig said it's a public hearing for the interpretation.

**Chair Cuthell made a motion to table the interpretation/appeal application for 26 Elizabeth Street, LLC listed under Tax Parcel ID 6272-10-445629 to May 25, 2023 at 7:00pm. Motion seconded by Member Reilingh. All in favor. Motion approved.**

**Chair Cuthell made a motion to adjourn the Zoning Board of Appeals meeting of April 27, 2023 at 8:15pm. Motion seconded by Member Ou-Yang. All in favor. Motion approved.**

Lara Hart,  
Secretary, Village of Red Hook ZBA