

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
October 12, 2007**

CALL TO ORDER

The meeting was called to order at 7:05 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: Christine Chale, Town Attorney (for the Lindsay and Simonetti
Hearings), James Ross, Town Board liaison

PRELIMINARY BUSINESS

Minutes of September 12, 2007: Chairman Ross asked for any questions, additions, deletions or comments on the Minutes. Ken Anderson made a motion to approve the Minutes without any changes. The motion was seconded by John Douglas 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 asked the Board if they had seen the training session notice from Pace Law School. Rob Latimer and Jim Hegstetter both expressed interest in attending. Chairman Ross stated that only one can go but the Board will nominate two, first and an alternate. He said that this is what the Board had done last time and both had been able to go. John Douglas asked that Rob be nominated as first, Jim as second and himself as third, if space allows. Chairman Ross agreed to send in the paperwork for the three nominees.

Chairman Ross ascertained that all the members of the Board had received the updates to Zoning Law Code books and requested that everyone keep their books up to date.

PUBLIC HEARINGS

7:20 Continuation of Public Hearing for 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. The applicant's lot is located at 123 Old Post Road North, Red Hook, in the H zoning district. Chairman Ross stated that at the last meeting Bob Fennell had reread the pertinent section of the law and reversed himself somewhat, stating that the Board could still proceed but could not actually change the use until site plan approval had been given by the Planning Board. Mr. Lindsay said that they are on the Planning Board agenda for the 15th. Chairman Ross stated that he is going to defer to the Planning Board as lead and one of the things which will be required will be a SEQRA (State Environmental Quality Review Act) form stating what the environmental impact will be.

Mr. Lindsay said that they submitted a Short Form to the Planning Board and they have had a full evaluation. They did a full hazardous waste inspection and checked the building over. Chairman Ross asked Mr. Lindsay if he could get him a copy of the EAF and he would then contact Chris Kane, Chair of the Planning Board. With the short EAF, he explained, we cannot do a coordinated review and we would end up doing two separate environmental reviews. When it is a procedure like this, normally we do a coordinated review and one of us takes lead. You have done the short form which is a one page form, front and back. The long form is twenty one pages, he told Mr. Lindsay, eleven of which are your responsibility. Mr. Lindsay said he would also try to get a copy of the assessment which they did for the bank because they sent an independent, third party. Chairman Ross said that that would be perfect for the Planning Board in their environmental review. Mr. Lindsay said he would provide copies of all materials to both the Planning Board and the Zoning Board of Appeals.

Mr. Lindsay asked if this means that the Board cannot take action until the Planning Board has conducted their SEQR evaluation. Chairman Ross said yes, they must first have made a negative declaration. But we can get all the information and continue the Public Hearing until we hear from them. They may find that one or two things have an impact, but can be mitigated and that is the whole idea of the site plan.

Our real issue, Chairman Ross said, is what the use is now and what is the proposed use. The proposed use, in the opinion of the Board, must be less intense. Chairman Ross stated that at the previous meetings Mr. Foti and Mr. Woisin (neighbors) had expressed concerns regarding parking, septic and the setback from the back of the building. Chairman Ross stated that these are not the issues at hand. What we are looking at today, he said, is what the non-conforming use is now relative to what you are proposing. The variance that was granted in 1987, he continued, had an issue about no trucks being parked on the property and one other item which needs to be met before we take action. If the existing condition is not in agreement with the original one, we are held in abeyance because it is considered a violation and we cannot take action if, for example, there is a truck parked there. He said that he had not seen the big truck for about a year. Mrs. Lindsay said that the big truck is for sale. Mr. Lindsay said that the Planning Board action

was about the truck we were using at that time for transporting heavy equipment and that is registered as a hobby motor home and is being taken off the road.

Mr. Lindsay presented a copy of the original site plan which was approved in 1987. Chairman Ross read into the record the motion made by the Planning Board on Sept. 29, 1987. That motion was “that the Board approve the actions of the Planning Board and allow the expansion of the building and the operation of the business with the following restrictions: business hours be from 9:00 AM to 6:00 PM five days of the week with administrative use of the building allowed on weekend days; a maximum of five employees to be on the site at any one time; no signs permitted; no retail sales permitted; the one bedroom apartment to be used solely for a one family unit; the deck is to be removed from the west side of the building; the truck is to be parked off the premises; parking of no more than five vehicles is permitted. All conditions of site plan approval by the Planning Board are to be complied with.”

