

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
July 11, 2007**

CALL TO ORDER

The meeting was called to order at 7:10 P.M. by Chairman Timothy Ross.

ROLL CALL

Members Present: Timothy Ross, Kenneth Anderson, John Douglas, Jim Hegstetter, Robert Latimer, Corinne Weber

Members Absent: Michael Mosher

Also Present: James Ross, Town Board Liaison; Bob Fennell, Building Inspector

PRELIMINARY BUSINESS

Minutes of June 13, 2007: Chairman Ross asked for any questions, additions, deletions or comments on the Minutes. Corinne Weber made a motion to approve the Minutes. The motion was seconded by Jim Hegstetter and all were in favor.

Planning Board Minutes and Letters: Chairman Ross asked for questions or comments on the Planning Board Minutes and letters. No comments were made.

Building Inspector/ZEO Permits and Memos: The Board reviewed the current Permits and memos.

Comments from the Chairman: Chairman Ross said that he will have to leave between 8:00 P.M. and 8:25 P.M. to run the Milan Planning Board. In that interim, he appointed Corinne Weber to run the meeting. If the Country Fresh issue comes up, he said that the Board will have to table it unless there is still a quorum as Corinne will have to recuse herself. To take any action, a quorum would be needed. At the last meeting, Mike Mosher said he would be out of town today.

PUBLIC HEARINGS

7:15 Appeal 07-08, Douglas and Donna Coons application to decrease required twenty foot rear setback to three feet for existing twelve by twelve storage building. Chairman Ross asked if everyone on the Board was familiar with Doug and Donna's shed situation. John Douglas asked if the property is on Manor Road and if it would be on the right or left if you are coming from Aspinwall, going toward 199. Mr. Coons responded that it would be on the right about halfway down. He asked if they were by the lot next to the easement for the road. Mr. Coons responded that they are on the north side of that. Mr.

Coons identified the lot on the map and said that the stonewall fence is the boundary line. He showed the Board members the layout on the map.

Chairman Ross asked if there were any other questions for the applicant. He said he had driven by and is familiar with that section. He opened the Public Hearing, asking if there were anyone present to speak for or against the Coons application. As there were no comments, he closed the Public Hearing and asked for comments from the Board. Ken Anderson asked if it was a twelve by twelve building and if the applicants have it there now. They responded in the affirmative. Donna Coons submitted a photograph of the shed. Ken asked if the lot line was behind the building. Mr. Coons said that it is and pointed the stonewall fence out on the map and also the vacant land which is owned by Mr. Chen. Mr. Chen owns over a hundred acres Mrs. Coons explained and he had subdivided the land. Using the map he had submitted, Mr. Coons explained the topography of the land to the Board, the boundaries and the positioning of the shed. He submitted additional photographs.

Motion to Grant Variance

Chairman Ross made a motion to grant the variance for a reduction of the rear setback from twenty feet to three feet for the twelve by twelve shed on Douglas Coons property because it will be a benefit to the applicant and no detriment to the health or safety of the neighborhood.

The motion was seconded by John Douglas and all were in favor.

Chairman Ross added that now the Coons have to finalize the Building Permit which never occurred. Mr. Coons said that he also had to get a CO for it. Bob Fennell said that they have to get the Building Permit first. Chairman Ross said that Mr. Coons could talk to Mr. Fennell and Mr. Cole, Building Inspector, tomorrow and make the arrangements. Mr. Fennell said that they could fill out the application now and leave it. Mr. and Mrs. Coons expressed their appreciation.

7:30 Appeal 07-06, Kim and Joe Curthoys application for the following area variances for an addition to their existing building: increase maximum building coverage from 7% to 20 % and reduce minimum open space from 80% to 69%. Chairman Ross asked if everyone had an opportunity to swing by and get a look at the site. There were affirmative responses from the Board. He said that he had done so and the deck certainly made sense to him. He asked Mr. Curthoys for a copy of the Master Plan showing everything he is planning to do, since that was what was being requested. Mr. Curthoys submitted a copy of the Plan, which was reviewed by Chairman Ross. He said that because the question came up regarding two other cases where parcels were combined, he had looked at the original subdivision map and found that there have not been that many that have been combined. He continued, saying that he had gone there and with the way the parcel is right now, with the dump truck and the big barn, it was his impression that it is hard to walk to the back. Mr. Curthoys said he wanted to hide the dump truck.

Chairman Ross said that those are the type of things which the neighbors at the previous hearing were concerned with.

Mr. Curthoys asked if Chairman Ross saw the two workers laying stone. Chairman Ross said he had seen them doing landscaping. He continued, saying that while he was not speaking for the Board, his comments were that the covered porch made sense to him. I could see where you need the space. I guess that I am a little more concerned with the larger construction towards the front, he said, because it is going to be tight with the landscaping I saw there. Corinne Weber asked the applicant if he had ever thought of combining the two lots he owns as the space would benefit him. Chairman Ross said, I don't see a considerable change in the porch you started on. The problem is the truck and the shed right next to the line. Mr. Curthoys said the shed would come off the lot if he got the variance. Chairman Ross said, you may not get the whole thing because it is a three part application. We can wait for Bob (Fennell) to get back because I think he did all the numbers on the coverage issue. Look at that Master Plan on the existing lot with that garage and the canopy and the cottage and the shed. It's just awfully tight, he said.

What I didn't get last time, Chairman Ross continued, was where is your septic, between the house and the lake? If you are facing the house, it is on the left hand side, Mr. Curthoys said. Between the road and the front left corner, Chairman Ross clarified. He then asked where the well is located. Mr. Curthoys responded that the well is on the far right hand side if you are facing the house, by the big stone table with the chairs around it. It is between that and the house. Mr. Curthoys then pointed out the well and the septic on the map. Ken Anderson asked how close the lake is to Mr. Curthoys' property line. I would say sixty feet, Mr. Curthoys responded. The Board reviewed the map with Mr. Curthoys. Ken Anderson asked if Mr. Curthoys' property line goes out to the lake. He said no, that it is all shared by everyone around the lake, like a common area.

