

**VILLAGE OF RED HOOK  
ZONING BOARD OF APPEALS MEETING  
July 27, 2023**

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

Village Attorney, Andrew Lessig

Absent: Member Maarten Reilingh and Member Sherry Ou-Yang

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Chair Cuthell opened the July 27, 2023 Zoning Board of Appeals Meeting at 6:37pm.

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 the May 25, 2023 meeting minutes. No comments.

***Chair Cuthell made a motion to accept and approve the meeting minutes of the ZBA dated May 25, 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 Board was given a draft Resolution for review and consideration.

Chair Cuthell said he will not read in its entirety but will provide a brief synopsis of it.

Attorney Lessig advised that the draft Resolution is for the Board to look at and deliberate, and that as Attorney he has spoken with each member individually and this resolution reflects the opinions of each member individually.

Chair Cuthell advised that was an individual consultation, and this was not discussed as a group. Attorney Lessig said correct.

Chair Cuthell said he will now briefly go over the proposed draft Resolution:

***VILLAGE OF RED HOOK  
ZONING BOARD OF APPEALS***

***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 July 27, 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**

***Application of Paul Sturtz & Polina Malikin – 25 Fisk Street (Parcel No. 134801-6272-10-493612-0000)***

***WHEREAS, on or about January 30, 2023, the Code Enforcement Officer (“CEO”) of the Village of Red Hook issued a notice of violation to Paul Sturtz (the “Violation”), owner of the property at 25 Fisk Street (the “Property”) along with his wife Polina Malikin (collectively, the “Property-owners”); and,***

***WHEREAS, the Violation alleged, based upon, inter alia, the CEO’s observations of the Property, that the Property at 25 Fisk Street was in breach of Village of Red Hook Code sections 200-5, 200-6, and 200-9 as the violations were alleged to be caused by the “housing/keeping of goats” at the Property explained further in the Violation as, “[pursuant to Zoning Law Section 200-6, any use that is not expressly permitted is prohibited. The use ‘Animal Husbandry’, as defined in the Zoning Law, is not expressly permitted in the R10,000 District and is therefore prohibited” and which afforded the Property-owners thirty days to remove the goats from the property to correct the cited violations; and,***

***WHEREAS, the Property at 25 Fisk 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 the permitted principal uses for parcels within the R10,000 Zoning District as being, “(1) Dwellings, one-family. (2) Parks, public and private. (3) Playgrounds. (4) Schools, elementary. (5) Schools, secondary”; and,***

***WHEREAS, the permitted accessory uses for properties within the R10,000 Zoning District which are provided for in Village of Red Hook Code section 200-9 include, “(1) Accessory uses of buildings as defined herein. (2) Accessory buildings and structures customarily associated with the permitted principal use’s buildings and structures. (3) In a one-family dwelling: (a) The keeping of not more than two boarders. (b) An apartment, subject to the provisions of § 200-19. [See § 200-19A(4) and B.] (4) Between the yards of a dwelling: (a) Outdoor storage of not more than two of the following: boat, boat trailer, camp trailer, cargo trailer, any of which shall be only for personal use by a resident on the premises. (b) A private garage not to exceed three bays or open parking for operative vehicles owned by a person residing or visiting the premises. (c) A playhouse with a maximum-size side yard and the required type of foundation, a toolhouse, or a garden house. (5) Between the yards of a dwelling or farmhouse, a private swimming pool not operated for gain, subject to the additional provisions of § 200-40”; and,***

***WHEREAS, “Animal Husbandry” was a use defined in the Village of Red Hook Code in section 200-5 on or about January 30, 2023, as being “[the keeping, grazing, feeding and care of animals other than household pets or more than two saddle horses or ponies. However, the term ‘animal husbandry’ shall not be construed to include the activities of fur farms, pig farms or cage-type poultry houses”; and,***

*WHEREAS, the principal use of the Property at 25 Fisk Street is as the primary residence of Paul Sturtz, Polina Malikin, and their minor daughter, fitting within the permitted use of “Dwelling, One-Family” as defined in the Village of Red Hook Code section 200-5; and,*

*WHEREAS, pursuant to Village of Red Hook Code sections 200-5 and 200-7(E) only one principal permitted use is allowed per parcel in the R10,000 Zoning District; and,*

*WHEREAS, Animal Husbandry is not a permitted accessory use for a parcel within the R10,000 Zoning District including one for which a One-Family Dwelling is the principal permitted use pursuant to Village of Red Hook Code § 200-9; and,*

