

**Town of Red Hook  
Zoning Board of Appeals Meeting Minutes  
January 14, 2009**

**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, Kenneth Anderson, John Douglas, Jim Hegstetter, Corinne Weber, alternate Craig Christensen

Members Absent: Michael Mosher

Also Present: Bob Fennell, ZEO

**PRELIMINARY BUSINESS**

Minutes of December 10, 2008: Chairman Ross asked if there were any comments, questions, deletions or additions to the Minutes. Hearing none, Nick made a motion to approve the Minutes as submitted. The motion was seconded by Jim. As she was not present at the last meeting, Corinne abstained. All others 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 asked if anyone would be attending the Association of Towns' meeting in New York City on Presidents week-end. John responded that he will be attending.

**PUBLIC HEARINGS**

7: 10 Public Hearing for 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. Chairman Ross asked if anyone was present to speak relative to this matter. Hearing no response, he asked the applicants to come forward and briefly describe what they are planning to do. Erica Brown presented three pictures and explained the deck project, showing where the two proposed staircases will be located. There will be no change to the driveway. Hearing no comments from the public, Chairman Ross closed the Hearing and asked for questions from the Board. Hearing none, a motion was made by John Douglas.

Motion to Approve Variance

John moved to approve the application to erect a fifteen by eight foot deck on the front of the 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. It is a good project, has a good plan and will have no detrimental safety aspects. The motion was seconded by Corinne. Chairman Ross added that no neighbors are concerned and the plans are complete and accurate. A roll call vote was taken and all were in favor.

7:15 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 was present as well as the owner, Jean Raymond. Chairman Ross noted that this Hearing had been previously published and continued for several meetings. He asked for a brief restatement of the project for the benefit of Ken and Corinne, who were not at the last meeting.

Ms. Sidarous said that the footprint of the building was pre-existing. The expansion involves only the upper level. They took out one of the bedrooms and created a staircase and they are hoping to add two extra bedrooms upstairs. The initial intent was to improve the look of the building by changing the pitch of the roof so that it blends in with the other building on the property. This created space which they want to use for the extra bedrooms. They went before the Planning Board and have obtained an approval. They have consulted with an engineer regarding the septic and determined that it should be expanded. They are planning to complete the necessary expansion if the variance is granted.

Chairman Ross asked for specific questions from the Board. He said that copies of the floor plan and the lease, which limits the occupancy, have both been received and reviewed by the Board. Corinne asked about the neighbors' concerns and Chairman Ross said that they had come to one meeting and they were primarily concerned with the appearance of the place and noise. Ms. Sidarous said that the owners have improved and cleaned up the site.

Chairman Ross said that the Board has asked the neighbors to contact the owners if they have concerns. Ms. Sidarous said that they have been given the name and telephone number of the owner for this purpose. Mrs. Raymond said she had spoken to one of the neighbors who said that sometimes the noise comes from the nearby bar and sometimes from the students; however it has never gotten so bad that he felt he had to call her. She stressed that they have fixed the place up not only because it is an investment property but because of concern for the community. She said that they are there continuously both in summer and winter to maintain the property and they want to be conscientious. Chairman Ross stated that he feels that the property has been dramatically improved in the last few years and looks much nicer.

Chairman Ross said that it is an existing non-conforming use and one of the issues was some sort of limit on the number of people occupying the buildings. The applicant said

that they want to fix the barn so that it will not fall down; but they have no intention of making it habitable space. Hearing no comments from the public, Chairman Ross closed the Hearing and asked for questions from the Board.

John pointed out that the letter submitted by Mr. Replansky indicates that the condition causing the alleged difficulty is not self created by the property owner. Therefore, although he admitted at the last meeting that there was great confusion on both sides of the aisle, he is now stating that there were no difficulties created by the property owners. The discussion moved on as Mr. Replansky was not present to address this comment.

Ken ascertained that a floor plan had been submitted and has not changed. There is one bedroom downstairs and three bedrooms upstairs. The square footage is 800 square feet, 40 feet 7 inches by 20 feet 6 inches. It is a little less upstairs due to the pitch of the roof. There are two apartments in the main house and there will be no more than that. The cottage has four bedrooms but is categorized as one apartment as it has one kitchen and one bathroom. It is on a five acre lot. Construction has ceased since the stop work order was issued. The upstairs was initially to have been storage for musical instruments. Ken ascertained that when they applied for the initial building permit for the roof, there was no mention of any space in the building being occupied. Ms. Sidarous agreed that the initial plan was for storage; however when space was created by changing the pitch of the roof and it was considered viable for habitation, the owners decided they wanted to utilize this space for bedrooms. They now want to correct the situation by getting the proper permit.

