

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
December 10, 2008**

CALL TO ORDER

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

ROLL CALL

Members Present: Timothy Ross, Nick Annas, John Douglas, Jim Hegstetter,
alternate Trilby Sieverding

Members Absent: Kenneth Anderson, Michael Mosher, Corinne Weber

Also Present: Bob Fennell, ZEO

PRELIMINARY BUSINESS

Minutes of November 12, 2008: Chairman Ross asked if there were any comments regarding the Minutes. Trilby said that the Minutes mentioned that all of the members of the Board were receiving the Planning Board Minutes electronically. She said that she was not receiving those Minutes. Chairman Ross asked the Clerk of the Board to have her name added to the Planning Board mailing list. As there were no further comments, Nick made a motion to approve the Minutes as submitted. The motion was seconded by Jim and all were in favor.

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

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

Comments: Chairman Ross advised those present that with just four members in attendance, all four must vote positively for a variance to be approved. He noted that as there is a quorum, alternate Trilby Sieverding may ask questions but she cannot vote unless a super majority or a quorum (should a member have to recuse him/herself) is needed. He therefore offered the applicants the option of having the Board vote or continuing their Hearings.

PUBLIC HEARINGS

7:15 Public Hearing for Appeal 08-13, Eckert application to construct an addition which will increase coverage from the current 10.1% to 10.8% where the maximum allowed is 7%. The applicant's lot is located at 32 Country Club Drive in the RD3 Zoning District. Mr. Eckert was represented by Rich Rock of L. Garrick Associates. Chairman Ross opened the Hearing and invited Mr. Rock to come forward and briefly present the plan.

Mr. Rock presented a map which was reviewed by the Board. He said that the Eckerts would like to make this their year round residence. They would like to add 242 square feet in order to square off the building. It will not be any closer to the wetlands or the pond. The driveway will be taken out and replaced with terrace and grass. If you look at the other houses around the pond, he continued, this is the least amount of coverage compared to the other lots. It is a small addition. We are asking for a lot coverage increase of less than 1%. We have been to the DEC and they are leaving it to the Town of Red Hook Planning Board. It has been to the County and they said that it is fine. If we get a variance, we will go back to the Planning Board and then we can build this addition.

As no one was present to speak to the project, Chairman Ross closed the Hearing and asked if the members of the Board had any questions or comments. Hearing none, he said that all the parcels in the area predate zoning. What they are asking for is considerably less than several which have been before the Board and he did not see a problem with it.

Motion to Approve Variance

Chairman Ross made a motion to grant the increased coverage as per the application as it is minimal in nature, will not have a detrimental effect on the neighborhood, will be a benefit to the applicant, will not harm public safety or well being and is consistent with other houses in the area. The motion was seconded by John Douglas. A roll call vote was taken and all were in favor.

Chairman Ross advised Mr. Rock that he should get the DEC approvals to Bob Fennell or Steve Cole before the Building Permit is issued so that they can be noted on that Permit.

7:20 Public Hearing for Appeal 08-12, Hobson/Spire Architecture application to construct a garage and an addition which would increase coverage to 20% where the required maximum is 15% and would reduce the front yard setback from the required minimum of 35 feet to 18.5 feet. The applicant's lot is located at 18 Rokeby Road in the R1 zoning district. Chairman Ross invited Chris Colby, Anthony Crandall, Kristin Hobson Crandall and neighbor Johanna Moore to come forward and review the plans. In response to questioning, Mr. Rock said that the addition will come out 14 feet from the existing structure. *Ms. Moore* inquired about how this would affect visibility on the corner. She was assured that there would be no change. She had no further questions and said that she was in favor of the project.

Chairman Ross asked if there were additional questions. Mr. Crandall was asked if he had a contractor and he responded that he did not as he was waiting for the approval of the variance. Chairman Ross read into the record a letter in favor of the project from neighbor *Jeffrey Bates*, who lives three houses down from the applicants.