*WHEREAS, the owners of the Property at 25 Fisk 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 to the ZBA on or about March 7, 2023, an Application for an Interpretation including maps of the Property in relation to other nearby parcels, a five-page letter dated March 4, 2023, and a petition in support of retaining their goats at the Property signed by a substantial number of neighboring property owners and residents near to the Property (collectively, the “Appeal”); and,*

*WHEREAS, the Property-owners did not dispute in their Appeal the CEO’s observations that they are keeping Goats at the Property and have confirmed they have “five small goats” specifically of the Nigerian Dwarf breed which are considerably smaller than goats typically raised for commercial agricultural purposes; and,*

*WHEREAS, the Property-owners in their Appeal expressed, inter alia, that the goats “have become a balm for our young daughter” who has been dealing with the traumatic psychological effects of witnessing her minor brother’s death and a desire for the Village to consider the goats to be “‘pets’, ‘companion animals’, and therapy/service animals’” for the minor daughter; and,*

*WHEREAS, on March 23, 2023, the Village of Red Hook Zoning Board of Appeals (the “ZBA”) took up the Appeal for the first time and heard further testimony from the Property-owners as well as their minor daughter including as it relates to their application for the goats to be treated as emotional support or therapeutic animals, and received from them further submissions including but not limited to letters from the minor daughter’s Licensed Clinical Social Worker in support of her need for the goats for therapeutic and emotional support purposes pursuant to the Federal Americans with Disabilities Act (“ADA”), the Fair Housing Act (“FHA”), and the Rehabilitation Act of 1973, as well as letters proximate in time from a doctor of veterinary medicine attesting to the good health and proper keeping of the goats, and several letters from neighbors of the Property-owners in support of their Appeal; and,*

*WHEREAS, the ZBA voted to consider the Appeal complete and to set a public hearing on the same for April 27, 2023, at or about 7:00 p.m. as required by law; and,*

*WHEREAS, the ZBA elected to organize a site visit to the Property on or about March 15, 2023, at 5:00 p.m. attended by members Luks, Cuthell, Reilingh, and Ou-Yang, during which time the Property was toured and members witnessed the goats and their enclosures while asking questions of the Property-owners and no deliberations were had amongst members of the ZBA; and,*

*WHEREAS, the legally-required public hearing on the Appeal was noticed for and 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 April 27, 2023, beginning at or about 7:00 pm, at which time all those wishing to speak were heard, and all public speakers spoke in support of the Appeal of the Property-owners while no speakers spoke against the same or expressed that the goats created any nuisance to the community nor raised any other concerns regarding public health, safety, or welfare posed by the goats; and,*

*WHEREAS, the ZBA elected to keep the public hearing open for further written submissions until the close of business on May 11, 2023, but subsequently received no further submissions; and,*

*WHEREAS, the ZBA next held a meeting on May 25, 2023, but as the Property-owners requested an adjournment and waived the applicable statutory timeframes in which the ZBA was required to render a decision, the ZBA agreed to adjourn their deliberations on the Appeal until June 22, 2023; and,*

*WHEREAS, after the Property-owners requested a second adjournment and further waived the applicable statutory timeframes applicable to the rendering of a decision by the ZBA on the Appeal, the ZBA canceled its June 22, 2023, meeting being this Appeal was the only item on its agenda for the June 22, 2023 meeting; 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, and has sought and received appropriate guidance on the legal questions which this Appeal raises;*

*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 January 30, 2023, which is the 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. All parties including the Property-owners have confirmed the presence of five pygmy goats of the Nigerian Dwarf Breed who are being kept, fed, and cared for at the Property.*
- 4. The five pygmy goats, may be regarded by some to be “pets” as has been argued by the Property-owners, and not be regarded to be “livestock”, however, the definition applied by the CEO at the time the Violation was issued which was appealed by this Board only made an exception for*

*“household pets” which the goats do not fit into as in common parlance, the term “pet” refers to an animal that is kept for companionship or enjoyment rather than for a working or commercial purpose, but whereas the term “household pet” specifies that the animal is intended to be allowed or kept within a home or a dwelling which the goats were not alleged, attested, or observed to be at any time.*

*5. The Property is one for which certain uses, both principal and accessory, are allowed by the Village’s Zoning Law, but Animal Husbandry was not a permitted accessory use to the Property’s sole allowable principal use as a One-Family Dwelling at the time the Violation was issued.*

*6. Having been raised by the Property-owners of 25 Fisk Street in the course of their Appeal to this body, the question of whether the five currently present pygmy goats should be treated as “therapy animals”, “companion animals” and/or “therapy/service animals” must also be weighed by this Board, and the applicable law governing the same in this context, namely the FHA, requires that “reasonable accommodations” be made even to local zoning laws where “such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 USCA § 3604(f).*