Chairman Ross said that when Bob Fennell, ZEO and Steve Cole, Building Inspector, inspected the site, they requested architect's drawings and that is how the Borenstein company became involved. Ms. Sidarous confirmed that her company was not involved from the outset. They did an existing drawing and then applied for the proper permits so that they could proceed. Chairman Ross said that they have updated their application, increasing the number of bedrooms from two to four.

Jim said that his observation is that the property looks a lot better. However, if the intentions of the owners had been clearer, it would have eliminated a lot of confusion. Chairman Ross said that he does not have a problem with what they have done because it has improved the property. However, valid concerns have been expressed that there should be some reasonable occupancy limit. He ascertained that the owners have agreed that they would be comfortable with a variance with conditions precluding any additional conversion of the barn and limiting the number of people on the property. He said that it is unfortunate that it occurred the way it did; however there has been an improvement to the property. Prior to application, he continued, we really do not have a limit on how many people can be in an apartment; however in granting a variance, we can place a limit which gives us a little bit of an advantage relative to the use of the property.

#### Motion to Grant Variance

Chairman Ross made a motion to grant a variance allowing a 100% expansion of the gross floor area of the accessory structure in question at the Raymond property on Route 9G in the Town of Red Hook adjacent to the Village of Tivoli because it is a benefit to the applicant with marginal detriment to the neighbors, particularly in light of the controls the property owners have placed on it. It poses no health risk to public. The property shall be limited to three units with no more than four persons residing in each unit and no additional rental spaces for habitation shall be constructed on the parcel. The motion was seconded by Corinne. John added that the 2008 Building Code shall be adhered to in the reconstruction on the premises. The Building Inspector shall use the Code which came into effect on Jan. 1, 2008, rather than the previous Code. Chairman Ross added that the septic system for the cottage shall be approved by the Dutchess County Health Department.

A roll call vote was taken. Per the following, the motion was passed by a five to one vote:

Ken Anderson	Yea
Nick Annas	Nay
Jim Hegstetter	Yea
Corinne Weber	Yea
Tim Ross	Yea
John Douglas	Yea

## **REVIEW OF APPEAL**

7:30 Appeal 09-01, Teviot Property application for interpretation of the law prohibiting accessory structures from being built in the WC and LD zoning districts. The applicant wishes to construct a swimming pool and pool house, to be considered an outdoor recreational facility. However such use is considered by law to be a principal use and there is already a principal use on the property, viz. the single family residence. The applicant's lot is located at 40 Davis Lane in the WC zoning district. Jon Adams, attorney and Tim Lynch, architect with the Chazen Companies, were present to represent the owners.

Mr. Adams said that when they had first appeared before the Board (for a variance to build a studio on the parcel) one of the intended uses, in addition to the studio, was to have been a swimming pool. They did not have to appear before the Board on the swimming pool issue because they had an interpretation by the ZEO that the pool was a permitted use. However, after they appeared before the Planning Board, ZEO Bob Fennell wrote a letter reversing his prior interpretation. He seemed to be saying two things: you can't have accessory uses in the WC zone and you can't have more than one principal use on a lot. We are seeking an interpretation of the latter issue, he said.

Mr. Lynch then explained the project using the plans and a topographical map. The lot is split in half by the Water Conservation (WC) and Limited Development (LD) zoning districts. It is about two thousand feet deep and has the thousand foot river buffer. He explained the proposed placement of the swimming pool in terms of the topography of the lot. The location is shielded from view both from the river and from the road. Placing the pool elsewhere would cause more disturbance of the vegetation.

Chairman Ross asked if they plan to demolish three buildings. Mr. Lynch said that they were planning to demolish an old shed, a barn and a cottage. The demolition permit was issued and then rescinded during the SEQR process with the Planning Board. The Planning Board wanted to ascertain that the structures targeted for demolition were not of any historical significance. He stated his opinion that ultimately these structures are not going to be determined to be of any historical significance.