John Douglas asked about one of the lots and Mr. Curthoys said that it is where Bob Willetts used to be. Is there a home there, John asked. Mr. Curthoys said that it is a three season house/camp. John asked how many bedrooms there will be in Mr. Curthoys' place. Mr. Curthoys said that there will be two bedrooms. Right now, he said, there is one which my little boys sleeps in and Kim and I sleep in the cellar. There is a pool in the cellar. In response to questioning, he explained that it is a lap pool. Bob Fennell asked who is going to move into the new bedroom. Mr. Curthoys said that he and his wife would. Bob asked what is going to happen to the cellar. Mr. Curthoys said it has a sauna and a pool, a shower and a toilet. The furnace is there.

Ken Anderson asked where the new garage would be. Would the master bedroom be over it? Mr. Curthoys said yes, it has to be higher because his wife wants to see the Catskills. That would be a two car garage going in underneath the upstairs, Ken summarized. Mr. Curthoys agreed. Ken asked if the roof line on the addition would be higher than the existing frame house. Mr. Curthoys said that it mirror images it. So it is close to the same height.

Chairman Ross asked if anyone in the audience was there for the continuation of this Public Hearing. The next door neighbors responded that they were there for their Hearing as well as for the Curthoys Hearing. He invited them to raise their hands and give their names if they have a specific question. Chairman Ross asked for comments from the Board. Ken Anderson said he was OK. Corinne Weber asked Bob Fennell if he was the one who computed the square footage. He said, probably; I'm not sure that I did. I would have to look at it.

Chairman Ross said that his comments are that the porch which has been covered and closed makes perfect sense to him and, he continued, I think if that barn were gone and the truck weren't parked there, it wouldn't be a real detriment. However, I have grave concerns with this first floor new garage and another bedroom above it when I look at where the septic is and the well is and all these lots tucked so close in. That type of an expansion is just so close in proximity, I have problems with that much on this parcel. If you have an opportunity to use the parcel next door and you could do some sort of flip flop with your well and your septic and get separations, it might actually work; however, this would be about a thirty to forty percent expansion of this summer cottage in square footage. You can say it is just one bedroom and it is only going to be two bedrooms, but with that much space, the usage is going to be a lot more intense on that little lot.

Mr. Curthoys said that if you walked into the cottage, you'd see that it was an old camp. It is very, very tiny. She (Mrs. Curthoys) likes open spaces and that's why she wants the big bedrooms. I can appreciate that, Chairman Ross said. So the actual usage, Mr. Curthoys continued, would be the same. But hopefully, we are going to have another child. Chairman Ross said that that might still be the same usage in this house; however in thirty years if you sell it as a two bedroom, when the footprint is that much bigger, the opportunity for intense usage is that much bigger and that is my concern. With three tenths of an acre, and particularly with the rock gardens you've got there, you don't have much real estate to do anything.

Mr. Curthoys said that there used to be an old cellar underneath and they tunneled under that. All those rocks are from what was underneath the house. Chairman Ross said it looked like there were some natural rocks there as well. Mr. Curthoys said it was built on old nail kegs. It was dug out with a mini-excavator and they went in with a Bobcat. It was bony sand. Ken Anderson asked Mr. Curthoys where is his driveway now. Mr. Curthoys pointed it out on the map. Chairman Ross asked what is in the studio now. Mr. Curthoys responded that it is an old toilet and bathroom. Bob Fennell asked if Mr. Curthoys' father-in-law had lived with him at one time and he responded that he had. Chairman Ross confirmed that one will enter the garage from the left side.

Chairman Ross asked Bob Fennell if he had done the numbers on the house. Bob said no, he didn't. He asked where the second floor bedroom was on the map. Bob responded that the second floor doesn't count as coverage. You only did the footprint, he concluded. The Board reviewed the map. Chairman Ross inquired about the size of the shed, asking if it was twelve by twenty. It is a good sized portable shed, he said. Mr. Curthoys said the shed was full of bassinets, cribs, etc. There was a discussion about whether the shed

was 196 square feet or 400 square feet. Bob Fennell said that he got the 400 square feet from something Joe (Curthoys) gave him or from the property statistics. Besides, Bob said, I don't think that is the shed. Isn't that Oz's place, he asked. Chairman Ross said that that is the little studio porch. It is a covered porch; that's the 400. He is not removing that. The map said the shed was to be removed, not the studio. Chairman Ross then asked what is the other shed which is 196? Bob Fennell said he was not including the shed, just the coverage. Bob Fennell cited from Section 143.13, A(4)(a) of the Red Hook Zoning Code, saying: "Development of such existing lot of record may, upon a demonstration by the applicant that greater side and rear yards which either comply or more nearly comply with this chapter cannot be reasonably provided, occur in accordance with the following reduced minimum side and rear yard requirements: the total of both side yards for the principal building shall be not less than 40% of the lot width; provided, however, that no single side yard for a principal building shall be not less than 60% of the minimum side yard otherwise required for the district". So they can make that intrusion, he said. It was concluded that the shed is 190 square feet, the covered porch is 400 square feet and the house 1200 square feet.

John Douglas asked if Mr. Curthoys owns the lot next door. He responded that he does. Bob Fennell suggested that Mr. Curthoys combine the two lots. John said that it would be easier for Mr. Curthoys because he wouldn't have these problems. Do you mean that all the variances go away, Mr. Curthoys asked. Yes, John said, if you combine them. Mr. Curthoys said that the only variance they are asking for is coverage. John asked if the lot next door was vacant and was told that it is. Could you sell that lot and build a house on it, Ken asked. Yes, a two bedroom, Mr. Curthoys responded. But Kim does not want to give that up. Chairman Ross said that this is listed in the tax records now as a two bedroom. Bob Fennell responded that this may be right or wrong, but it is not relevant for zoning purposes.

Chairman Ross stated that he does not have an issue with the covered porch. The garage and the second master bedroom on that small a lot is a problem for me because it is so tiny. But, he said, I don't know how the rest of the Board feels. Rob Latimer stated that there is a simple decision to be made here: you either have to live within the confines of that lot or combine the lots and build whatever you want. Ken Anderson said that his question is, if you sold that lot would somebody build a small house on it. Most likely they would, he said. Mr. Curthoys stated that it already has Board of Health approval and a septic in it. Bob Fennell said that it sounds like they could build tomorrow. Mr. Curthoys said that the problem is that she (his wife, Kim) may do a mother-daughter or a mother-son type deal. She may want to have that property to put a house on it. Bob Fennell said that that should not have any bearing on what we are considering here.

