

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
February 11, 2009**

CALL TO ORDER

The meeting was called to order at 7:06 P.M. by Chairman Timothy Ross.

ROLL CALL

Members Present: Timothy Ross, Nick Annas, Kenneth Anderson, John Douglas, Jim Hegstetter, Corinne Weber, alternate Trilby Sieverding
Also Present: Bob Fennell, ZEO

PRELIMINARY BUSINESS

Minutes of January 14, 2009: Chairman Ross ascertained that everyone had a chance to review the Minutes and asked if there were any comments. Regarding the Raymond appeal, John proposed that “in the building” be changed to “on the property” in Finding #7, Page 10 of the Minutes. This section would then read as follows: “there shall be no more than three units on the property”. He also noted that the motion to approve the Raymond variance was made by Tim Ross and not by himself. Ken pointed out that iteration of the vote on that appeal which appears on Page 4 of the Minutes did not include his vote, which was in the affirmative. Chairman Ross added that the Decision on Page 10 should therefore be “five to one” rather than “four to one”. Chairman Ross asked if there were any further changes. Hearing none, he made a motion to approve the Minutes with the changes discussed. The motion was seconded by Nick and all were in favor.

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

Building Inspector/ZEO Permits and Memos: There was only one Building Permit this month. It was reviewed by the Board.

Comments: Chairman Ross announced that Mike Mosher has officially resigned from the Board. No replacement has been appointed yet. He also said that four members had requested to attend the Association of Towns meeting in New York City for purposes of training. Two were approved. The Town Board voted that Corinne and Jim should not attend. He felt that this was unfortunate because Jim has never attended, there are many good classes and it covers the required training for the year. However Nick and John will be attending.

PUBLIC HEARINGS

7:15 Appeal 09-01, Teviot Property application for interpretation of the Town of Red Hook Zoning Law so that a swimming pool may be built on an existing parcel as an outdoor recreation use and as a permitted second use on the parcel located at 40 Davis Lane, Red Hook in the WC zoning district. Alternatively, the applicant requests authorization of either the use of the swimming pool in the WC district as a more restrictive use or the granting of an area variance for a swimming pool in the WC district. Jon Adams, attorney and Tim Lynch, project engineer with the Chazen Companies, were present to represent the owners. Richard and Hildegard Edling, neighbors across the street from the Teviot property, were also present for the Hearing.

Mr. Adams said that the property is divided into two zoning districts, viz. the WC, which is the portion closest to the river, and the LD. He then outlined the history of the appeal, saying that prior to buying the property they had sought and obtained an interpretation allowing them to construct a swimming pool in the WC district. Approximately a year later, this interpretation was reversed and we are appealing that reversal. Before his client bought the property last year, Mr. Adams continued, it consisted of five rental properties including the main house, two separate residential structures and some additional rental units. Our client wants to eliminate the rental properties and reconstitute this property as a traditional Hudson River estate with a single family residence.

In addition, he continued, our client would like to have a swimming pool. Why, he asked couldn't we put the swimming pool in the LD district, where we would not have to go through this exercise as it is permitted in the LD district. He deferred to Tim Lynch to explain why this particular location had been chosen rather than another site on the property. Mr. Lynch said that the siting of the pool and the pool house has to do with the lay of the land and the contouring. Using two drawings, he further explained the logic behind the choice of the site. The area around the pool and the pool house is private and secluded. It is wooded and shielded from view. A proposed apple orchard will offer further screening. There is historic grading which seems to have been contoured for a garden or a croquet court. Bob asked whether the pool or the pool house would be visible from the river and Mr. Lynch replied that it would not.

Chairman Ross opened the Public Hearing and invited questions from *Mr. and Mrs. Edling*. Mrs. Edling noted that there are high hawk and deer populations in the area. She agreed that the pool would not be seen from the river.

Chairman Ross noted that he did receive one letter from the neighbor to the south. He read this letter into the record. The letter did not express opposition to the swimming pool; however it did express concern regarding an above ground spring in the area which creates a stream that empties into the Hudson. The writer, *Mr. Francis D. Davis*, was concerned that chemicals from the pool might drain into the river. Chairman Ross asked what is the proposed disposal for the backwash from pool filters and general pool cleaning. Mr. Lynch did not have specific information. *Mrs. Edling* asked about the

fencing code. Chairman Ross said that the pool has to be enclosed by a four foot fence. Bob Fennell added that these codes are well enforced.

Chairman Ross said that previously this property had received a variance for a change in non-conforming use to construct a studio and remove one of the rental houses which does not fit with the property. They have since abandoned that variance and are back because they have decided that they don't want to have a studio, but rather wish to build a swimming pool instead.

