

**VILLAGE OF RED HOOK  
ZONING BOARD OF APPEALS MEETING  
May 25, 2023  
7:00 PM**

Present: Chair Erik Cuthell, Member David Javscas, Member Maarten Reilingh and Member Kristin Luks

Village Attorney, Andrew Lessig

Absent: Member Sherry Ou-Yang

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Chair Cuthell opened the May 25, 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 asked the Board if there were any questions regarding last month's meeting minutes. No comments received.

***Chair Cuthell made a motion to accept and approve the meeting minutes of the ZBA dated April 27, 2023. Motion seconded by Member Luks. All in favor. Motion approved.***

#1. Polina Malikin and Paul Sturtz Tax Parcel ID 6272-10-493612	25 Fisk Street	Interpretation/Appeal (Continuation)
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Chair Cuthell advised that the applicants were unable to attend this evening and have requested that this application be tabled to the June 22, 2023 ZBA meeting.

Chair Cuthell advised that applicants have agreed to waive the 62-day timeline for this Board to make their decision.

Chair Cuthell acknowledged the letters that were received via email and that said will become part of record on file with the building department.

**Chair Cuthell made a motion to table the interpretation/appeal application for 25 Fisk Street listed under Tax Parcel ID 6272-10-493612 to June 22, 2023 at 7:00pm. Motion seconded by Member Javscas. All in favor.**

#2. 26 Elizabeth Street LLC Tax Parcel ID 6272-10-445629	26 Elizabeth Street	Interpretation/Appeal
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Present: Attorney Sean Kemp (representing applicant/owner)  
Dr. Dean Bloch, Owner

Chair Cuthell advised that applicant filed an interpretation/appeal dated March 7, 2023 appealing the Notice of Violation issued by the Village of Red Hook Code Enforcement Officer dated February 1, 2023 regarding an illegal 3-family use and that a first meeting was held on April 27, 2023 wherein a public hearing was set for this evening.

**Chair Cuthell made a motion to open the public hearing for 26 Elizabeth Street, LLC listed under Parcel ID 6272-10-445629. Motion seconded by Member Luks. All in favor. Motion approved.**

Chair Cuthell asked if any persons present wanted to speak, they could come forward.

Attorney Kemp spoke and said that Dr. Bloch is a member of Elizabeth 26 LLC as owner of the property and that Mr. Bloch can speak if he wishes, but as opening remarks there was not too much more to add and feels this is a pretty straight-forward issue that we have here in that Mr. Bloch's property was cited for a violation and that they have submitted documentation that this is a pre-existing non-conforming use and has not seen anything contrary to that, and that the public comments in writing did not dispute the fact that it's been being used a 3-family dwelling for some time now and there were no objections to nuisance, health safety or welfare concerns.

Attorney Kemp said he submitted an affidavit on behalf of Ms. Mondello as she could not be present this evening.

Dr. Bloch, the owner, spoke and advised the Board that he thought this was zoned as a 3-family and would not have bought the property if he had known.

No other person present and no further comments.

**Chair Cuthell made a motion to close the public hearing for Elizabeth 26, LLC. Motion seconded by Member Reilingh. All in favor. Motion approved.**

Chair Cuthell acknowledged 7 additional letters that were received via email all of which will be a part of the record, 4 being associated with the realtor who brokered this sale.

Chair Cuthell wanted to say that he is disappointed the suggestion that this is the fault that this known 3 family was not cited for a violation, but it was known to be in violation because 3 family units are not allowed by Code in the Village. Chair Cuthell said it is not as if this came as a surprise when a complaint was filed, and that there is record of the listing agent contacting the office asking about the status of this property prior to the sale that explicitly says 3 family is illegal in the Village but no inspection has been done because of the way the office works and that the Code Enforcement Officer didn't respond, who is only part time, and he does inspections when there is a complaint made.

Chair Cuthell advised he believes due to this issue there are changes being made to the way the letter for a CO search is being done, so that if there is a violation it is noticed and notified.

Chair Cuthell said not only did the listing agent speak with the building department but also spoke with the Village attorney, who told her it is in violation. Chair Cuthell said apparently that was not translated to you when you bought the place.

Chair Cuthell said in the packet received there was an affidavit from the prior owner who swears that it has been like this for as long as they can remember, and we have nothing to prove otherwise in the Village, so not to impugn her character and assume she is telling the truth and that is what this Board has to go on, but he wants to defend our code enforcement officer and building dept. clerk who do a really good job, and does not think an oversight or missing this really warrants approach on them for this oversight, never the less a complaint ultimately was filed and it's a 3-family house, and the code enforcement officer goes out and it is a 3-family and he checks zoning and it is not allowed and the violation was issued.