*7. Whereas the only evidence in the record before this body relevant to answering this question has come in the form of the testimony of the Property-owners, the minor daughter of the Property-owners for whom the accommodation is sought, her clinicians, and others whose testimony and submissions have all shown the existence of emotional and psychological needs which the minor daughter is afflicted by and which could be ameliorated by the keeping of the five pygmy goats with whom she has already formed an attachment.*

*8. The ZBA must also weigh whether the sought accommodation, allowing the five pygmy goats to remain whereas the Violation which is herein appealed required that all five goats be removed from the Property under the applicable local law as it existed and applied at the time, would not only be a possible accommodation, but a reasonable accommodation for the ZBA to make to the otherwise applicable Village of Red Hook Zoning Law that the CEO was applying.*

*9. As the Property at issue here is nearly four and a quarter acres in size, making it among the largest residential parcels in the Village and as the Property is mainly open grassland which is ideal for grazing animals such as goats and which has been observed by members of this Board to be sufficient space for them to be kept and grazed, and as the five pygmy goats at issue here are a specific dwarf breed which typically does not exceed 20 inches in height or 75 pounds in weight making them more comparable to many breeds of dogs, and as members of the public were afforded the opportunity to be heard and many neighbors of the Property spoke in support of the goats and believed they were a benefit to the neighborhood whereas no issues were raised by any members of the public which imposed upon them or negatively detracted from the community, the ZBA resolves that it is reasonable to accommodate the five pygmy goats currently at the Property and which appear to be being appropriately kept, housed, fed, and cared for by the Property-owners by overturning the Violation issued which required the goats to be removed within thirty days as their being kept was “Animal Husbandry” under the then-applicable zoning law and which was not an allowable use at the Property, in order to affirmatively enhance the life of the minor daughter of the Property-owners while she resides at the Property owing to her documented and currently persisting psychological needs.*

***10. The herein appealed Violation is hereby reversed given the evidence submitted to the Village of Red Hook Zoning Board of Appeals since the Violation was issued.***

***11. 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 which applied the local laws of the Village of Red Hook as they applied at the time the Violation was issued. The Property-owners should be aware that the Village Board has subsequently changed certain local laws which may apply to their Property, and they should familiarize themselves with the same as this decision is not a prospective decision regarding the application of any laws that came into force after the Violation was issued as that would be beyond the authority of the ZBA in this appeal.***

***12. This Holding by the Village of Red Hook Zoning Board of Appeals only applies to the facts as they are laid out herein and as they existed at the time the Violation was issued. Only the five pygmy goats currently at the property are being accommodated from the effects of the Violation dated January 31, 2023. No other, additional, or further Goats or other animals including by the breeding of goats are being explicitly or implicitly invited or allowed at this time. The accommodation being made here is only relating to the presence of the currently present five pygmy goats at the Property at issue here for so long as the need for the reasonable accommodation exists and the Village may periodically seek to verify such a need still exists. This reasonable accommodation with regards to the Violation herein appealed under the laws as then in force for the currently present goats to remain is not an accommodation to any other laws which were in force or which may come into force at any point which may be affected or implicated in by the presence of the goats, for example, local laws preventing undue noise and odor may still be enforced by the CEO.***

***13. 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 Property-owners to come into and/or to maintain compliance with all other applicable requirements for their Property, including applicable state and local building codes, fire codes, and zoning requirements, including all other portions of the Village of Red Hook Code.***

Attorney Lessig stated this was a draft that belongs to the Board based on his conversations with the Chair and if anyone has an amendment or issue of questions about something...Chair Cuthell said he is absolutely is going to put that out there.

Chair Cuthell briefly went through the WHEREAS clauses.

Chair Cuthell stated that the 14<sup>th</sup> WHEREAS clause indicates that he was present for a site visit and stated that he was not present. Correction made removing the name Erik Cuthell from that paragraph.

Chair Cuthell spoke about WHEREAS clause #20 and indicated this Board has the right to review the violation with the information that this Board received and can change it, accept it and provide concerns, restrictions, etc. and that is this Board's right.

Chair Cuthell now briefly went through the THEREFORE clauses.

Chair Cuthell advised that #2 & #3 were statements of facts.

Chair Cuthell said #4 was a long but felt that there was nothing he would change. Member Luks agreed. Member Javsicas spoke and said his only hesitation is that how we define household pets and that a person could say that lots of people have outdoor pets and lots of people keep dogs and are considered a household pet and same for rabbits. Chair Cuthell said but those animals could be brought in. Member Javsicas said they could. Chair Cuthell asked owner, Paul Sturtz, if they ever brought the goats into their house. Mr. Sturtz said no.