Chairman Ross asked Bob Fennell how the porch that was covered was being treated before it was covered. Was there a deck? Would you calculate that as total coverage because it was an open deck? Sure, he responded. So closing in that deck would have required a variance. I don't have those figures before me, Bob said, but I believe you are correct. He did increase the coverage. Bob Fennell asked if Mr. Curthoys had gotten a Building Permit and he responded that he had.

Ken Anderson asked about the lot on the other side. Mr. Curthoys responded that it had been the Willett's property and it was a three season camp, like his was. Is it pretty well built out, Ken asked. I think they are going to put in an extension on theirs, Mr. Curthoys said. Chairman Ross asked if these lots are about the same size as College Park. Yes, he responded, I would say that that is probably true; they are quarter acre lots. Ken asked how this compares to the other houses in the area. Are they bigger, smaller, taller? Bob Fennell said that the area is being gentrified. I'd say that they are slowly getting developed, Mr. Curthoys responded. Mr. Willetts was there for many, many years and he didn't want to change. The new owners are changing their property a little bit at a time.

Chairman Ross asked if anyone else had additional comments relative to this. You know where I stand, he said. The covered porch I don't have an issue with. The first floor new garage and the second floor master bedroom I think are enough of an increase on this parcel that it puts it over the threshold for me. So it can't be a two bedroom, Mr. Curthoys said. Bob Fennell said that the Board has not yet voted. You say it is a two bedroom now, Chairman Ross said. It's a bed in a cellar that has a pool, a sauna and a hot tub, Mr. Curthoys said. It's not what I would consider a bedroom. Chairman Ross said that he can appreciate that, but the trouble is that on three tenths of an acre you've probably got a sixty foot separation from your existing well and the existing septic and you're looking at doing a large expansion on a tiny lot. A smaller space would make sense to me; but this, at least for me, seems a little more intense than makes sense with that size parcel.

Mr. Curthoys asked if he combined the properties, could it be a four bedroom total build out? Yes, Rob Latimer responded. Mr. Curthoys said he would like it if it could be a four bedroom. Chairman Ross said he thought there would be a pretty good likelihood of that because you have doubled the size. Obviously, you've got to see what you've got for separations. Ken Anderson asked if he had added another bathroom. There are two bathrooms, Mr. Curthoys said. There was a discussion of the size of the other lot and review of the map. It was determined that the other lot is larger than the one on which Mr. Curthoys presently resides. Chairman Ross said that if you combine the lots, that changes everything. If you combine them, you don't need variances. If you want to go to a four bedroom, that would be a separate issue involving what was approved for that parcel. Corinne Weber asked if Mr. Curthoys would like the Board to vote tonight or defer another month.

Mr. Curthoys said he would prefer having the two separate lots because if something happens to him and his wife needs to sell the piece of property, it would be a lot more valuable to her as a building parcel. That parcel has got to be worth at least \$100,000. It would be nice to combine them, but I'm looking at the monetary detriment to the family, he said. Chairman Ross said that when you look at this, you see an increase in coverage on this type of lot. I know, he continued, that it's a two bedroom to a two bedroom, but it's still a big change. A twenty four by twenty eight foot bedroom could easily be turned into two bedrooms. I'm just looking at the intensity on the parcel and it's difficult. Mr. Curthoys said they have two cars and a single garage would look worse than one for two

cars. Chairman Ross questioned this, saying that that would not be so if he is making it match the existing width of the house.

Chairman Ross asked if anyone wants to address this. As there was no response, he said that, based on the intensity as it appears to him, he could not in clear conscience make a motion on this as it is presently in front of the Board. He verified with Bob Fennell that Bob had advised the Curthoys to come before the Board with everything they wanted in one shot. That's what I don't understand, he said, since they only need to be here for the porch. Bob said that he couldn't recall now what the problem was with the porch. He verified with Mr. Curthoys that the entire porch had been there before; however Mr. Curthoys said that it wasn't the same height. It was down below it; it wasn't on the same level. When we told you to stop work, Bob said, it seems that we thought that this was new construction, new coverage. We stopped him because he didn't have a Building Permit, Bob continued. At the same time, we thought that this was construction. Chairman Ross said that he had brought this up because of the 324 square feet for the enclosed porch. That makes sense to me because the existing house was just over the coverage and that porch would have taken it a little more over. Bob Fennell said they had treated it as a brand new structure. Nothing was there. He told Mr. Curthoys that he had not raised an issue relative to that at the time. You didn't say that it was already there, he told Mr. Curthoys.

Mr. Curthoys telephoned his wife and then asked if a one car garage would be alright. Ken Anderson asked if you can get two cars in there. What is the width, he asked. The response was twenty eight feet. Chairman Ross said that he would like to address the porch which is under construction now so that can get finalized. He said that more details are needed and we can keep it open and carry it on another month or we can just do the porch. But right now everything is on hold. It's up to you, he told Mr. Curthoys. We can continue to August, but we need details of the layout of what you are doing. To go forward, we need more than we have with the Master Plan. If you reduce to a one car garage, then my question would be what about converting the studio/shack into a garage instead. There's enough on that property that I think it's going to take a little more than just reducing to a one car garage and I want to go through the numbers.

So, Chairman Ross asked, do you want to address just the porch and look at reworking your Master Plan in the future? We could put that on the Agenda for next month, Mr. Curthoys replied. Chairman Ross clarified that if we just address the porch tonight, you would start at ground zero with public hearing notices and filling out the applications and so on. That would be for the structure you want to build next year. If you want to try to continue this Public Hearing and come in with more detailed plans of exactly what you would like to do with that property, rather than just the twenty four by twenty eight box layouts, how the stairs are going to be, what you are going to do with that studio and how you can guarantee that it's not going to go to a two or three bedroom, then we will continue until August 8th at 7:40 P.M. So I need more than a footprint, Mr. Curthoys said. Chairman Ross told him that he needs the septic and well locations, as many details as possible, the dimensions of that barn on the property, steps down to the lake. Show everything you have there, the gardens, etc.