Mr. Lynch said that they are no longer planning to build the studio. The pool house will be a new building. There will be a path from the main house to the pool house. Bob Fennell said that the zoning law does not allow accessory uses to occur in the WC district. It does allow dwellings and outdoor recreation. Mr. Adams asked if there is language in the ordinance which specifically says that you cannot have two principal uses on a parcel. Mr. Fennell responded that he does not believe it says that. Mr. Adams responded that in the absence of such language, you can have two principal uses. Mr. Fennell said that they have always felt that you couldn't because it seems to be understood. Mr. Adams said that most zoning ordinances will have a section which says whether you can have multiple uses.

Chairman Ross read a relevant section of the law which refers to the "main or primary purpose or purposes" for which structures may be occupied and maintained. Mr. Adams said that a swimming pool does not have to be defined within the law as an accessory structure. Chairman Ross agreed, but said that if it were to be called an accessory structure, it would be prohibited in the WC zoning district. Chairman Ross read from the Code the following definition of an accessory structure: "An accessory structure is a structure the use of which is customarily subordinate to that of the principal building and which is attached thereto or which is located on the same lot or premises.... Accessory structures are not for the purpose of human habitation and include tennis courts, garages, swimming pools,..." etc. Mr. Adams pointed out that if you look in the permitted uses for the zone one of the uses is privately sponsored outdoor recreation, which includes the swimming pool. There is thus a contradiction and when there is a contradiction, the property owner gets the benefit of the contradiction. Where there is no restriction on the number of principal uses, the swimming pool becomes another principal use.

Mr. Lynch said that the pool house is being designed, but will be approximately fifteen hundred square feet. Nick asked if it will be a habitable structure. Mr. Lynch responded in the negative, saying that it will not be for overnight guests.

Mr. Adams said that they would like to substitute the pool for the studio (for which a variance has already been obtained). We still have the non-conforming uses and we still

want to eliminate several non-conforming uses and substitute one which is less intense. An alternative approach would be to consider the pool as something that would be used in a residential zone. Therefore a use variance would not be required, only an area variance. Mr. Adams said that in his submission for the application, he has set forth three alternatives for construction of the pool in the location in question.

Chairman Ross said that he has walked the property and the site which is proposed is the most logical. An arrangement was made for members of the Board to meet with Mr. Lynch on Saturday morning to look over the site. Bob Fennell then read two sections of the law which he felt were germane. "Section 143.19: Where more than one principal building may be permitted on a lot, no detached principal building shall be located any closer than any other principal building on the same lot." This indicates that you may be able to have two principal buildings or uses on a lot. "Minimum lot area per principal dwelling unit: In all districts where residences are permitted, a lot may only be improved for residential use in accordance with minimal lot area...If two or more principal residential structures or dwelling units are located on the same lot..." Thus there is mention in the law of lots which can have more than one principal structure. Mr. Adams said that, by inference then, if you can have two principal dwellings, you can have two principal uses.

Chairman Ross referred to a discussion a few years ago regarding a detached garage. At that time, the pertinent section of Code required that you have a principal use before you can have an accessory. He said that this is an extremely unique lot. It is split between the WC and the LD districts. In the Limited Development District, accessory uses are allowed; in the Waterfront Conservation District they are not. However it can also be argued that it is a separate principal use.

Nick suggested that a conditional variance be granted with the provision that the estate not be further subdivided. Mr. Adams said he would consult with the owner about that. He said that the owner wishes only to respect this property. Bob Fennell said that he thought that one of the reasons for the establishment of the Waterfront Conservation District was the visual impact from the river and you don't see swimming pools. Chairman Ross said that you can barely see the top of the house. Mr. Lynch said that the buildings on that property are almost invisible from the river. John agreed and Chairman Ross said that in the summer you cannot see them at all. They are shielded by the wooded section.

Upon further discussion, Chairman Ross said it is a question of whether you look at this use relative to the section of the code referring to accessory structures or the section concerning outdoor recreational facilities. It is defined in both. The interpretation is twofold. One is to have two principal uses on a single parcel and the second is whether the swimming pool is an accessory use to the house or a principal use on its own. If we interpret that two principal uses are allowed and this is a principal use in and of itself, then it would be permitted. Mr. Adams said that if you look at the permitted uses in this zone, one of the permitted uses is outdoor recreation.

