Town of Red Hook
Zoning Board of Appeals Meeting Minutes
March 12, 2008

CALL TO ORDER

The meeting was called to order at 7:30 P.M. by Chairman Timothy Ross.

ROLL CALL

Members Present: Timothy Ross, Kenneth Anderson, Michael Mosher, Corinne Weber
Members Absent: Jim Hegstetter, John Douglas
Also Present: Bob Fennell, Building Inspector, Chris Chale, Town Attorney (for CSI Hearing)

PRELIMINARY BUSINESS

Planning Board Minutes and Letters: There were no comments by the Board.

Building Inspector/ZEO Permits and Memos: There were no Permits or memos this month.

PUBLIC HEARINGS

10:45 Public Hearing for Appeal 08-02, Espie application to construct a garage which would reduce the side yard setback from the required twenty feet to seven feet. The applicant's lot is located at 42 Kalina Drive in the R1.5 zoning district. Chairman Ross invited those interested in the Appeal to come forward to review Mr. Espie's plans. It was noted that a telephone call was received from one of the neighbors, Mrs. Malloy, indicating that she could not attend because she was in Florida and designating her son, Steven Malloy, to represent her at the hearing. Mr. Espie said that he would like to construct a 24 by 24 foot garage. *Mr. Malloy* asked why it would be so close to the property. Mr. Espie explained that because of the position of the septic system he could not place it any closer and he also wants to keep it in line with the house. Speaking for himself and his mother, Mr. Malloy said that they would not like to have it that close. Mr. Malloy asked how high it would be. Mr. Espie responded that it would probably be fifteen or sixteen feet to the gable. Neighbor *Nate Kalina* ascertained that Mr. Espie presently has a one car garage and asked why he wants a two car garage. Mr. Espie said that he plans on living there some day and he wants more storage as well as the garage. My plan, he said, is to make a screened in porch out of the present garage.

Mr. Malloy said that they do not approve of it. Mr. Espie rents the house out now, he continued, so I imagine there will be construction vehicles going up and down the driveway and in that storage area or garage. He said that Mr. Espie presently has

construction material and asked what the use of the garage would be between now and some day. Mr. Espie said that he would not be running a construction business out of the garage. Mr. Malloy asked why Mr. Espie could not reposition the two car garage and put the screened porch in the back. Mrs. Espie said that the garage will not be available to the tenants. It is for our personal use, she said. We will not be running a business from there. It will be storage. We are planning to downsize and move into this property. We have excess furniture and need a place to temporarily locate that until we have an opportunity to move in.

Upon questioning, Mr. Espie said that he will eliminate the present driveway and run the new one around the side of the existing garage to the back. We don't want to interfere with the existing septic system, Mrs. Espie said, because if we ever have to replace it we will need the land. *Mr. Kalina* said it would seem reasonable to him to attach another garage to the present garage to make it a two car garage.

Mr. Malloy said that a lot of the houses in the area have garages attached to the house. He expressed concern about putting such a large separate garage in the back and asked if there is a way to downsize it. Neighbor *Theodora Kosar* asked Mr. Malloy if they were worried about obstructing the view of the pond and he responded in the affirmative. Mrs. Espie said that they had considered that, but their options are limited on the parcel and this is the best way to achieve what we are trying to accomplish. *Mr. Malloy* again stated that he does not agree with that.

The Board and the neighbors reviewed the drawings. *Mr. Malloy* said that he would like to see drawings showing how this would look on the property. Right now, he said, I do not agree with the placement of that size building that close to the property line. Chairman Ross ascertained that Mr. Espie is planning to put a truss roof on the garage with the pitch of the roof matching the house. He said that he did not think it would be very obtrusive at all and asked if there was an option for screening, e.g. evergreen trees. Mr. Espie said that there is a big tree there right now which would probably hide a lot of it. Mrs. Espie said that as she saw it, the screening is their fence.

Mr. Kalina said that he could see a one car garage in addition to what they have; but he could not see putting in a two car garage. Chairman Ross asked Mr. Espie if he intends to remove the one driveway once he constructs the new one. Mr. Espie concurred, but said that it would probably not be right away. But if you were to build this driveway, Chairman Ross asked, you wouldn't do so until the old one is gone. Mr. Espie agreed. He said that he will not do anything until he moves into the house.

Ms. Kosar asked about the height of the garage. Chairman Ross said that the Board does not do an architectural review; our authority is in determining whether placing this seven and a half feet from the line is more of a benefit to him than a detriment to the community. That is what we are reviewing.

Ken Anderson asked if, in view of the opposition expressed by the neighbors, Mr. Espie could construct a one car garage with a walk in area and cut the width down to eighteen

feet rather than twenty four. Mr. Espie said that then he could not get two cars in and he needs to put both his car and his wife's car in the garage. *Mr. Kalina* asked Mr. Espie if he or an architect could sketch the proposed garage and Mr. Espie agreed to do a drawing. Chairman Ross asked Mr. Espie to prepare a sketch and an elevation from the road for the next meeting and continued the Hearing until 7:10 P.M. on April 9, 2008.