At 7:30 PM, Chairman Ross opened the Hearing and asked for any additional questions or comments. As there were none, he closed the Hearing and asked if there were any additional questions from the Board. Hearing none, he said that he thought that the project was in keeping with the neighborhood and was not a huge addition. The parcel predates zoning and as such they are limited regarding setbacks because if they put in an

addition in any direction a variance would be required. He felt that their request was minimal.

Motion to Approve Variance

Chairman Ross made a motion to grant the variance to allow construction to within 18 feet of the property line facing Adams Road and to allow the increase to 20% coverage because it is a benefit to the applicant, no detriment to the neighborhood and will not be a detriment to the public health or safety. The motion was seconded by Jim Hegstetter. A roll call vote was taken and all were in favor.

7:35 Continuation of Public Hearing for Appeal 08-09, Raymond application to expand a non-conforming accessory dwelling unit by 100% of gross floor area where the size of such expansion is limited to 50%. The applicant's lot is located at 5098 Route 9G in the RD3 zoning district. Nevien Sidarous of the Borenstein architectural firm and Warren Replansky, attorney, were present as well as the owners, Paul and Jean Raymond. Based on the lease, it was ascertained that the most people who would ever be renting on this property would be twelve, including the two apartments, the house and the cottage.

Chairman Ross read into the record two letters from neighbors in opposition to the project, one from *Mr. and Mrs. Gilbert* and another from the *Mr. and Mrs. Carroll*. The primary objection was to the number of people on the property. Chairman Ross then asked for questions from the Board. John asked who came in for the Building Permit. Mr. Raymond said that he had. When you came in for the Building Permit, John asked, what did you tell Mr. Fennell that you wanted to do with this property? Mr. Raymond responded that he said that the roof was in bad condition and they thought that as they were renovating, the roof could go up and they could mimic the architecture and pitch of the roof of the main house. We were not sure exactly what we would be doing upstairs. Our builder came in and spoke to Steve Cole, town Building Inspector, about where the staircase was coming in, where the support beams were, etc.

John asked Bob Fennell if he had previously said that Mr. Raymond came in and got a Permit just to fix the roof and to modify the roof line. In response, Bob asked to read his notes into the record. On October 25, 2007, he said, Mr. and Mrs. Raymond submitted an application for a Building Permit to renovate the cottage to the rear of the main dwelling. They wrote on their application that the renovation was intended to replace the poorly constructed and ugly roof structure with a new, properly built roof to complement the main Victorian house. Small roofs will be added over the doorway, sidewalk and porch. They indicated that the estimated cost would be \$19,000. The general contractor was Matt Simmons. Two non-professional, unsigned and unsealed exterior elevation drawings were submitted with the application, showing the existing roof line and the proposed roof line. No interior layout was provided. Signed and sealed professional drawings were not required as the applicant indicated that the construction would be under \$20,000. The Permit was issued on October 25, 2007 with the following notation: this is to certify that permission is hereby granted for altering the roof line. The space being created over the first floor will be an attic storage space.

On 6/30/08, after having been to the contractor, Matt Simmons, Mr. Fennell and Mr. Cole inspected the structure, including the framing. On going up to the new second story, they observed that the space had been partitioned off into rooms with heat and electrical outlets in the new walls and closets which clearly indicated that this was living space and not storage space. We gave Mr. Simmons a verbal order to stop work and submit signed and sealed plan drawings for the renovation as the work clearly exceeded that allowed by the Permit. We then got a telephone call from Mrs. Raymond who insisted that the space was not going to be living space. She said that she rented to Bard students who often have musical instruments which need to be stored in heated spaces. We told her that signed and sealed drawings would be required since clearly the scope of the work was more than what was approved. We then received a signed and sealed drawing prepared by David Borenstein, licensed architect, showing a floor plan for the second floor with bedrooms number 2, 3 and 4 indicated on the plan.