Mr. Curthoys asked if Chairman Ross felt more comfortable with a single car garage than with a two car garage. My concern in looking at that is where you are going with the coverage, Chairman Ross replied. I would say, do the minimum you think you can do to create a reasonable two bedroom. Think a little bit more about how you want to address that studio as well, because right now you've still got four hundred feet of coverage. All that contributes to the problem with this lot. It's just a little too much in too small a container. So a single car garage would not make you feel better, Mr. Curthoys asked. I don't know what the inside is going to look like, Chairman Ross responded. A fourteen by twenty five would be a single car garage and a twenty eight by twenty five would be a two car. Rob Latimer said that his fundamental difficulty is with people getting those lots, building them to the absolute bursting maximum and then building the same thing on the vacant lot next door. That is my concern, he said. The trend seems to be to gentrification, to buying up multiple lots, combining them and building something quite nice. Chairman Ross turned to Jim Hegstetter for comments. Jim said that he does recognize the size of the lots and the problem is not going to be eliminated by downsizing the two car garage. He said that there are alternatives to make the house look bigger. Chairman Ross said that if you wanted to build the bigger house, you do have the property next door if you want to really expand this. Jim said, you could leave this and build a two bedroom next door.

REVIEW OF APPEALS

8:15 Review of Appeal 07-09, Linda Lindsay application for a use variance to create an accessory apartment in an existing building through adaptive reuse of a non-dwelling structure. Chairman Ross left the meeting temporarily and the Chair was assumed by Corinne Weber. Mrs. Lindsay was accompanied by her husband, Shelton. Chair Weber asked the Lindsays to tell the Board what they want to do. Mr. Lindsay said they had gotten a Permit at the time of the renovations to build the apartment and now they want to downsize the business. We are still active in the space, he said, but the entire upstairs is vacant. We want to use what was living space as an apartment.

John Douglas asked how they want to use the building in the future. For two apartments and our offices and shop, Mr. Lindsay replied. Chair Weber asked how much of that space they are going to use for the shop. Mr. Lindsay asked if he could point it out on the map. The entire downstairs, he said, is all part of the ongoing business which has been there. The second floor is divided and there is an apartment which is on two floors and the space which we are proposing is where Lou Brown used to live. Mr. Lindsay used the map to explain this layout to the Board. Chair Weber again asked how much of this Mr. Lindsay wants to retain for his offices and how much would be used for the apartment. Mr. Lindsay said that the downstairs has not changed. The offices are twenty eight by forty and thirty two by thirty two. There is a second floor over this entire section and what we want to do is use Mr. Brown's former living space. This was all offices and the downstairs was all offices and then there is the apartment that goes up to the second floor. Chair Weber asked how many square feet Mr. Lindsay is proposing to use. Mr. Lindsay and the Board again studied the map. Rob Latimer asked if they were in essence asking for approval for the section where Mr. Brown was living. The Lindsays said yes.

Chair Weber asked for the footage. Mr. Lindsay said it is roughly thirty by thirty. The upstairs is nine hundred plus the one half of twenty by forty. So that's about four hundred. The second floor is seventeen hundred square feet. Chair Weber questioned the legal guidelines for footage for an accessory apartment and asked Mr. Fennell if there are different requirements in the hamlet. He said no. Rob Latimer said that this is an apartment now and it was an apartment, albeit perhaps an illegal apartment, and they want approval for the portion where somebody was living.

John Douglas asked how many employees Mr. Lindsay had five years ago. Probably about twenty five total, Mr. Lindsay responded. So there were a lot of people at this facility Mr. Douglas said. But they were not just at this facility, Mrs. Lindsay clarified. Again Mr. Douglas asked how many employees were there. Five, Mr. Lindsay responded. Mr. Douglas asked how many people lived in the apartment, two? Mrs. Lindsay said that they have had a single woman living in the one apartment for quite some time. It has been sublet right now and there are two people there. But there have been two kids and a couple there, Mr. Lindsay added. They were the original tenants. Will it support the number of tenants you have now, Jim Hegstetter asked. Mrs. Lindsay said that they have changed the bathrooms. There was a bathroom there when Lou Brown had the house. We added bathrooms when we did the addition years ago, she said.

Chair Weber asked if it was a legal apartment. John Douglas responded that it was legal. Ten years ago, he said, they had the right to have an apartment and they also had the rest of the building occupied by the business and the apartment in question was actually utilized as an office area and prior to that Lou Brown lived in the building and ran his business out of the building. So we have two apartments in there now, Chair Weber questioned. John Douglas said that what they attempted to do, and we found out about it, was to convert Mr. Brown's living quarters back to living quarters, take out the office equipment and convert it back to an apartment because they don't need that space since they have downsized. He asked how many employees work in that building now. Mr. and Mrs. Lindsay responded that they work there and another person, who is not an employee, works there on specifications for projects.

Jim Hegstetter asked if the company is a fabrication company. Is it an intense machine shop or not? Mr. Lindsay responded that it is not. It has very high quality equipment, very nice tools. The reason for the downsizing, he said, is that he has had some medical issues over the years. I had a liver transplant, he said. So everything has gotten much smaller in dimension and scope. These tools had existed, by and large, over the years and were part of the ongoing business. Jim Hegstetter asked how the waste water from the machines is handled. Mr. Lindsay said that there is no waste water. Everything is totally biodegradable, he continued. There is a parts cleaner which is biodegradable. The other parts cleaner is baking soda, all of which is biodegradable and meets OSHA regulations. The only thing which is at all toxic is some machine oil. We do dry machining, not wet machining.

Bob Fennell asked about the 650 square feet of habitable space. Take out the non-habitable space, such as bathrooms, halls and stairways, he said. Mr. Lindsay said that the roof is peaked and that limits the square footage. He offered to bring a floor plan to the Hearing. John Douglas asked if there were an injunction preventing Mr. Lindsay from renting the third floor. Bob Fennell said that there is no injunction and we are only discussing the second floor. Steve (Cole) gave him an order to vacate that apartment until such time as it was approved. Mrs. Lindsay stated that they had complied with that order. But it had been approved previously, John asked. No, Bob said. Five years ago there was an apartment which was approved, John clarified, and that was on the third floor. Bob Fennell said he did not know where that apartment was. He asked the Lindsays what was approved twenty years ago in terms of apartments. They said that one apartment on the north side was approved. John Douglas asked what floor that apartment was on. They responded that it was on the second and third floors. There is an outside stairwell and a stairwell inside the apartment, Mrs. Lindsay explained.