Mr. Lindsay said the deck was removed years ago. Chairman Ross said that the one bedroom apartment is still a one bedroom apartment and what the applicant is asking for is to change a portion of the existing business to a second one bedroom apartment. Mr. Lindsay submitted several photographs. In regard to the issue previously raised by Jim Hegstetter about whether there was a permit for the south side of the building, Mr. Lindsay said that a permit was issued for it and he submitted the certificate of compliance from the Zoning Board. The members of the Board reviewed the photographs submitted by Mr. Lindsay. In response to questioning, Mr. Lindsay said that he makes one off, custom pieces, fixtures and some motor parts. Chairman Ross said that it is not high volume production. Mr. Lindsay said no, it is not. He continued, saying that he has a part time employee who works there on occasion, when there is work for him.

The question right now, Chairman Ross said, is that the building is approved for a one bedroom apartment and the existing business with a maximum of no more than five employees on the premises at any one time. John Douglas then questioned how many employees there would be, given that they want to downsize the amount of square footage for the office. Mr. Lindsay said that they don't have anyone currently, only a part time person. I would really hope, he continued, that at some time we can make more of a go of what we do downstairs. It is very small. But he said that he would be willing to discuss or negotiate any recommendations of the Board.

Chairman Ross said that the question is how we judge the intensity of the use. Rob Latimer said that he has worked in machine shops for twelve years and with one person running an office, one technical machinist and one assembler, you already are at three people and you don't have anything which is going to produce a large amount of noise or pollution. Chris Chale, Town Attorney, said that the Board needs to be able to find that there is a decrease in intensity of use. You already have an additional apartment, so somehow you need to take the whole picture and be able to conclude that it is a decrease in intensity. That is what the finding needs to be. Chairman Ross said that he would argue that if there is a small change in going from machine shop to residential, it is already in the direction of a decrease in intensity.

Mr. Lindsay said that perhaps he could clarify the issue. One of the things which had the highest impact on the neighborhood, he said, was the amount of trucks we had coming in and going out. We had fifty-three foot tractor trailer trucks coming and going on a daily basis. That intensity was a significant impact on the neighborhood. Chairman Ross said that that was a good point. One of the concerns of this Board, he continued, would be the maximum size of the trucks. John Douglas asked if that was when Mr. Lindsay was in the business of doing the shows. Mr. Lindsay said that he is still in that business, but he doesn't run that from this building. So the impact on the neighborhood from noise and traffic has been greatly reduced. One of the reasons for the downsizing, he said, is that I have had medical issues and had to step back and make a change in my life and I am not motivated now to try to grow a business to the size that it was previously.

Rob Latimer said that he is a big proponent of machine shops but his one fear is that if they gain approval for this without some limiting factors, it could grow back into a very large shop. Chairman Ross agreed that the restrictions have to be tighter than those imposed in 1987, or else there is no way we can say it is a less intense use. The Board has to wrestle with the nine original restrictions. We have to be able to legitimately justify that an apartment plus the business is less intense and we need numbers or hours in order to do that. Mr. Lindsay said that typically the type of deliveries which the facility gets are UPS. The last time a tractor trailer has been in there has been to deliver a machine and that was about two years ago. Mr. Lindsay again emphasized that although he does do fabrication work, his specialty is one off pieces, not production work. Ken Anderson asked how the past intensity compares with the proposed intensity. Mr. Lindsay said that the difference is probably 80% less intense right now. Ken asked what he projects for next year. Mr. Lindsay said his goal would be 50% to 60% less intense, if you look at the trucks, the traffic, the number of deliveries and the new apartment.

Chairman Ross said that the problem is that the Board would need constraints that would be enforceable. Mr. Lindsay said that if the Board wants restrictions in nine areas, why don't we discuss those nine areas and come to some agreement today as to what the reductions could be. Chairman Ross said that further discussion is required and the Board needs to look at the SEQRA findings. Several areas are not really negotiable, he continued: no signs are permitted; no retail sales permitted; the one bedroom apartment is still only a one bedroom apartment; the deck is already gone; the truck is to be parked off the property. We are down to hours of operation, site plan, number of employees and parking of no more than five vehicles. Those are really the only things which are reducible. Mr. Lindsay said that the Board could expect a letter from the minister of the church where he has arranged parking. He asked if the Board had received any other letters. Jim Hegstetter said that a letter had been received from Charlie Hapeman saying that Mr. Lindsay is a good neighbor and he did not have a problem with the proposed changes.