We then had a telephone conversation with Mrs. Raymond and told her that she would need to have Dutchess County Health Dept. approval for the septic for the increase in the number of bedrooms in the building. She said that the drawings by Borenstein were in error and they really were not bedrooms, but storage space and the only reason Borenstein had put the notation bedrooms on the plan is because we had told him to do so. She said she wanted to go back to plan number one, which was the storage plan. She said it must have been some mistake between Mr. Simmons and Mr. Borenstein. After continued conversation, she said that she could not deal with it and would have her attorney Warren Replansky call us.

Mr. Replansky said that there was a great amount of confusion with regard to this application when he got involved. Bob and I went through several rounds of trying to determine what was required in order to do what they had requested to do. We acknowledge, he said, that the application requires an area variance from ZBA and that is why we are here. Nobody was trying to put something over on the Building Department. I do not believe that they had any intent to get a Building Permit and a CO for something that was not authorized. They did have a misunderstanding of what the requirements are. We worked with Bob and the Building Inspector in order to clarify that. There was some confusion about what type of variances and what type of applications would need to be made.

Initially we had suggested that because it is a non-conforming use, that the expansion would be permitted for an additional 50% and they could create an additional apartment upstairs. When the other portion of the building opened, but not as habitable space, Bob was very uncomfortable with that. He did not want that to happen because that could possibly be used as habitable space. As a result, we all agreed that the best thing would be to apply for an area variance. So what is before the Board now is the issue of whether the application for an area variance meets the requirements for an area variance under your law. We want to correct the problem and do what is right.

Chairman Ross asked if the intent is to have finished off living space on the second floor. Correct, Mr. Replansky replied. John asked if this would be for three people. Yes, Mr. Replansky answered. At the time my clients purchased the property, he continued, the single family residence which is the subject of this appeal looked terrible and was in a terrible state of repair. It was a non-conforming two bedroom living unit.

Everyone agreed that the best thing to do would be to put three bedrooms upstairs and eliminate one bedroom downstairs to make room for the stairwell to the second floor. You then wind up with a four bedroom residence rather than a two bedroom residence. There will be two additional bedrooms which will be occupied by people living as a family, which is permitted by the Red Hook zoning law. What they have done is taken a fairly unsightly looking building which was in a substantial state of disrepair and remodeled it into an aesthetically attractive building which not only complements the property but complements the surrounding neighborhood. Outwardly, what neighbors will see will look much better than what they saw before.

In my letter, Mr. Replansky said, I have referred to the standards for the granting of a variance which are now a balancing test between the benefit to the property owner who is seeking the variance against the detriment to the neighboring properties. In doing that you have to consider five factors which basically relate to whether there is going to be an undesirable change in the neighborhood and whether the change will have an adverse effect on the physical or environmental condition of the neighbors. I have cited a number of cases in which area variances which have considerably greater impact and involve a higher percentage of variance have been granted by the courts simply because what the property owner is trying to achieve is not going to have a detrimental effect on the neighboring properties.

Mr. Replansky presented an aerial map of the property, which is five acres. It is equal to or larger than the surrounding properties in that area. The residences are situated in the middle of a tree buffer which buffers the property on three sides. Most of the surrounding lots are smaller and many are rental houses. He provided a map showing which lots are rental properties and said that they are mostly rented to Bard students. What the owners are doing on the property is therefore consistent with the surrounding neighborhood and will not have a negative effect. An increase of two bedrooms on a five acre lot can't possibly have a detrimental visual impact or result in a diminution of property values.

The only complaint that you had is from two property owners who expressed concern about noise generated by the students. There was no evidence that the Police, the property owner or the ZEO were called. My clients have taken steps to control that situation. The lease agreements have language about not making unreasonable noise. The Rules and Regulations which all the tenants are required to adhere to also talk about refuse and noise and not making a nuisance. My clients, he continued, take care of the property. They have invested in the property. They respond to the tenants' needs and they will take every possible step to remedy any impact if one of the tenants has a party and makes noise which bothers the nearby property owners.