John said he had not seen the interior design of this building. Mr. Lindsay said that it is a nice old structure. If you were to look at the building, the existing structure which was there thirty years ago, the old schoolhouse, was divided in half on the second floor. There is also a third floor that goes over the entire thing. There were three floors to the existing schoolhouse. John said that his assumption was that the apartment that was legal five years ago was on the third floor; but now, he said, you are telling me that part of it is on the second floor and part on the third floor. On the north side of the building, Mrs. Lindsay added. That never changed, they said. So we are talking about the former owners' residential area, John said, and he asked where that was located. On the other half of the second floor, Mr. Lindsay responded. Only the second floor, John asked. Yes, Mr. Lindsay replied. In the downstairs, Mr. Brown had all of his tools, Mr. Lindsay said, and that is where all our fabrication has always been.

Chair Weber asked if the Lindsays would object to the Board members stopping by and taking a look. You can come anytime, Mrs. Lindsay responded. Chair Weber asked the Lindsays to bring a better diagram with exact square footage to the Hearing. Mr. Lindsay said he would do a floor plan. Jim Hegstetter said he had driven by when this came up before and he had some notes. He asked if they had a Building Permit for the south side porch. Mr. Lindsay said that there is a south side porch which was replaced last year that was tied into an existing porch. It was a replacement. Was it an exact replacement, Chair Weber asked. Mr. Lindsay said that the width was probably increased. Jim asked if the town had approved that. Was there a Building Permit? Mr. Lindsay responded that there had not been a Building Permit. Bob Fennell said that you don't need a Building Permit if you are replacing it in kind. If it is larger, you need a Building Permit, Jim said. You need a Building Permit to build a porch, Bob said, so that it complies with the Building Code. There are things that need to be inspected, like the footings, structural members, etc.

Mr. Lindsay said that a year ago he wrote a letter to the town saying that they wanted to replace certain things in the structure, e.g. some lights, bathroom fixtures, etc. I was told at the time that I didn't need a Permit for that stuff. He asked if he needed a Permit for those things. Bob Fennell said, in general here is what you need a Building Permit for:

changing structural elements in a building; changing the exiting provisions; extending the electrical system in any way; extending the plumbing in any way; making additions and a whole host of other things. If you are replacing lighting fixtures, no; for extending those elements, however, you need a Building Permit. Chairman Ross returned to the meeting. He said that if you want to add two outlets, you need to get it inspected and then a Permit. Mr. Fennell agreed. If you want to change a switch that is burned out or a fixture, you don't need a Permit, Chairman Ross said.

Corinne Weber asked if someone is usually at the property. Mrs. Lindsay said that one of them is usually there. Mr. Lindsay requested the Board members to make appointments. Mrs. Lindsay said that they do have a tenant in the north side; however they are away right now, so it might be a good time to go up if you want to take a look at everything. John Douglas asked what time they are usually there. Ten o'clock until five, Mrs. Lindsay replied. Chairman Ross said that it would be easier for the members to call individually.

Chairman Ross said that use variances are very difficult to get. Mr. Lindsay said that he thought it was an area variance that he originally was told he had to get. Chairman Ross presented the applicants with a card summarizing the requirements for use versus area variances and explained the differences. The trouble with use variances, he said, is that all four requirements have to be met. The first is that you cannot realize reasonable return. That is a tough one. You need to have approved financial records showing that without this apartment, the building really doesn't make it financially. The second requirement is for proof of unique hardship. You can describe why it is unique and how you got where you are. Chairman Ross handed the informational card to the applicants and told them that the financial hardship requirement is very tough. Mr. Lindsay questioned the meaning of financial hardship. Chairman Ross said that the property can't show a reasonable return without this apartment and you really need to prove that with bona fide financial documents. That's where it gets tough. In my experience, he continued, it's not like an area variance. Mr. Lindsay expressed his belief that this would not be that difficult for them to do. John Douglas questioned whether Mr. Lindsay's income would be involved and Bob Fennell replied that it involved only the property. It is only the dollars and cents for that parcel, Chairman Ross explained.

Mr. Lindsay said that if you look at the revenue, it is set up so that there are tax returns for each business which is in there and a full set of tax returns for the income from the apartment. The expenses are also on the tax returns. Corinne Weber asked about the allowable uses. Chairman Ross said that the business and one dwelling are grandfathered in. To change it from that is where it gets difficult. Bob Fennell said that it is a very complex issue because of the mixed uses. What happened before is very confused.

Mr. Lindsay asked why it went from an area variance, which is what he thought it was, to a use variance. I thought, he said, that what Steve Cole (ZEO) and I had originally talked about was an area variance. He had turned it down as an area coverage, saying that we were four tenths of an acre and to qualify for two family we had to have more acreage. Chairman Ross said that the denial which was before the Board was for a second

apartment in an existing building, in a non-dwelling structure, in the hamlet zone district and Chapter 143.66 does not allow an accessory apartment for adaptive reuse in a non-dwelling structure in a hamlet district. A use variance is required. Mr. Lindsay said that he thought he was being turned down due to the square footage of the lot, because we were under the one and a half acre zoning for two family in the hamlet and that that had caused the difficult situation.

Bob Fennell said that this could be argued in many ways. Because of the nature of the building, it has all these uses going on in it. It is a non-conforming use, non-conforming lot and it is hard to argue that it is simply a two family dwelling because other things are going on. Chairman Ross stated that it is a mixed use building. So, Bob Fennell continued, is the addition of a second living unit really an accessory apartment or is it now simply a two family dwelling with all this other stuff going on in the building? Jim Hegstetter said that the question he has is, based upon what is going on in the building, are the other uses that are in the building permitted? Mrs. Lindsay said that they have been doing the same things for twenty years. The only thing which we changed in the building, she said, is that we had offices upstairs and downstairs. We don't need that office space any more, she continued, because we have downsized. We just want to revert the use of Mr. Brown's living quarters back into living quarters. But the use hasn't really changed in the building, except for that area upstairs which used to be offices and we tried to make it an apartment. Everything else has been there since we bought the building in 1987. Jim Hegstetter asked if they had had the same type of business doing the same type of work. Continuously, Mrs. Lindsay responded. It has been machining, offices, storage and the apartment upstairs. Nothing has really changed.