Chair Cuthell advised that with an interpretation/appeal this Body can support the Code Enforcement Officer and let it stand and have a fight in a bigger court somewhere, or we can consider restrictions on allowing it. Chair Cuthell said the Code book exists for a reason and we don't want everything in the Village turning into small apartment buildings and that is why it is prohibited yet this property has clearly been like this for a very long time.

Chair Cuthell said with those considerations our Attorney has drafted a Resolution which this Board will discuss. Draft copies of the Resolution were available for those present, and Attorney Lessig handed one to Mr. Kemp and his client.

Chair Cuthell said if the previous owner had come to us and said they were selling their property and it's been a 3-family forever, but supposedly illegal and what can we do we probably could have extended the pre-existing designation to it and none of us would be here, and that is costing the Village and applicant a lot of money and time. Chair Cuthell said it was unfortunate that it went down like this, and is a little annoyed that this is the way it has come to us.

Chair Cuthell asked for Board comments on the draft Resolution.

Member Reilingh said that he felt the draft resolution was spot on but had a concern with the last sentence of paragraph #8 and felt it was an admonishment for the homeowner going forward. Member Reilingh said he is in agreement with the draft up until that last sentence in paragraph and asked how are they any different from any other resident keeping a rental unit in the Village and why are we suggesting these issues to this applicant.

Member Javsicas read the last paragraph (#8) as for this specific violation, based on our findings, that we are saying we think it's been around for longer than the Code has existed, but we are then not using that as a reason to get them out of any other zoning stuff and sort of as a disclaimer and that we are ruling on this very specific but that doesn't mean any other part of the Code would not apply, and that the 3-family is pre existing but that all of the other zoning that would apply to a property like this still applies.

Chair Cuthell felt we are going further and understands Member Reilingh's point.

Member Javsicas said in terms of the letters it is worth noting that the emails received were in a pattern, that the Village would benefit if there were more 3-units, or more, and basically the density of housing is potentially good for the Village in the long term, but that we are the wrong Body for that. Chair Cuthell said correct and would be the Village Board.

Chair Cuthell asked member Luks for comment. Member Luks had no comment.

Chair Cuthell responded to Member Reilingh that most of what was in paragraph #8 was at his request in talking with the Village Attorney and the last paragraph says if we chose to rescind the violation that we do it with considerations. Chair Cuthell said it is pre-existing but has been sold a number of times and now it is on our radar and it's not an owner occupied property, and had it been this may be different, but this a business commercial enterprise, and is in the R10,000, and it is an exception which he does not see us changing the rule on anytime soon, but that his only concern is if it is a rental that no particular owner is a resident in, he wants to make sure that not only is it up to Village Code but needs to have a fire code inspections which is not unreasonable.

Secretary Hart advised it would be NYS Mandated and that Clark is the fire inspector.

Chair Cuthell said there are concerns about sewers and wastewater and that we are not dealing with inadequate septic, and feels it is not unreasonable and should have been addressed prior to sale and that the owner should have been better informed. Chair Cuthell said he wanted to make sure that if we accept this that we include this paragraph to make sure that reasonable inspections are done going forward.

Member Reilingh said he understands why but it is our place to make such a recommendation.

Chair Cuthell said it is his understanding that because we are looking at an interpretation/ appeal, we are looking at the language of the violation and we can consider everything that has come to light, subsequently, and this is not strictly about the words or definition of a 3-family but it's a consequence of it being a 3-family, in that these considerations being taken into consideration.

Member Reilingh said it's a consequence of having come before us in this way.

Chair Cuthell said yes and if this Board is going to back date an acceptance to this being prior to zoning, not knowing if this is actual truth, with zoning be effective in 1955 and if the house is older than that – who knows, this Board does not know and does not have any other proof otherwise so it would be punitive to say well you can't prove it so we are denying you, which would seem unreasonable to him, but thinks going forward if this is the record of how a 3-family is dealt with, than this is essential. Member Luks said she agrees. Chair Cuthell said if-and-when the next case comes along it is established.

Member Reilingh asked then what does the owner do with this advice that is incumbent upon them, as we are not mandating inspections to take place. Chair Cuthell said he thinks we are.

Member Reilingh said then he feels we need to rethink about the word "incumbent".

Chair Cuthell read aloud the 2<sup>nd</sup> sentence of paragraph 8...and said we are issuing a work order to Clark but thinks whoever our Code Enforcement is, that a site inspection is warranted and if there are hidden defects that don't meet Code that you get a notice and does not feel it is unreasonable.