Chairman Ross said that the problem with the parking arrangement with the church is that unless you have a very long term lease, it is hard for the Board to look at that as legitimate parking for the future. Mrs. Lindsay said that right now they have enough

room for parking for the five approved vehicles. Chairman Ross said that the problem would be if they had five employees and two one bedroom apartments, they would run out of parking spaces. Mr. Lindsay said that he has an annual agreement with Mr. Hapeman to park there and asked if the Board would like to see that. Chairman Ross said that he would. In response to Mr. Lindsay's question, Chairman Ross said that, depending upon the action of the Planning Board, this Board might be in a position to take action at the November meeting.

Chairman Ross asked if anyone had any specific questions for Mr. Lindsay. Jim Hegstetter inquired about the septic system. Mr. Lindsay replied that he had redone the septic in 1988; it has been inspected by Royal Flush and the plumber has done a calculation of size and an evaluation of the well. He has recommended replacing the casing on the well and that work is already scheduled.

Chairman Ross asked if there were any other specific questions or comments. John Douglas asked for clarification of the steps which need to be taken. Chairman Ross responded that the next step is for us to defer to the Planning Board as lead on the coordinated review and we will waive the thirty day notice. They will still need time to process that. The Planning Board will do a site plan review and an environmental assessment. If they grant a declaration of negative impact (no adverse environmental impact), then we have their decision and whatever concerns they have to contribute to our decision. They may say that there are minor impacts which have to be mitigated, hours of operation or parking, etc. But the site plan review is more involved with those issues and it therefore makes sense for them to take lead.

Chairman Ross said that it is really down to two things: hours of operation and number of employees. Rob Latimer has stated that he doesn't think that five employees is very much in a machine shop. My concern, he continued, is that it has to be less intense than it currently is. It must be either employees or hours of operation and 9:00 AM to 6:00 PM five days a week is pretty restrictive. Mr. Lindsay reiterated that he has only one part time employee at present, but he would hope that he would be able to have a full time employee. Jim Hegstetter said that if there are two apartments each with one car, plus the three of you, that makes five and someone in the apartments might have another car. Mr. Lindsay said that he has an annual agreement for parking off the premises. Chairman Ross said that they could include in the lease the stipulation that there be no more than one car per apartment.

Chairman Ross asked the Board what their feelings are regarding the number of employees. Rob Latimer said that he would have no issue in making it restricted to three. Three would not be unreasonable. Chris Chale said that you have an existing apartment and an existing business use. So you have two uses in the facility. If they are going to add an apartment, you still have to say that this is a less intensive use. That is what you are trying to conclude as a Zoning Board. Chairman Ross said that he would be comfortable with four employees. If there are administrative people, that will reduce your production output. In response to questioning, Mrs. Lindsay said that she pays bills for the fabrication business from a desk downstairs and would therefore include herself in the

employee count. However, she stated that she does not conduct her real estate business there and does not receive calls for this business there

Mr. Lindsay offered to provide a ten year shipping schedule for the building including the number of trucks which have come and gone from the building. That would certainly be a record that has changed very dramatically. Chairman Ross said that if he could provide two or three years worth of history, that would be good. John Douglas asked that the Board be provided with any further information prior to the next meeting. Mr. Lindsay said that he will provide information re numbers of employees, hours of use and the impact of the trucking. Chairman Ross said that if Mr. Lindsay could provide the latter information by the end of next week, he would review it with him. He closed the Public Hearing, continuing it until Nov. 14, 2007 at 7:20 PM.

7:40 Continuation of Public Hearing for 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. The applicant's lot is located at 7782 Albany Post Road, Red Hook, in the RD3 Zoning District. Chairman Ross stated that Town Attorney Chris Chale has reviewed this issue and determined that time limiting variances is acceptable practice in New York and that has been upheld right through the Court of Appeals. Unfortunately, what isn't limitable by us is what is displayed on the sign. While we are all in agreement that the idea of benefitting all the local farmers is good, the risk is if someone comes in with a consortium of bars or whatever and wants to put up a twenty by forty foot sign and we can't limit it based on content. Chris wants to look at it a little more to see if there is any loophole where we can limit what is actually displayed on that sign. Chairman Ross asked Chris Chale if she thought the Board could know definitively by the November meeting and she responded in the affirmative. Chairman Ross then tabled the issue until November. He said that the sign can stay there until we make a decision; however the issue is whether we can limit the content and that is what we have to finalize. He closed the Public Hearing, continuing it until November 14th at 7:40 PM.