7:50 Continuation of Public Hearing for Appeal 07-21, JNY Quest Realty application to erect two identity signs and allow the following variances: 1), 2) and 3) internally illuminated signs of 24 square feet, 62.25 square feet and a wall mounted sign of 34 square feet each of which exceeds the limit of eight square feet; 4) decrease the required setback from the road for signs from fifteen feet to eight feet; 5) increase total signage from the limit of sixty square feet to 96.25 square feet. The applicant's business is located at 7307 South Broadway in the B1 zoning district. Chairman Ross asked if anyone was present for this application. As there was no response he stated that, per the applicant's request to continue the Hearing until next month, he would continue the Hearing until 7:20 P.M. on April 9, 2008.

7:15 Continuation of Public Hearing for 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. Attorney Jon Adams, representing the applicant, presented a memo to the Board outlining his present position. He stated that he thought the Public Hearing portion of this application could be concluded tonight. In discussing whether to discontinue one non-conforming use and substitute a more restrictive non-conforming use, the question has arisen as to whether it has to be in the same zoning district. He said that his memo addresses that issue. The relevant section of the zoning law refers to the lot and not the zoning district. He therefore concluded that, as long as the substitution is on the same lot, and the proposed substitution is within the same lot, it is our belief that this Board can authorize this more restrictive use. The second issue is whether or not subdivision B of this section which says you can't move a non-conforming use applies to the situation. When you look at subdivision C, which permits substitution uses where they are more restrictive, it refers to "the specific use". We are proposing to remove a house and substitute for it a studio. That is a different use. It is not the same use. And it is more restrictive, Chairman Ross interjected, and far less intense. It is therefore my belief, Mr. Adams continued, for the reasons set forth in the memo, that the Board can authorize the applicant to construct the studio as proposed by him even though it is in a different location.

There is a second aspect of the appeal which we have not talked about much, Mr. Adams continued. We asked the Board to consider whether, if we cannot accomplish a substitution, we need a use variance or an area variance if we want to go by the variance route. If you recall, he said, we have sixty acres. So we could simply subdivide the parcel and put the studio down as a permitted use. I am trying not to go to that extreme. In my memo I discuss some court decisions which say that where the proposed use for which a variance is being sought does not impair the essential character of the residential

neighborhood, an area variance is required rather than a use variance. And in the case I cited, we had an estate property as we have in this situation. In that case there was a gatehouse which was proposed to be rented. The zoning law said you cannot rent out an accessory structure. The court said that if you want to grant a variance for that use, viz. the rental of the existing gatehouse, you can have an area variance if you determine that the granting of that use will not change the essential nature of a residential neighborhood. I really don't think that substitution of the studio on sixty acres in a location that basically can't be seen would preclude you from considering an area variance as opposed to a use variance. So I am asking you, in the alternative, to address that issue. If you decide the other favorably, it becomes a moot point. Mr. Adams concluded by asking the Board to close the Public Hearing.

Chairman Ross if anyone was present to speak to the application. Hearing no response, he moved to close the Public Hearing. The motion was seconded by Corinne Weber and all were in favor. Chairman Ross stated that he will have the town attorney review Mr. Adam's memo. What you are proposing makes sense, he said. It seems as though it would be absurd for you to go through a subdivision. He stated that the Board would make a decision at the next meeting after getting an opinion from the town attorney. He scheduled the continuation of the appeal for 7:40 P.M., April 9, 2008.

8:10 <u>Continuation of Public Hearing for Appeal 07-20, Stortini application to erect a single family dwelling which would increase the coverage from the required maximum of seven percent to fifteen percent, reduce the front setback from the required sixty feet to thirty feet and the side setback from twenty feet to ten feet. The applicant's property is Lot 16, Red Hook Country Club Estates, in the RD3 zoning district.</u> Chairman Ross stated that subsequent to the last meeting the applicant has started the process of getting a permit to connect his well to his house. The well has been built. Nothing else has been done. He wants to continue the Hearing until the next meeting. However, as this is a continuation of the Public Hearing, Chairman Ross asked if anyone was present to speak to this. He noted that Mr. Weissman had presented a wetlands map to the Board. *Mr. Weissman* asked if Mr. Stortini was going to present revised plans which might eliminate the need for a variance. Chairman Ross said that he did not believe that it would eliminate the need for a variance. Based on the size of the parcel, he is going to be over the seven percent as well as the side yard setbacks. From the last conversation, it sounded as though he was going to remove the decks or possibly the garage and leave the decks. But we haven't gotten anything from him yet. Chairman Ross said he thought Mr. Stortini was waiting to get through the permitting process with the DEC to finalize that.

In response to questioning, Bob Fennell said he would provide information relative to coverage on lots in the area. Chairman Ross indicated that the Board would review previous variances on lots in the area and continued the Public Hearing until 8:00 P.M. on April 9, 2008.