Member Reilingh said he understands the fact that it has come to us in this way sort of puts it in our line of vision in a way that a 2-unit rental or 3 rental might not come under our scrutiny as in the way this has.

Secretary Hart advised that Clark inspects all 3-families and is mandated by NYS Fire Code.

Chair Cuthell the language is instructive and is not us setting a high bar and this is what it is.

Member Reilingh said he understands if you say that it is not an affirmation to use the property in any other respect, but the rest there is nothing in there that if he were the owner, asked what does this mean.... you have to contact the code inspection for another inspection, call the County for the sewer, and who else will they have to call.

Attorney Lessig said the paragraph states "should".

Chair Cuthell said it spells out these responsibilities go with it.

Attorney Kemp said he had one concern about paragraph #8 in that it states "should" but then later on "with all due haste", which he feels contradicts each other, and then inter alia, and feels it is a little over broad and vague and pushes the burden on the property owner and what is at issue here it's whether or not the violation was issued properly or if this property was in fact a violation or was it in fact a pre-existing non-conforming use and appreciates the fact of the inclusion that it is a pre-existing non-conforming use and also appreciates the fact of the desire that it be up to Code and life safety issues and that his client has no issues with coming into compliance, but thinks Mr. Reilingh touched on this as a condition with determination, which he feels is not proper, but given kind of a guidance to the property owner is ok.

Chair Cuthell said he understands and asked if we can accept this with the understanding that we will re-write the last paragraph.

Attorney Lessig asked Member Reilingh if he wanted to a specific motion to exclude everything after the first sentence of paragraph #8.

Chair Cuthell asked if we could stipulate that the building will require fire safety inspections or do we want take it all out. Member Reilingh said it's hard to feel we shouldn't stop after the first sentence.

Chair Cuthell said if we rescind the violation it becomes in fact a 3-family and that puts it on Clark's radar.

Attorney Lessig asked the Board if they wanted to motion to delete everything after the first sentence.

Member Reilingh said the first and second sentence is ok. Chair Cuthell asked if he wanted the third sentence removed and was ok with ending paragraph 8 at the second sentence. Member Reilingh agreed.

Member Javicas said concerning wastewater he does not know what the requirements are. Chair Cuthell said if there's no problems there is no offense, and we could probably leave that alone. Chair Cuthell said the Code Enforcement Officer may have a better understanding of

that. Secretary Hart advised he does not do that. Chair Cuthell said it is not our jurisdiction to mandate an inspection of something.

Member Luks said she agreed to strike that part out.

Dr. Bloch advised that a new septic was installed prior to the sale.

**Chair Cuthell made a motion to Amend the draft Resolution to delete sentence 3 from paragraph 8. Motion seconded by Member Reilingh. All in favor. Motion approved.**

**Chair Cuthell made a motion to approve the Resolution to reverse the determination of the Code Enforcement Officer. Motion seconded by Member Reilingh.**

A meeting of the Village of Red Hook Zoning Board of Appeals was convened in public session at the Village Hall, 7467 South Broadway, Red Hook, New York on May 25, 2023. The meeting was called to order by Chairman Erik Cuthell.

Moved by: \_\_\_\_\_ Seconded by: \_\_\_\_\_

**RESOLUTION TO REVERSE THE DETERMINATION OF THE CODE  
ENFORCEMENT OFFICER**

**Elizabeth 26 LLC – 26 Elizabeth Street (Parcel No. 134801-6272-10-445629)**

WHEREAS, on or about February 1, 2023, the Code Enforcement Officer (“CEO”) of the Village of Red Hook issued a notice of violation to Elizabeth 26 LLC (the “Violation”), the owner of the property at 26 Elizabeth Street in the Village of Red Hook (the “Property”); and,

WHEREAS, the Property at 26 Elizabeth Street is located in the R10,000 Zoning District of the Village of Red Hook, the restrictions for which are provided for in Village of Red Hook Code section 200-9 which provides, *inter alia*, that one-family dwelling units are permitted principal uses, and that accessory apartments are a permitted accessory use subject to section 200-19 which states, *inter alia*, “one accessory apartment for a total of two dwelling units shall be permitted in a residential structure”; and,

WHEREAS the Violation alleged that the Property at 26 Elizabeth Street was in breach of Village of Red Hook Code section 200-9, as well as section 200-19, as it is an “existing illegal 3-family” and required that the third apartment be vacated within thirty days to correct the violations; and,

WHEREAS, the owner of the Property at 26 Elizabeth Street timely appealed the Violation issued by the CEO within sixty days as required by Village of Red Hook Code section 200-50(D)(3) by submitting through their attorney an Application for an Interpretation on or about April 17, 2023; and,