Mr. Adams said that there are three different grounds on which the Board can grant relief. The first is the question of whether or not this is a permitted use. We believe, he said, that this is a permitted use. At the last meeting, we took the position that we could have two permitted uses. Subsequent to that meeting, he said that he had a dialog on that issue with Bob Fennell, ZEO. According to the zoning law, the WC district is not a residential district. The section of the zoning law which says that you can only have one permitted use is only applicable to residential districts. Therefore, Mr. Adams continued, Bob and I agreed that we could have more than one permitted use. Mr. Fennell stated that he concurred with Mr. Adams on this point.

If we can have more than one permitted use, Mr. Adams said, the next question is whether the swimming pool a permitted use in the WC district. We believe it is because it is an outdoor recreational use. Outdoor recreation is permitted in the WC district and your definition of outdoor recreation encompasses swimming pools.

If you were to act favorably on the interpretation, Mr. Adams continued, it would not be subject to environmental review. If, by contrast, you decide to act on one of the other grounds, we would have to wait until the Planning Board completes it's environmental review because it is a Type 1 action and we in a coordinated review. You would be subject to the determination of the Planning Board if you act on another ground. If you act on the first ground, we do not have to go to the second or third ground.

The second ground is the provision of the zoning law which permits you to substitute a more restrictive use for a less restrictive use where both of those uses are non-conforming. We propose to demolish one of the housing structures on the property and substitute a swimming pool, which we think is more restrictive. The pool is more restrictive than having an additional family living on the property. The intensity of use decreases because you have fewer people on the property.

The third alternative which we have suggested, Mr. Adams said, is the granting of a use variance. However, because this is a residential zone and because the swimming pool is compatible with residential neighborhoods, we don't need to go to a use variance. Where the proposed use is compatible with a residential neighborhood, you can have an area variance rather than a use variance. The character of the neighborhood will not be changed. There will be no visual impact. Some of the neighbors have supported the project. The use is insubstantial. The pool is very small relative to the forty acres of which the parcel is comprised. In a sense, he continued, it is not even self-created because

as part of our due diligence prior to acquiring the property, we did make an inquiry, received an affirmative ruling that we could build the pool and acted upon that initial interpretation of the zoning law.

Chairman Ross asked if the *Edlings* had any further questions. Mrs. Edling said that no one will ever see the pool. She agreed that there is no other good site for the pool and voiced no objections. Chairman Ross agreed that the location is the right place on the property for the pool. He said that any chlorine from the pool would be dissipated if it were backflushed onto the lawn. He also said that as a full EAF was being done for the Planning Board, the environmental aspects are being taken into consideration. Mrs. Edling said that before the parcel was divided, there was always a pool on the property.

Chairman Ross closed the Public Hearing and asked for comments from the Board. Jim said that he understood the proposal. Nick said that he had no problems with the project. Ken felt that they are entitled to have a pool on the property and he had no problems with it as long as the environmental accommodations are met. Chairman Ross said that since the WC district can have more than one principal use, he could justify saying that it is an outdoor recreation site and therefore does not need a variance. He explained that the applicants need an interpretation that it is a permitted use and noted that a special permit will be required.

Motion to Approve Interpretation

Chairman Ross made a motion that, based upon the information provided by the applicants' representatives and after reviewing the case law and the Town laws, this is a second principal use on the property as an outdoor recreation facility. It will not have an adverse impact on the surrounding properties and will be a benefit to the applicants. The applicants have also indicated that they are reducing the intensity of use on the property. The motion was seconded by Corinne and all were in favor.

ADJOURNMENT

A motion to adjourn was made by Chairman Ross, seconded by Corinne and all were in favor. The meeting was adjourned at 7:40 P.M.

FINDINGS AND INTERPRETATION

Appeal 09-01, Teviot Property application for interpretation of the Town of Red Hook Zoning Law so that a swimming pool may be build on an existing parcel as an outdoor recreation use and as a permitted second use. Alternatively, the applicant requests authorization of either the use of the swimming pool in the WC district as a more restrictive use or the granting of an area variance for a swimming pool in the WC district.

FINDINGS:

1. The applicant's property is located at 40 Davis Lane, Red Hook in the WC zoning district.
2. Tax Map #: 175-00-270556.
3. The applicant wishes to construct a swimming pool as an outdoor recreation use and as a second principal use.
4. A favorable interpretation will not have an adverse impact on the surrounding properties and no objections were voiced by the neighbors.
5. The applicants will be reducing the intensity of use on the property.
6. A review of case law and Town law indicated that a second principal use on the property is permitted and an outdoor recreation facility is a permitted use in the WC zone.

INTERPRETATION: Based on the above findings, Chairman Ross made a motion to allow the building of the swimming pool as a second principal use and accept it as a recreation facility, which is a permitted use in the WC district. The motion was seconded by Corinne Weber and all were in favor.

Dated: Feb. 11, 2009