8:05 Continuation of Public Hearing for 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. The applicant's lot is located at 40 Kristen Lane, Red Hook in the RD3 zoning district. Chairman Ross asked Mr. Baker to refresh the Board briefly on the issues. Mr. Baker said that after doing some research, he would like to go for a private driveway. Right now, he said, we have a common driveway with a homeowner's agreement already in place. With a homeowner's agreement, he asked, could we make the strip going to the big lot in the back into a private road so that there is only one road coming in instead of two roads side by side. On a private road, we only need fifty feet of road frontage and we would not need the flag lot. Chairman Ross said that with a private road, you need a homeowners association. Mr. Baker said that he already has an agreement in place. The legal distinction, Chairman Ross said, is that that is just an agreement which gets filed in the County Clerk's Office. A homeowners association must go through the State.

Mr. Baker presented a map which was reviewed by the Board and neighbor *Karen Jerro*. He said that his new proposal would eliminate the flag lot. Before we blacktop, we can just shove the road over. Chairman Ross said that a variance would not be needed then; it would be an issue for the Planning Board. It is a better solution, he continued, because you take out the frontage issues. The homeowners association would involve everyone, at a bare minimum these three or four lots. This a common entrance which would need to be improved to town specs. Mr. Baker said he thought it was up to town specs already. The next step, Chairman Ross said, would be to touch base with the property owners to see if they are in agreement with it. If they have a shared driveway, they may not wish to pay a homeowners association fee to maintain a road. The Planning Board, he continued, did not like the idea of the reduced flag. The private road is a good idea. It offers more protection to the people using it than just the homeowners agreement.

Chairman Ross said that the Board will continue the Hearing. He advised the applicant to see when he can get on the Planning Board's agenda. If nothing has changed by our next meeting, we will just continue it again and you will not have to appear. If you are progressing, you may wish to just withdraw your application, he advised Mr. Baker.

Ken Anderson questioned the maximum number of lots allowed by code on a homeowners road. Chairman Ross said that if there are five or more, you have to go to a homeowners association and there is no maximum. Mr. Baker said that there are only four and asked Chairman Ross if he thought the homeowners association was necessary/ advisable. The problem, he responded, is that if there are shared driveways, everyone needs a fifty foot flag. If it is a private road, you can get frontage off the private road and this would correct the real issue, which is frontage. To have a private road, he concluded, you need a homeowners association. Chairman Ross closed the Public Hearing and continued it to November 14th at 8:00 PM. He asked Mr. Baker to let the Board know after he has made contact with the Planning Board.

REVIEW OF APPEAL

8:15 Review of Appeal 07-16, Lewis Ruge application to erect an addition to an existing building which would increase building coverage from the required maximum of 15% to 18%. The applicant's lot is located at 7293 South Broadway, Red Hook, in the B1 zoning district. Chairman Ross verified that Mr. Ruge wants to put the addition to the rear of the building. In response to Chairman Ross' question as to the reason for the addition, Mr. Ruge said that the existing building is full beyond capacity. That is a business which works well, he said, and we would like to continue it. We employ about 45 people there. So it is a good thing for everybody. Rob Latimer asked how many square feet there are in the existing building and Mr. Ruge said it was 12,480 square feet with 12% coverage. Your regs say that 15% is the maximum and with the proposed addition of 6,000 square feet, that brings us up to approximately 18%.

Rob Latimer verified that the proposed addition was for parts storage. Mr. Ruge said that the addition would be similar in design to the existing building. Ken Anderson asked whether it is just extending the length of the building and Mr. Ruge confirmed that. He

asked whether there would be any additional access off Old Farm Road. Mr. Ruge replied that the current access is fine. It works well. We just need more space, he said. Chairman Ross asked whether Mr. Ruge anticipates having more employees. Probably not, Mr. Ruge replied. The requirements of the company are for more space for inventory. All the companies have gone to controlling your inventory, he continued. They force you to let them order for you. This weekend General Motors just changed it's whole structure. There are about 18,000 parts we have to sort through. We have to be 90% compliant to get our proper discounts.

Chairman Ross said that it appears that the plan is to stay at the same setback from the property line, so you would not need anything there. The reason I ask, he said, is that when we take action you don't want to get a variance for one thing and then have to come back and say that you think you are going to be six inches closer. We thought of that Mr. Ruge said and if there were a problem, we would probably move it the few feet that we needed because that would not hurt the view or the looks of the building at all. Chairman Ross suggested that Mr. Ruge verify that before the next meeting because if you are putting on an addition, you want it to look right. You don't want to offset the building. Mr. Ruge said that it would not look that bad. If we have to change the roof line, we can give it a little jog there. John Douglas said that he didn't want to see the building offset. If you find that you are going to be closer, Chairman Ross said, just contact the Clerk of the Board within two weeks so that the Appeal can be amended prior to the Public Hearing notice.