Chairman Ross said that as it stands now, the ZEO's interpretation is that it requires a use variance. So we can ask you to modify your application for an interpretation, questioning whether it is or is not a use variance. But if we are to follow through with what we have before us, he continued, we have to look at it as a use variance and I cannot stress enough that a use variance is very difficult to get. Bob Fennell suggested to the applicants that maybe they should seek an interpretation of what it really is. Mrs. Lindsay asked if the Board would be more comfortable after looking at the building. Yes, Chairman Ross responded. I think it would be best if we did not schedule the Public Hearing at this point, he said. We'll look at it and we will review it again at the next meeting because this is complex and everything is in abeyance while we are in review.

He asked the applicants if the records of their previous variances and their Building Permits were in order now. Bob Fennell responded that we have those. Chairman Ross said he just wants to have the file as complete as possible when we go there and I think, he continued, that the area on the second floor which you are using as office space was really an apartment which you just put desks in. There was a kitchen there, a bathroom there and a bedroom there that you used as office space as part of the downstairs business. Exactly, Mrs. Lindsay said. Prior to that there were two apartments and the business, he asked. No, Mrs. Lindsay replied. Lou Brown lived in a building which was non-conforming use and he had this shop. Where he used live, we used as office space

and we are trying to use as living space now. The rest of the use is the same in the building.

Chairman Ross said he wants to get a look at it and get a little more input. Bob Fennell asked if they should make some sort of an application for an interpretation in the interim. Chairman Ross said that the Board could modify it for an interpretation at the next meeting after we go through everything. We will not go straight to Public Hearing for the next meeting. We will get a look at it so that we are all comfortable with it. I am going to refer it to the Town Attorney for her input as well. I will check with the Association of Towns' attorney because this isn't black and white. Bob Fennell agreed that it is very complex.

John Douglas questioned the applicants about what custom motor work means. Mr. Lindsay replied that he races cars as a hobby and builds motors. John asked him where he does this work. In the shop downstairs, Mr. Lindsay replied. In the building we are discussing, John asked. Mr. Lindsay agreed. I thought you built things for the music industry, John said. I do, Mr. Lindsay said. Is that a different business, a different name, John asked. No, Mr. Lindsay replied. So you do things for the car industry and things for the music industry, John said. You do both and you have been doing this for twenty years. Yes, we have not been out of that building since we bought it twenty years ago, Mr. Lindsay said. The only thing I want to clarify, he continued, is that due to my health the businesses and the property are all in Linda's name. John Douglas said Mr. Lindsay was again talking about the "businesses". How many businesses do you have, he asked. Mrs. Lindsay said she has the real estate; she considers the apartment as a business and there is Shrimp and Peas. So the apartment is one business, John summarized, Shrimp and Peas is a second business. Are there any other businesses, he asked. No, the Lindsays replied. There are two businesses then; one is the apartment and one is Shrimp and Peas. Nothing else. And Shrimp and Peas is in the automotive business and is also in the music business. Fabrication, Mr. Lindsay clarified. Fabrication of music equipment, John elaborated. Chairman Ross said it was fabrication of mechanical devices.

Let's just simplify this a little bit, Mr. Lindsay said. I think you are looking at this as a machine shop, with rebuilding of motors on a large scale. So far it has rebuilt a Jaguar motor in the course of a year and it has rebuilt a Toyota in the course of a year. That is the extent of what work is done through that fabrication business. The business has downsized radically from what it was. We had fifty-three foot tractor trailer trucks backing in and out that property on pretty much a daily basis for twenty years. Up until a few years ago, Chairman Ross added. We had a great deal of ongoing business activity from that location, Mr. Lindsay continued, and I think when we go to the Public Hearing you will hear from neighbors, if they come, that the business which is there now and the use of the building is much downsized from what it was. It is much quieter. They are happy. We had everybody come through the building and look at the way everything is put together. The neighbors seem very content. Obviously, I can't speak for them, he continued, but by and large we have been there twenty years and we have been a good neighbor.

Chairman Ross said that we need to get all the facts clear to make sure that it is the correct interpretation of variance we are addressing. I want to make sure that you realize that if it is a use variance, it will come down to the hard facts and numbers. Bob Fennell said that one of the things he thinks we should look at is whether or not this is in fact a business that is operating as a result of a variance or is it a non-conforming use. And if it is a non-conforming use, perhaps the way to approach this is to ask for a change in the non-conforming use to a less intensive non-conforming use, which is allowable by the Zoning Board of Appeals and the demonstration has to be that the intensity of the use of the building is less than what it was before. Chairman Ross said that we will look at the records and he still thinks that we need to get a little more information together. As long as we are still in the review process, no action about vacating the one apartment needs to be taken because it is held in abeyance. Mrs. Lindsay said that it is vacant. So we want to get it done soon, Chairman Ross said, because you don't want to get it rented and have to get somebody out.

Chairman Ross asked Bob Fennell to advise him if Bob gets any other interpretation or information that would lead him to say it might be a change of a non-conforming use. Bob said that this Board is going to have to make that interpretation by looking at the records. I am very confused as to what happened at the time. It seems, Bob continued, as if they got a Building Permit, started construction, Earl stopped them, they came to the Zoning Board, they went to the Planning Board, the Planning Board gave them approval, then everybody got upset and got nervous and said they had done the wrong thing. They stopped them again and then the Zoning Board didn't really grant a variance but endorsed whatever the Planning Board had done. It's sort of a mish mash. So you're going to have to decide whether it is a non-conforming use or operating as a variance.

Mrs. Lindsay then asked when they have to come back. Chairman Ross said we could schedule the Public Hearing for August 8, 2007 at 8:00 P.M. and continue it if we do not have enough information. The applicants were asked to be sure to bring a floor plan.

8:45 Review of Appeal 07-10, Donald and Karen Signor application to reduce front yard setback of shed from the required minimum of 50 feet to two feet. John Gardinier, a neighbor of Mr. and Mrs. Signor, presented the Board with a proxy allowing him to represent them as they were away on a cruise which they had planned prior to the scheduling of this review. He gave the Board a diagram of the property, which is in Forest Park, and showed the Board where the Signors would like to put the shed. There is nothing there now, he said. Chairman Ross said that the Board will do a drive by. Mr. Gardinier explained that the positioning of the shed really makes sense because the piece Mr. Signor is putting it on goes up a hill. You can't put it anywhere else, he said. In response to John Douglas' question, Mr. Gardinier said that it is staked out. If you drive by, you'll see it, he said. Chairman Ross told Mr. Gardinier to let them know that we are going to set the Public Hearing for 8:20 P.M. on August 8, 2007.

