

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
April 13, 2011**

CALL TO ORDER

The meeting was called to order at 7:03 P.M. by Chairman Nick Annas.

ROLL CALL

Members Present: Nick Annas, Kenneth Anderson, Paul Marienthal, Tim Ross
Absent: Christopher Carney, John Douglas, Jim Hegstetter

PRELIMINARY BUSINESS

Minutes of March 9, 2011: Chairman Annas asked if everyone had read the Mar. 9, 2011 Minutes and invited comments or questions. Hearing none, Paul made a motion to accept the Minutes as written. The motion was seconded by Tim and all were in favor.

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

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

Comments: Chairman Annas announced that there will be a short course on Zoning Board essentials in Millbrook on April 26th. He and John will be attending.

PUBLIC HEARING

7:15 Public Hearing for Appeal 11-01, Charles & Christine Riedinger application to expand the foundation of an existing single family dwelling to accommodate a one bedroom accessory dwelling where the zoning law does not permit such expansion. The applicants' lot is located at 14 Grandmour Drive in the R1.5 zoning district. Chairman Annas opened the Public Hearing and invited comment. Neighbor *Jerry Benkowski*, who lives across the street, came forward saying he had several questions to ask. He said that he has been living in the neighborhood for 25 years and it has been a single family neighborhood and was meant to remain a single family neighborhood. My concern, he said, is that the character of the neighborhood will change if this variance is granted. Other people will move in, make similar arrangements and cause problems for the residents of the neighborhood.

Mr. Benkowski continued, saying that the Riedinger house was built as a four bedroom house; it has two bedrooms downstairs and two bedrooms upstairs. The couple had a bedroom and each of the three children had a bedroom. Now they want to add an

apartment for a married daughter, bringing additional people into the house. Mr. Benkowski questioned the effect on the septic system of having five bedrooms in the house. The Riedingers, he continued, will not live there forever. What happens when this couple moves out of that house, he asked. A family with six children could end up living in the house and causing further problems. Another issue is whether or not this would be fair to the buyer of that house. Also, the house sits on an aquifer which is quite close to ground level. The water needs to be clean. A number of families have tapped into that aquifer instead of going down deeper with a well.

Mr. Benkowski then expressed his concern about the number of cars which would be parked at this house. At present, he said, five cars are parked there. You cannot park on the road and this couple could move in with two additional cars. My concern, he said, is keeping the area safe for the children and for the future.

Mr. Benkowski went on to say that there are deed restrictions which require that the homes in the area remain single family residences. These restrictions apply to all the homes in the neighborhood. In response to that, Mr. Reidinger said that there is at least one property which does have an accessory apartment. Tim noted that for most of the developments with deed restrictions, there is an expiration date. However, he said that the town does not enforce deed restrictions. Disputes over deed restrictions would have to be settled in a civil court. The only thing on which the Board can pass judgment is local law. It is not incumbent on the Town to enforce deed restrictions.

Chairman Annas asked if these restrictions are still in effect in the deed. Mr. Benkowski responded that he did not know. Chairman Annas asked him if he could bring a copy of the deed to the Board. He then stated that he had some questions as to whether the Board can justifiably issue a variance which is known to be in direct conflict with a deed restriction. Tim responded that he can say that it is a fact that the Board has previously done so. Our job, he said, is to balance the benefit to the applicants with the detriment to the neighbors. The deed restrictions are beyond our purview.

Mr. Riedinger said that if he is denied the variance, he is still allowed to put in the apartment as long as he stays within the footprint of the foundation. If we are limited in altering our plan, we will do that. Chairman Annas said that if they had originally presented their plan in accordance with their current expectation, they would have been issued a permit without going through Planning or the Appeal Board. The foundation could have been expanded initially and it would still have been within all the applicable setbacks. Mr. Riedinger said that he was told that if he built outside the footprint of the current foundation of the home, he would need a variance. Tim said that if they had expanded their garage and then converted it, that would still have required a variance.

Following discussion, Tim confirmed that one acre is the minimum required for an accessory apartment, but to expand the foundation you have to have property equal to or greater than the zoning district, which is 1.5 acres. Therefore, the applicants are in that intermediate grey area. Chairman Annas asked how many other accessory apartments

there are in the development. The Riedingers replied that they know of only the one which was previously mentioned.

Neighbor *Richard Russell* said that he had some questions. He said that after he received the notice of the Public Hearing, he visited the property and read through part of the Town Code, especially the section which was referenced in the letter, viz. 143-64A. His first question, he said, is whether this addition meets the definition of an accessory apartment. Given that it does, he moved to Section 143-64I which deals with insuring that approval has been obtained from the Dutchess County Board of Health and asked whether it has been determined that the water and septic systems are adequate for the project. Tim responded that this is part of the process for obtaining the Building Permit. A form must be sent to Dutchess County for review of the capacity prior to the issuance of the Building Permit.