Chairman Ross said that the Public Hearing will be scheduled for next month and all your neighbors within three hundred feet will have to be notified. He asked for specific questions from the Board. Jim Hegstetter said that it is not going to have any impact. You are going from 15% to 18%. There are no problems. Ken Anderson also said he had no problems. He asked Mr. Ruge to bring his survey to the next meeting. Chairman Ross agreed and scheduled the Public Hearing for 7:15 PM on November 14, 2007.

8:25 Review of Appeal 07-17, Teviot LLC application to change a non-conforming use by constructing a 1200 square foot studio to replace an existing accessory structure on a parcel which currently has four separate living units. The applicant's lot is located at 40 Davis Lane, Red Hook, in the WC zoning district. Jon Adams, attorney and Sam Trimble, architect (Sam Trimble Design), were present to represent the applicant. Mr. Adams said that their client is interested in purchasing the property and would like to have a pool and a work studio. He then deferred to Mr. Trimble to explain what is there now and what they propose. Mr. Trimble said that he is the architect working on the renovation of the existing house and whatever other structures the buyer decides to build. Chairman Ross asked who the present owner is and Mr. Adams responded that it is the Howland Davis Trust. This is a due diligence inquiry, he explained. Chairman Ross asked that before the Public Hearing, Mr. Adams provide the Board with a consent form from the owner allowing him to represent them.

Mr. Trimble then made a pictorial presentation to the Board, showing the structures and layout of the sixty eight acre parcel. The historic house on the property dates from

between 1843 and 1880. The locations for the proposed studio and the pool were identified as were the three units which are currently being rented. An image upon which the studio may be based was presented. The studio would be a sort of retreat or writing studio, Mr. Adams explained.

Mr. Adams said that his client would like to move in with his grown children and the rental use of the property would be terminated. All the renters would have to relocate as the client envisions this as a family gathering place. Some of the outstructures might be useful because some of the children who have separate families could live there. The house is only four thousand square feet. The object is to restore and preserve the historical character of the main house. The house is a retreat, but the studio would provide a separate, quiet place to do work. Mr. Trimble said that, with the landscaping and the restoration of the house, the client wants to maintain the estate character of the property. One or two of the smaller cottages may be taken down and the barn may be restored to clean up the property.

Mr. Adams stressed that they are not seeking to add a fifth residential unit. We are proposing to eliminate one of the existing residential units and replace it with a private studio in another location, which is a less intensive, more restrictive use. Chairman Ross said it sounds reasonable to him. Mr. Trimble said that they would renovate the barn and make it into a home theater or something similar. There would be some bedrooms in the buildings in the back because there are no big spaces in the historic house. If they had a caretaker on the property, one structure might become a caretaker's house.

Chairman Ross said that the proposal, in a nutshell, is to eliminate the one small, brown building and build a studio on the proposed site. He asked about the use of the studio and Mr. Adams said that it would be a one person retreat, not an office. Chairman Ross said that it seems to be a fancy gazebo down by the river. Mr. Adams agreed, saying it could be likened to a gazebo, but with heating and air conditioning. Chairman Ross asked if the members of the Board could drive to the site to get a firsthand look at the parcel. Mr. Adams responded that he would have to get permission as he does not have control of the property. Chairman Ross asked Mr. Adams to leave the number of the contact person with the Clerk of the Board.

After discussion, it was decided that the proposed structure should be referred to as either a studio or an accessory structure and not as a cottage as it is not a living or sleeping area. Chairman Ross said that it is forbidden to have a cottage on residential premises. John Douglas asked where the heating and air conditioning would be located. Mr. Trimble indicated that it would not be housed separately, but would be incorporated into the cellar or integrated within the structure.

Chairman Ross said that the studio would be permitted as an accessory structure. Mr. Adams said that in the WC zone a special permit would be required and that is why they went to the non-conforming section. But the replacement use has to be more restrictive than the existing use. Chairman Ross set the Public Hearing for 8:20 PM, November 14, 2007.

ADJOURNMENT

A motion to adjourn was made by John Douglas, seconded by Ken Anderson and all were in favor. The meeting was adjourned at 8:50 PM.