John Douglas asked why Mr. Signor would not want to put it by the driveway. Mr. Gardinier responded that it is all hill back there. He asked if it goes up the hill. Mr. Gardinier said he was not sure if it goes up the hill. There's some brush in there, but he

has it cleaned out where he laid it out. John asked if there is brush between Edgewood and the road. Very little, Mr. Gardinier responded. He's got it cleaned out. Chairman Ross said that what you have to remember is that a lot of the lanes in the original Forest Park were sixty feet wide, so the lot line is way back here off the road. That's why we really need to go and look at the stakes. It'll make more sense. He got the three feet because he has good reference toward the real property line. Mr. Gardinier agreed, saying it is all marked out. John asked how far off the pavement he is. Probably more like fifteen or twenty feet, Chairman Ross responded. It looks like it is way in, John added. If he has his original survey map, Chairman Ross said, that would be good to bring to the Public Hearing.

9:00 Review of Appeal 07-11, Derek Moore application to reduce rear yard setback of proposed deck from the required minimum of 35 feet to twelve feet. Mr. Moore said that he had submitted a survey. The Board reviewed the survey map. Chairman Ross said that it is on the lake side, to the rear of the house. John Douglas asked, how big is the deck you want to build? Sixteen by twelve, Mr. Moore responded. Chairman Ross set the Public Hearing for 8:30 P.M. on August 8, 2007. I don't think we need any other information, he said. I'll probably just drive in a day or two before the Hearing so that it is fresh in my mind.

9:05 Review of Appeal 07-12, David Baker Construction Co., Inc. application to subdivide the existing flag lot into two parcels and reduce to twenty five feet the fifty foot flag pole width which is required throughout the length of the flag pole. Mr. Baker presented a survey map and said that he wants to cut the thirty one acre lot in half so that he and a friend of his can build their own houses here. The Board reviewed the map with Mr. Baker. Chairman Ross asked if Mr. Baker has presented anything to the Planning Board. Mr. Baker said that he had not. What I would like to do, Chairman Ross said, is at least get it in front of them for a proposal because we actually had a similar proposal about a year and a half ago that was directed to us first. It was the same thing and when it got to the Planning Board, it all fell apart on them because they interpreted some other notes on the original subdivisions and I don't know if there are any other notes on this subdivision map. What I would like to see, he continued, is an initial review. Actually, we will forward it to the Planning Board for comments just before we hear it. So we won't schedule it in August for a Public Hearing because it generally takes them a week or two to get back to us and we would need to address that. It's just to show that you have gone through the whole process. What I would like to do is review this again next month and we will contact you prior to putting it on the Agenda to make sure we've gotten comments from our Planning Board. We are really just trying to save you undue aggravation, he added.

Chairman Ross said that a couple of questions come to mind. Have you contacted this lot owner about purchasing a fifty foot flag from him, a fifty foot strip? Mr. Baker said no. He just bought this from me because he didn't want anyone to build across from him. But that is a question we have to ask, Chairman Ross said. Mr. Baker said he thought he had ninety foot road frontage. If you follow this out, it is ninety feet on the road. Discussion followed regarding the frontage dimensions. Chairman Ross said that at some point it is

fifty feet. That would be one of the questions, could you attain another access point, he asked. It is worth at least asking them about purchasing an additional flag. You'd probably still end up with one common driveway. That's how it is now, Mr. Baker said. There is one common driveway in there and there is one going up that way. Right, Chairman Ross said, there are two driveways all the way back there. However those are questions we need to ask, he continued, because you would not need a variance if you get another fifty foot access.

Chairman Ross asked, have you gone through the whole subdivision map to see if there are any notes about no further subdivisions. Mr. Baker responded that he had read through and he did not find any. Chairman Ross said that there was an interpretation of a note on the map which we addressed previously which shot it down and I don't want you to run into the same thing.

The Board reviewed the map. Mr. Baker said he wanted to split one thirty one acre lot in half and have two fifteens. First we want to get the variance and then we are going to draw the lines, he said. Rob Latimer asked if Mr. Baker was comfortable with the idea of having a restriction on further subdivision of the two lots that he would end up with. So it would be just two more and that's it, Mr. Baker asked. Yes, Rob said. That's all I want, Mr. Baker said. That's what we did previously, Rob said. Chairman Ross said that if it were granted, you could do nothing more with it. But I do need to forward it to them for their input initially, he added. That's the reason I don't want to schedule for a Public Hearing in August. We will just review it, and possibly what we will be able to do is if we get their input late, someone will get in touch with you and tell you that you don't have to come to the meeting. We will review that or if more questions come up, we will ask you to please come to the meeting as we are going do another review and we will set the Public Hearing for September. If this goes, it will help you down the road.

So we will have a continuation of the review at 9:00 P.M. on August 8, 2007 and if we don't have their comments or they seem relatively benign, I'll try to call the Board members to see if they want additional information. It would then make sense for you to drive up here. If not, we will just review it and set the Public Hearing for September. Ken Anderson asked why Mr. Baker had not tried to get other lots. Mr. Baker said that this is how it was designed when he bought it. And everything else has been sold off and now I have no other way to get out of there. Chairman Ross said that when we get information back either he or the Clerk of the Board would contact Mr. Baker to let him know if it makes sense for him to drive up that night. If we think we have all the information we need, we will set the Public Hearing.

If they won't give me a variance for this, Mr. Baker asked, and you are saying that I have to go back to this guy, do I have to buy a piece or can I just get an easement from him? Is a fifty foot easement the same? Chairman Ross said that generally you need to purchase it. You ought to just contact him and ask if he would be interested in selling you a fifty foot strip of land. The trouble is, Mr. Baker said, that he owns this piece and I couldn't get the driveway permit because he owns that. Once he bought this from me, he got the driveway permit. Chairman Ross said that he needs to purchase in fee a fifty foot strip of

the road and it depends on the topography too. It may be that you couldn't get in a driveway there anyway. Bob Fennell said that he wouldn't use that as a driveway, so it would have no impact. Mr. Baker said that if I have to have fifty feet of something which I can't even use, why don't they just break down and give me two twenty five foot easements, rather than have fifty feet of useless property. Because, Chairman Ross said, part of our job relative to the variance is to determine if it can be obtained some other way without granting of a variance. That's a reasonable question. Could you purchase another strip so that you had access to the road? That is the reason you were asked.