The courts have held that generalized complaints about noise should not be the basis for denying a variance. I understand your concern and we would certainly agree to reasonable conditions to try to control that. That is the only factor which would mitigate against granting this variance. All the other factors, we think, are fairly overwhelming in favor of granting the variance.

Chairman Ross said that one of the other comments made by the neighbors is that there was refuse and debris in the area. He said that he had driven by but did not see that. The property looked neat. Mr. Raymond said that when he took over the property about two years ago, he brought in large dumpsters to collect the garbage which had been thrown in the barn over a period of many years. He said that they have hauled away four large dumpsters and cleaned up the property. Chairman Ross asked what Mr. Raymond's plans are for the barn. None, Mr. Raymond responded. It will just be a barn. We do not need any more rentals.

Chairman Ross asked for questions from the Board. Jim asked if there was any letter from anyone in the neighborhood stating that they are in favor of this project. Mr. Replansky said that it is hard to get people to speak in favor of an application. The other adjoining property owners were notified and they have not come and voiced concern. We can infer from that they have no objection to it. Community opposition is certainly a relevant concern, but you have to consider the nature and substance of the case. They are simply concerned with the fact that in the past they think that Bard students have created some noise. That certainly can be controlled and addressed. They do not have other concerns. They have not said anything about diminution of property values. Jim expressed concern that there would be two more people, which could add to the noise. He acknowledge that the structure does look much better than it did.

Bob Fennell asked how many individuals live in the main house. Chairman Ross responded that there would be a maximum of eight people. Mr. Replansky said that the Board could apply conditions that there be no more than four people occupying the four bedrooms. Nick said that this area was zoned single family residential. Chairman Ross said that this has existed as two units in the main house and the side building from some time in the '60's or '70'. So it is a non-conforming, existing, grandfathered use.

Mr. Replansky submitted a picture of the property from the road, saying that it was obvious that there is a very minimal visual impact. John said he had visited the site and walked around and did not see garbage. The building is quite an improvement from the original. My concern, he said, is that the Raymonds came in to fix the roof and change the roof lines. It went from that to stairs, a layout for three bedrooms and closets upstairs. We went from fixing and adjusting a roof to a huge second floor addition.

Mr. Replansky said that there was no intent to slip this by the Building Inspector and the ZEO. As soon as I got involved in it, we sat down and discussed it. He said that certainly there was a great deal of confusion in his client's mind, but they were attempting to rectify the situation. John ascertained that they did stop construction upon receiving the stop work order.

Chairman Ross said that you cannot limit who lives in the house because four people living together have to be considered a family whether they are related or not; however, the number of people can be limited as a use. You can put a condition that there will be a maximum number of people allowed on a property as tenants because that is intensity. You cannot say anything about who those people are. Mr. Replansky said that you can impose a limiting condition if the property owner consents to it, which they will do.

Chairman Ross said that from an architectural standpoint he thinks that what was done is a dramatic improvement relative to what was there. The look of the property has been dramatically improved. Personally, he said, he did not have a problem with going to four bedrooms provided that there is a maximum of four people in each of the three units so that there would never be more than twelve individual tenants on the property. I would not like to see anything happen with the barn, he added.

Chairman Ross said that when the Board only has four voting members at any meeting, he always gives the applicants the opportunity to continue the Public Hearing and take the vote at the next meeting. It is entirely your decision, he told the applicants. Trilby is our alternate, he explained. She is only allowed to vote if we do not have a quorum. With four voting members here we have a quorum. What that means is that if we vote on this tonight, all four would have to be in favor of any motion in order for it to pass. He then asked if they would like the Board to vote tonight or continue. Mr. Replansky asked to have the Hearing continued. Chairman Ross scheduled the continuation for January 14, 2009 at 7:15 PM. Mr. Replansky also said that he would like to revise his letter and resubmit it.