Bob Fennell said that the existing shed is a non-conforming structure because it is an accessory structure in the WC zone and you are going to change it to a swimming pool, which is another accessory structure. This would be a change to an equal or less intense use, which is provided for in the Code. Mr. Adams agreed with this statement, saying that that was one of things which he included in his application. That would essentially replace the swimming pool for the studio relative to the variance granted for the studio. Nick said that it is necessary to look at the entire situation and consider what they want to do in light of the objective of the WC district. If you don't see it from the river, then for all intents and purposes it is not there. Chairman Ross agreed. Why don't we just grant a variance then, Nick asked. Chairman Ross responded by saying that the Board has to take into consideration what the next person to buy a property on the river might do. He added that he thinks that this will be an improvement to the property.

John said that he would like to see the layout of the pool house. Mr. Lynch said that he does not have floor plans, but he could provide elevations. John said that he would like to see plans at the next meeting.

Should it be determined that a variance is needed, Chairman Ross asked Mr. Adams to review how he would argue that an area variance rather than a use variance is required. Mr. Adams said that there are many cases from the Court of Appeals which say that where the use for which you want a variance is a use that would normally be found in that type of district (and these are basically residential rather than commercial districts) that you only need an area variance rather than a use variance. He said that he had cited an example of a relevant case in his application. A swimming pool is basically residential. The character of that use is similar to the character of the uses otherwise permitted in this zone. In this zone, recreation and residential are just about the only uses permitted. The court has said that where the uses are similar in character, you need an area variance rather than a use variance.

Chairman Ross said that for the Public Hearing, the application should be updated to include the two interpretations and the area variance, viz. are two principal uses allowed on one property and can a swimming pool complex be a principal use in and of itself. Bob Fennell said that the recreational use is allowed in the Code. If two uses are allowed, he continued, then that use would be allowed. Chairman Ross asked Mr. Adams if he would interpret the pool, pool house and tennis court as a recreational complex if the Board were to interpret two principal uses were allowed. He responded that he would consider it an outdoor recreational facility. Chairman Ross said that he would consult with the town attorney relative to the need for a Hearing in this instance. Bob Fennell reviewed the Code regarding the definition of recreational facility and found it to be a vague definition. He said that on commercial properties, you can have more than one principal use on a property, e.g. stores. He thought that the interpretation of one use on a lot came from that but could not, at that moment, pinpoint a source in the Code.

The Public Hearing will be for two interpretations, an area variance and a change of non-conforming use. The Public Hearing was set for February 11, 2009 at 7:15 P.M.

## **ADJOURNMENT**

A motion to adjourn was made by John Douglas, seconded by Corinne Weber and all were in favor. The meeting was adjourned at 8:35 P.M.

**FINDINGS AND DECISION**

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

**FINDINGS:**

1. The applicant's property is located at 22 Cornell Avenue in the R1.5 zoning district.
2. Tax Map #: 6273-09-245542.
3. The applicant wishes to erect a 15 by 8 foot deck on the front of a dwelling, 39 feet from the property line.
4. A setback of 50 feet is required by law.
5. A variance would be of benefit to the applicant and no objections were voiced by the neighbors.
6. There will be no impact on the health, welfare or safety of the community.

**DECISION:** John Douglas made a motion to grant the variance based upon the above findings. The motion was seconded by Corinne Weber and all were in favor.

Dated: Jan. 14, 2009

## **FINDINGS AND DECISION**

Appeal 08-11, 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%.

### **FINDINGS:**

1. The applicant's property is located at 5098 Route 9G in the RD3 zoning district.
2. Tax Map #: 6174-00-839998.
3. The zoning law requires that expansion of a non-conforming accessory dwelling unit be limited to no more than 50%.
4. The applicant wishes to make a 100% expansion.
5. There will be no impact on the health, welfare or safety of the community.
6. A variance would be of benefit to the applicant with marginal detriment to the neighbors
7. As concerns were expressed by the neighbors relative to increasing the occupancy of the building, the following limit shall apply: there shall be no more than three units on the property with no more than four persons residing in each unit. Further, no additional rental spaces for habitation shall be constructed on the parcel.
8. The 2008 Building Code shall be adhered to in the reconstruction of the premises and this Code shall be used when the building is inspected by the ZEO and/or the Building Inspector.
9. The septic system shall be approved by the Dutchess County Health Department.

**DECISION:** Chairman Ross made a motion to grant the variance based upon the above findings. The motion was seconded by Corinne Weber and was passed by a five to one roll call vote.

Dated: February 11, 2009