8:05 <u>Public Hearing for Appeal 07-19, Curthoys application to construct a garage and play area addition which would reduce the minimum open space requirement from 80% to 70% and increase the total building coverage from 7% to 18%. The applicant's lot is</u>

located at 183 Country Club Road in the Town of Red Hook zoning district. Chairman Ross ascertained that the applicant already has 15% coverage and therefore he is applying for a three percent increase. Mr. Curthoys presented material regarding coverage of neighboring houses. The coverage percentages were between 21% and 23%. When Bob Fennell asked him for the names of the homeowners, he was able to provide names for some, but only lot numbers for others. He said that the information came from the assessor's office. Chairman Ross asked for copies of the information and said that he would like to see where the houses are on the tax maps.

Chairman Ross asked Mr. Curthoys for his revised plans. Mr. Curthoys did not have revised plans and, due to what he had found relative to the other lots, said that he wanted to go with his original proposal which was 504 square feet (28 by 18). Chairman Ross said that prior to finalizing this he will want to have data on the buildings, particularly where variances were granted. His recollection, he said, is that the upper threshhold we've been at is fifteen percent. The Board then reviewed the plans previously submitted by Mr. Curthoys. Bob Fennell said that he saw a survey of the Brochetti property yesterday and it is now at 22.7%. They are going to come in and ask to put in a pool, which will bring it up to 25.6%. Mr. Curthoys said the 7% law is not for postage stamp sized lots. Chairman Ross responded that that is the reason why a lot of these parcels have come in for variances. They are substandard because they were subdivided before zoning. However, we still have to have some reasonable upper threshhold, he said.

Mr. Weissman asked if this isn't in the DEC check zone. Chairman Ross responded that every one of these houses is within that zone. Wouldn't they then have to ask the DEC about permits, Mr. Weissman asked. Chairman Ross responded in the affirmative. Typically, they want everything within one hundred feet to have a permit. Mr. Curthoys asked if all the houses in the area are therefore in violation. Chairman Ross explained that if any construction or grading is to occur, it requires a site visit as a bare minimum from the DEC to say if what you are proposing to do is going to impact the pond. Neighbor *Richard Dill* asked if the DEC would be concerned about coverage. Chairman Ross said that he did not think so, but there might be mitigating circumstances. They might not have a problem with 25% coverage, if you comply with their requirements; however that doesn't mean we wouldn't have a problem with 25%.

Chairman Ross said that he would not be comfortable until we have good data on all the parcels and he would like to continue the Hearing. He asked Bob Fennell if, before the next meeting, he could provide a breakdown of every parcel and what the coverage is. Corinne Weber said the Board needs an accurate plan of what Mr. Curthoys really wants to do. She said that we should have information on all the twenty six parcels there. Bob Fennell said he doesn't know how to get that. Very often, the property cards don't reflect reality. Some of them are very wrong. The only way to really find out is to go out and measure every one, he said. Chairman Ross asked the Clerk of the Board to look through the records back to 1996. The appeals of Jim Mort, Ken Gieks and Brochetti were mentioned as cases in point. Bob Fennell asked if the Association would be willing to have him come and measure all the houses. *Mr. Weissman* indicated that this might be possible. Chairman Ross continued the Hearing until 8:20 P.M. on April 9, 2008.

8:20 Executive Session. Chairman Ross said that prior to continuing the Hearing for Appeal 08-01, CSI Developers, the town attorney is present and we are going to go into Executive Session to review some of the finer points with her.

8:55 Continuation of Public Hearing for Appeal 08-01, CSI Developers application to construct Meadowbrook Estates, a 119 unit multi-family dwelling project. The proposed units have been interpreted as single family dwellings. The applicants' properties are located at Norton and Baxter Roads, in the R1 zoning district. Chairman Ross stated that Mr. Anderson, being a large property owner adjacent to the proposed subdivision, has expressed his discomfort in making this decision and is therefore going to recuse himself. That leaves three members for this case, he said. The Board does not have a quorum and we cannot take additional comments until we have a quorum. Therefore, we will continue the Hearing until 8:40 P.M. on April 9, 2008. Chairman Ross expressed his hope that at that time the vacancy on the Board will have been filled, vacations will be over and there will be more members present to continue. At that time, he said, I know several of you have comments. Please keep them focused on the multifamily development issue, not traffic or other concerns. This Board is just looking at the multifamily aspect of this. That is the interpretation that is before us.

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 continued the Hearing until 9:00 P.M. on April 9, 2008. He will contact Mr. Baker to see if he wants to have his Appeal withdrawn.

Minutes of the Feb. 13, 2008 Meeting

Jackie Martin asked whether the Minutes of the previous meeting have been revised. Chairman Ross stated that an addendum has been placed in the Minutes and they will be reviewed and finalized once we have a quorum. He said that he spoke to the Ethics Committee. As no one submitted a letter, he said that he specifically requested that they review his situation. They did not deem it necessary for me to recuse myself, he said, and therefore I will not be recusing myself. Jackie Miller asked if it was necessary for someone to submit a letter. Chairman Ross said that he had stated that at the last meeting. However, as no one did, he contacted the Ethics Committee himself and requested their review.

ADJOURNMENT

A motion to adjourn was made by Tim Ross, seconded by Corinne Weber and all were in favor. The meeting was adjourned at 9:00 P.M.