Aaron Craft, son-in-law of the applicants, explained that the home will still be a three bedroom dwelling as one of the bedrooms is going to be eliminated. Therefore, there will be no additional strain on the septic system as the home will continue to be a three bedroom home. Mr. Reidinger said that what determines the required capacity of the septic system is the number of bedrooms in the home and that is not going to change. Mrs. Riedinger said that she had spoken to an engineer at the Board of Health and he said that they have an adequate septic system for a three bedroom house. Mr. Riedinger said that he had spoken to Steve Cole, the Building Inspector, and Steve is going to come out and certify that the home is still a three bedroom home.

Mr. Russell asked if the proposed addition, as it contains a bedroom and a bathroom, turns the home from a single family to a two family dwelling. Tim responded that it does not, as long as it still meets the definition of an accessory apartment. If it does, it is a primary home with an accessory apartment. Mr. Russell said that if the apartment is considered a dwelling unit, it would be a dwelling unit within a single family dwelling unit.

Mr. Russell then said that there have been three releases of deed restrictions granted to three people in the neighborhood. He presented the Board with copies of the associated paperwork. He said that his only interest is in seeing the Code enforced as it benefits the entire community when the Code is enforced. Mrs. Riedinger said that she had never received a release of deed restrictions. Mr. Russell added that if this project does not change the nature of the home from a single family to a two family home, then it does not abrogate the deed restriction. Chairman Annas said that the Board was getting into differing legal interpretations about building regulations and the application of the Town Code. Tim maintained that it is clear that the home remains a single family dwelling.

Mr. Reidinger said that he is doing this project in a manner which will maintain the character of the neighborhood. What we are planning does not increase the number of occupants of the home. Mrs. Riedinger added that they want to keep the neighborhood quiet and beautiful. Chairman Annas said that they are changing the neighborhood as they are attempting to become the first home with a legal accessory apartment. Further,

there is a conflict between the law and the deed restriction. Mr. Reidinger said that the project has been discussed many times with the Building Inspector and it is not an issue with him. Paul asked how the issue of parking will be handled. Mrs. Riedinger said that they have a double driveway and it has ample room for the four cars which will be parked there.

Chairman Annas told the applicants that only four of the seven members of the Board are present and that they would need a unanimous vote from those four in order to pass a variance. He stated that he was not ready to cast a vote yet as he would like to hear from legal counsel regarding the deed restriction issue and would also like a clearer understanding of the issues from the Building Inspector and the ZEO. Tim said that they can have an accessory apartment because they have the minimum of one acre but need a variance because they are going outside of the footprint of the foundation.

Mr. Reidinger said that if he understands the concerns of the neighbors, they feel that the number of people living at the property may increase in the future and the character of the neighborhood would then change. He stated that they have every intention of remaining in the home for the rest of their lives and keeping it a quiet place. He concluded by saying that he felt that the new construction would enhance the home and the neighborhood.

Tim made a motion to continue the Hearing. The motion was seconded by Paul and all were in favor. Chairman Annas set the continuation of the Hearing for 7:15 P.M. on May 11, 2011.

REVIEW OF APPEAL

8:15 Appeal 11-02, Stewart Shops Corporation application to install exterior lighting with light trespass from the property in excess of 0.25 foot candles where the zoning code limits light trespass at the property line to 0.25 foot candles. The applicant's lot is located at 7243 S. Broadway in the B1 zoning district. Mr. Tom Lewis, Real Estate Representative for Stewart's, was present to represent the applicant. He said that Stewarts is undertaking several improvements at the location in question, viz. replacing the underground gasoline storage tanks which are eighteen years old, replacing the roof and installing new LED lighting, replacing some of the drainage system and putting in landscaping.

Mr. Lewis said that the lighting code limit in Red Hook is double the most severe code limits which he has encountered in other towns in which he has worked. In fact, many other towns have an upper limit of 1.0 foot candles. Tim said that the IES requirement is .5 foot candles for parking lots. Mr. Lewis then presented a chart showing the evolution of the thinking which Stewarts had gone through on this project. The chart he presented had three columns, viz. the present level of lighting, the level required by the Planning Board and the current proposal. These figures showed a significant reduction in the level of lighting. Mr. Lewis said that the lighting is a safety issue. If this is built without the variance, he said that he would welcome the members of the Board to visit because they would see that the lighting would be very dull.

Mr. Lewis said that the code requires a maximum of .25 foot candles at the property line and Stewarts is at about .5 or .6 at the line, mostly because they have a large right of way. The lighting level is at about .4 on the Route 9 side. In response to Chairman Annas' question, Mr. Lewis said that they are fine on the residential side. He said that they have been before the Planning Board three times and the Planning Board has the authority to compel them to comply. He provided the Board with a copy of the Minutes of the meeting at which the Planning Board issued a negative declaration. Paul said that this is a safety issue and the proposed level of lighting would be safer. Mr. Lewis agreed that it is a safety issue and said that it would be an improvement.

Chairman Annas set the Public Hearing for 7:30 P.M. on May 11, 2011.

ADJOURNMENT

Paul Marienthal made a motion to adjourn the meeting. The motion was seconded by Chairman Annas and all were in favor. The meeting was adjourned at 8:25 P.M.

Respectfully submitted,
Sheila Franklin