Mr. Baker said that if he did buy that, there is no way he could get in a road out to there. Maybe, Chairman Ross said. I don't know what it looks like, Mr. Baker said. I would need two hundred feet in order to cut a rock driveway out through there. I wouldn't be able to do it in fifty feet. So is it fifty feet, no matter how it is so long as it is fifty feet touching the road or do we have to have fifty feet and a way to get the driveway in. Chairman Ross said that the way it has been interpreted is that you need a minimum of fifty foot of frontage for a flag parcel. It doesn't matter what it looks like as long as it is fifty feet, Mr. Baker asked. Chairman Ross agreed. That language has not been changed yet, he said. Some towns require that it be passable for ingress and egress, but ours is not worded that way yet. But obviously you need legal access to the parcel.

9:20 Review of Appeal 07-13, Jerry Simonetti of Sim-Kno Farms LLC application to display a twenty by twenty foot sign on the side of barn reading "Hudson Valley Fresh – Buy Local". The law limits the size of the sign to twelve square feet with only the name of the establishment and its principal service or purpose. Corinne Weber recused herself from this Review. Mr. Simonetti said that he was sure that everyone had seen it. It is up. What I would like to do, he said, is request approval to leave it up there for one year, until September of 2008. It is not a permanent sign. Chairman Ross said that he could see that it is a canvas type sign. The one issue we run into, he said, is that we can't technically time limit area variances. However, he asked Bob Fennell, if a variance is granted and it is not used after eighteen months, does it extinguish or does it stay forever? Bob responded that if you don't initiate it within a certain period of time, it expires. It runs on forever once you initiate it. There is a sunset provision if you don't do it in a timely fashion; but if you do it in a timely fashion and you take it down, you can put it back up.

Chairman Ross asked if anyone had any questions. Everyone knows what the sign looks like. When Ken Anderson asked what the sign looks like, Mr. Simonetti submitted a picture of the sign to the Board. He acknowledged that he had made a mistake on the application when he stated that the sign was ten by twenty. It is actually twenty by twenty or four hundred square feet. It is a temporary sign, he said. It is not going to stay up. John Douglas asked whether or not a variance can have time limits. Chairman Ross commented that if the sign were to stay up for seven years and get weather-tattered and it was an approved sign, how do you get him to take it down.

Mr. Simonetti said it is not a business advertisement; the purpose really was to promote local food. That's the only purpose of it. It's not like a sign a local business puts up. Chairman Ross said that that goes a long way toward the uniqueness and benefit to the community rather than detriment. It leaves us a lot of latitude. I have to say, Mr. Simonetti added, that that sign was noticed by an Executive Assistant to Governor Spitzer

and now we deliver milk every week to him at the Governor's Mansion in Albany. So that's the kind of effect that sign has for us. That is all good information for the Public Hearing, Chairman Ross said. I don't expect you'll get throngs of people, he continued. You may have one or two neighbors. Mr. Simonetti said that one person complained who doesn't live in Red Hook. It is a person who lives in Columbia County and drives by every day. What is interesting is that that came up at one of our meetings, Chairman Ross said. If you can see it from a state road, they can show up at a Public Hearing and be heard.

We will set this Public Hearing for 8:40 P.M. on August 8, 2007. It was decided that the issue of whether you can or cannot have time limits would be referred to the Town Attorney. If we can't have time limits, there is a concern about a sign being up there for eight, ten or twenty years and getting tattered. Mr. Simonetti stated that he is not leaving anything out there which doesn't look good. Chairman Ross said that that is not the problem. If you sell, he continued, this variance runs with that property. Realistically, Mr. Simonetti said, I am going to take the sign down by the end of next year, in September of 2008. That is my plan. Ken Anderson remarked that he likes the sign and asked why the person from Columbia County who complained was upset. Mr. Simonetti responded that she was upset because she said that the barn looks beautiful and the sign detracts from the barn. Chairman Ross said that he thinks that the Board does not need any more information.

9:30 Review of Appeal 07-14, Laura and Dan Theisen application to reduce side yard setback from the required twenty feet to 12.4 feet. Mr. Theisen submitted a site plan to the Board showing the positioning of the new garage section which will be added on to the house. It is right in front of the driveway. We want to convert the existing garage into a family room, he said. John Douglas asked if it is a single story and Mr. Theisen said it was. Mr. Theisen explained the project, reviewing the site plan with the Board. He said that the addition would not obstruct the view of the neighbors. Chairman Ross commented about blocking windows and Mr. Theisen said he is already taking one window out. He said that the garage door would be recessed just to give the aesthetic look. We are going to do some landscaping on the side; right now it is just grass on the side.

Chairman Ross said that the members of the Board would just pull into the driveway, see the position of the neighbors' houses, etc. It will not obstruct anybody's view, Mr. Theisen said. Chairman Ross asked if there were any questions. The map says it all, he noted. He asked if they had an idea of what the front of the building will look like. It will match the house, Mr. Theisen said. Actually I am going to do stone work all around the front for the first five feet and the rest is going to be vinyl siding and will match the house. Chairman Ross set the Public Hearing for August 8, 2007 at 8:50 P.M.

ADJOURNMENT

A motion to adjourn was made by Rob Latimer, seconded by Jim Hegstetter and all were in favor. The meeting was adjourned at 9:35 P.M.

Respectfully submitted by,

Sheila Franklin
Clerk of the Board

sf:attachment

FINDINGS AND DECISION

Appeal #07-08, Douglas and Donna Coons application to decrease required twenty foot side setback to three feet for existing twelve by twelve storage building.

Findings:

1. The property is located in the R 1.5 Zoning District at 72 Manor Road, Red Hook.
2. Tax Map #6173-19-691239-0000.
3. The zoning law requires a twenty foot setback from side line.
4. The applicant wishes to reduce the setback to three feet.
5. A variance would be of benefit to the applicant with no detriment to the community.
6. There will be no change in the character of the neighborhood.
7. There will be no impact on the health, welfare or safety of the community.

Decision: Timothy Ross made a motion to grant the variance based upon the above findings. The motion was seconded by John Douglas and carried by a 6-0 vote.

Dated: July 11, 2007