Member Javsicas said he does not know if this matters, but for him the difference is does the animal have to be brought into the house. Chair Cuthell said no and that it's a common definition which can be with incredible broad range. Member Javsicas said lots of people he knows would think of goats as household pets and said this has been a topic lately and felt could people imagine it being a pet, yes, a household pet, no. Chair Cuthell said that is the common parlance. Member Javsicas said the common parlance speaks more to him as to whether or not they can go inside the house or not. Chair Cuthell said he does not feel the need to change any wording.

Attorney Lessig said he drafted this as best as he could based upon on conversations with each member and there being some suggestions from the applicant and public speakers that these were pets and the definition being appealed here of animal husbandry at the time is ... "grazing and care of animals other than household pets"... Chair Cuthell said right and that is why the violation was written. Chair Cuthell said those animals do not fit into the household pets category and were determined to be animal husbandry.

Chair Cuthell spoke on #6 and felt this trumps everything else.

Chair Cuthell felt #8 was very confusing but said we have to seek the accommodation is what it is saying and understood that the accommodation we are considering is reasonable.

Chair Cuthell said #9 was important in detail and read aloud. Chair Cuthell felt this was not an unreasonable consideration on our part under the circumstances.

Chair Cuthell said #10 should make the applicant happy because that is where they were trying to get to because none of us wants to be unreasonable.

Chair Cuthell said the Village has redefined some things and going forward the applicants have to pay attention to what those definitions are if they want to do something else.

Chair Cuthell completed reading clauses and ended stating that he was not aware that they are in violation of anything else at this time.

Chair Cuthell said he understands this Resolution and feels no amending is needed. Attorney Lessig said except to remove his name from one paragraph.

Chair Cuthell said if this Board was comfortable with this, he will make a motion to accept this proposed draft Resolution with one change of removing his name from paragraph about the property site visit.

Secretary Hart asked if the applicants have to look at the new amendment to zoning; apply for a site plan and come into compliance. Member Luks said she wanted to know that as well.

Attorney Lessig said that it is beyond what the ZBA can do right now and the ZBA has only been asked to look at and advise based on the violation as written under the Laws existing in January.

Attorney Lessig referred to the paragraph at the end. Chair Cuthell said applicant was entitled to a copy of the Resolution.

Attorney Lessig said this Board has to look at the law that now has been adopted by the Village and as an attorney is advising them not applicant.

Chair Cuthell advised to read the new language because some of the questions that were brought up here pointed out the fact that the Code had holes with the eye towards lets make a standard that brings into some sense of control in size of a lot, number of animals, which none of that will affect you in this regard but you may have to do something about the fence but not this Boards place.

Member Luks asked if in what was just read does it say that 5 goats, specifically, will be allowed. Both Chair Cuthell and Attorney Lessig said yes.

Attorney Lessig said yes according to the Law as it was written at that time and since the Law has subsequently changed that is not in front of the ZBA because no one has cited them we can't ... Chair Cuthell said they won their argument based on the fact that they are therapy animals so this Board will not cite them for that. Attorney Lessig said that is beyond what the ZBA can do.

Member Luks asked if we will allow goats on the property without saying the number. Chair Cuthell said no and in this situation as it exists, we are making accommodation that is the most reasonable accommodation we can make and we cannot say you can only have 4, but we also don't want to say have 6-7. Attorney Lessig spoke about the facts when the violation was issued.

Member Javsicas said it is important to state and we don't want to gloss over is that the goats are attached to your daughter. Chair Cuthell said yes and while she is resident of the village and when she stops living there the need goes away. Member Javsicas said right and that they should plan for it if and when that changes.

***Chair Cuthell made a motion to vote on the proposed Resolution to Reverse the Determination of the Code Enforcement Officer:***

<b><i>Chair Cuthell</i></b>	<b><i>YES</i></b>
<b><i>Member Reilingh</i></b>	<b><i>Absent</i></b>
<b><i>Member Javsicas</i></b>	<b><i>YES</i></b>
<b><i>Member Ou-Yang</i></b>	<b><i>Absent</i></b>
<b><i>Member Luks</i></b>	<b><i>YES</i></b>

***Chair Cuthell signed said Resolution and motioned to approve said Resolution. Motion seconded by Member Javsicas. Motion approved.***

***Chair Cuthell made a motion to adjourn the Zoning Board of Appeals meeting of July 27, 2023 at 7:07pm. Motion seconded by Member Javsicas. All in favor. Motion approved.***

Lara Hart,  
Secretary, Village of Red Hook ZBA