John said that at the continuation, he would like to see proof that the septic can handle the required number of people. Chairman Ross said that the septic would have to be approved by the Board of Health. Mr. Replansky said that that would be part of the site plan and they do have a letter from an engineer saying that it meets the requirements. We would agree, he said, that it would be conditioned upon meeting the Board of Health requirements as part of the site plan review.

REVIEW OF APPEAL

8: 20 Appeal 08-14, Michael & Erica Brown application to erect a 15 foot by 8 foot deck on the front of a dwelling, 39 feet from the property line where 50 feet is required. The applicant's lot is located at 22 Cornell Avenue in the R1.5 zoning district. The applicants were represented by Nic Ross of Ross Contracting. For the record, Chairman Ross noted that he was not related to Mr. Ross. He invited the applicants to come forward and present a brief overview. Mr. Ross reviewed the plan with the Board. He said that the stairs are disintegrating. The top pad is about five by five and the new stairs will come straight out the front of the house with sixteen to eighteen inch stair treads. They will turn and follow the front walk. Nick ascertained that the stairs will not protrude any further than what is currently there. The base of the current stairs protrudes eight feet. Mr. Ross said that they are basically covering the flower garden. He said that the deck will be

uncovered and will have two sets of stairs, one up the side and one in the front exactly where the existing stairs are. Mr. Ross pointed out the two sets of stairs on the plans. The deck will be the length of the steps. The driveway will not be touched. Bob Fennell explained that unroofed steps are an exception to the intrusion rule. If the steps did not exist, they could build the deck without a variance but unroofed steps cannot intrude into the required yard. The deck can intrude into the front yard, but the steps can't.

Chairman Ross asked if anyone wanted any further information before the appeal goes to Hearing. Upon questioning, Mr. Ross said that the deck will be made of pressure treated wood. Chairman Ross said that there would not be a need for the members of the Board to go on the Brown property; they could just drive by. The picture explains everything. I think it will be an improvement, he said. He then scheduled the Hearing for 7:10 PM on January 14, 2009.

ADJOURNMENT

A motion to adjourn was made by Jim Hegstetter, seconded by John Douglas and all were in favor. The meeting was adjourned at 8:33 P.M.

FINDINGS AND DECISION

Appeal 08-13, Eckert application to construct an addition which will increase coverage from the current 10.1% to 10.8% where the maximum allowed is 7%.

FINDINGS:

1. The applicant's property is located at 32 Country Club Drive in the RD3 Zoning District.
2. Tax Map #: 6372-19-691176.
3. The zoning law requires a maximum coverage of 7%.
4. The applicant currently has a coverage of 10.1% and wishes to increase the coverage to 10.8%.
5. A variance would be of benefit to the applicant and no objections were voiced by the neighbors.
6. The variance is similar to other variances granted in the immediate neighborhood and 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: Tim Ross made a motion to grant the variance based upon the above findings. The motion was seconded by John Douglas and all were in favor.

Dated: Dec. 10, 2008

FINDINGS AND DECISION

Appeal 08-12, Hobson/Spire Architecture application to construct a garage and an addition which would increase coverage to 20% where the required maximum is 15% and would reduce the front yard setback from the required minimum of 35 feet to 18.5 feet.

FINDINGS:

1. The applicant's property is located at 18 Rokeby Road in the R1 zoning district.
2. Tax Map #: 6272-17-189158.
3. The zoning law requires a maximum coverage of 15% and a 35 foot front yard setback.
4. The applicant wishes to increase the coverage to 20% and decrease the front yard setback to 18 feet.
5. A variance would be of benefit to the applicant and will not be a detriment to the neighborhood.
6. There will be no impact on the health, welfare or safety of the community.

DECISION: Tim Ross made a motion to grant the variance based upon the above findings. The motion was seconded by Jim Hegstetter and all were in favor.

Dated: December 10, 2008