WHEREAS, the owner of the Property at 26 Elizabeth Street has not disputed that the property is in a Zoning District in which three-family or three-apartment residences are not permitted; and,

WHEREAS, the owner of the Property at 26 Elizabeth Street has disputed the applicability of the Village of Red Hook's Zoning Laws, cited above, to the Property at issue here, by alleging that the CEO did not consider or adjudge whether the use of the Property as a three-family or three-apartment residence preexisted the Village's adoption of Zoning; and,

WHEREAS, the owner of the Property at 26 Elizabeth Street has submitted material in support of their application, including an Affidavit from Rose E. Rider, whose immediate family members followed by herself, continuously owned the Property at issue from 1945 until selling it to the current owner and the appellant herein in or about 2021 and who attested that "the [P]roperty has been used as a 3 residential unit building continuously and uninterrupted since the early 1950's" based upon her knowledge and recollection as well as conversations with her immediate family; and,

WHEREAS, the Village of Red Hook adopted Zoning in or about September of 1955; and,

WHEREAS, Village of Red Hook Code section 200-42 states, "[t]he lawful use of any land or a building or structure or a part thereof existing at the time this chapter or any amendment thereto becomes effective may be continued, although such use does not conform with the provisions of this chapter" which is consistent with rulings from Courts in the State of New York that have found a constitutional right to continue a preexisting nonconforming use after the enactment of zoning restrictions on that use; and,

WHEREAS, a duly noticed public hearing was opened during the regular monthly meeting of the Village of Red Hook Zoning Board of Appeals which was open to the public and held in person at the Village Hall, 7467 South Broadway, Red Hook, New York on May 25, 2023, during which all those who wished to speak were heard, and several written comments were received by the Board from members of the Public, and that this Public Hearing was subsequently closed on May 25, 2023; and,

WHEREAS, pursuant to Village Law Section 7-712-b(1), upon an appeal of a determination of the Village of Red Hook Code Enforcement Officer, the Zoning Board of Appeals "may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken"; and,

WHEREAS, the Zoning Board of Appeals has reviewed all relevant submissions, information, and documents pertaining to the Appeal;

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals makes the following findings per section 7-712-b of the Village Law regarding the Appeal of the Notice of Violation:

1. The determination of this Appeal is a Type II action under the State Environmental Quality Review Act pursuant to 6 NYCRR 617.5 and no further review under the Act is required.
2. The Violation dated February 1, 2023 subject of this Appeal, was factually accurate and correctly issued given the information the CEO had before him at the time of its issuance.
3. The Owner of the Property at 26 Elizabeth Street confirmed the primary structure at the Property is a three-family or three-apartment residential structure at this time.
4. Having been raised by the Owner of the Property at 26 Elizabeth Street now on appeal to this body, the question of whether the use of the primary structure at the Property as a three-family or three-apartment residential structure preexisted the Village of Red Hook's adoption of Zoning in or about September 1955, or that this use has continued since then, has only been answered by evidence submitted in the form of affidavits and written public comments in support of its preexisting status.
5. The ZBA at this time has no evidence before it and has received no written or oral public comments that would suggest the representations made to it that the use of the primary structure at the Property as a three-family or three-apartment residential structure did not preexist the Village of Red Hook's adoption of Zoning in or about September 1955, or that this use has continued since then.
6. The herein appealed Violation is hereby reversed given the further evidence submitted to the Village of Red Hook Zoning Board of Appeals since the Violation was issued.
7. This holding by the Village of Red Hook Zoning Board of Appeals in its quasi-judicial capacity is a decision rendered based on the record evidence before it at the time of its rendering and only addresses the allegations of the Violation herein appealed.

8. This holding by the Village of Red Hook Zoning Board of Appeals is not an affirmation of the current use of the Property in any other respect. It is incumbent on the owner of the Property at 26 Elizabeth Street to come into and/or to maintain compliance with all other applicable requirements for three-family structures, including applicable state and local building codes, fire codes, zoning requirements, including all other portions of the Village of Red Hook Code.

<b>Erik Cuthell</b>	<b>YES</b>
<b>Maarten Reilingh</b>	<b>YES</b>
<b>David Javsicas</b>	<b>YES</b>
<b>Kristin Luks</b>	<b>YES</b>
<b>Sherry Ou-Yang</b>	<b>ABSENT</b>

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**Erik Cuthell, Zoning Board Chairperson**

**Motion approved.**

**Chair Cuthell made a motion to adjourn the Zoning Board of Appeals meeting of May 25, 2023 at 7:42pm. Motion seconded by Member Luks. All in favor. Motion approved.**

Lara Hart,  
Secretary, Village of Red Hook ZBA