

## **DRAFT**

### **Town of Red Hook Zoning Board of Appeals Meeting Minutes March 14, 2012**

#### **CALL TO ORDER**

The meeting was called to order at 7:05 P.M. by Chairman Nick Annas.

#### **ROLL CALL**

Members Present: Nick Annas, Chairman, Christopher Carney, John Douglas, Jim Hegstetter, Paul Marienthal, Tim Ross, alternate Trilby Sieverding

Absent: Kenneth Anderson

Also Present: Jim Ross, TB Liaison; Bob Fennell, ZEO

#### **PRELIMINARY BUSINESS**

Minutes of February 8, 2012: Chairman Annas asked if everyone had read the February Minutes and invited comments or questions. Hearing none, Jim made a motion to approve the Minutes as written. The motion was seconded by Chris 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 memos. The Permits were reviewed by the Board.

Comments: The Chairman noted that several members of the Board attended a training session on Affordable Housing. However, he did not find the session particularly germane to the work of the Board.

#### **REVIEW OF APPEAL**

7:08 Appeal 12-02, Allen Hansen application to raise fowl on a lot of 1.22 acres where the code requires a lot of at least two acres for the keeping of fowl. The applicant's property is located at 168 Hapeman Hill Road in the RD3 zoning district. Mr. Hansen said that the lot was created at the time of the subdivision of a twenty acre parcel. Bob Fennell said that in an attempt to save farmland, the Planning Board had required that Mr. Hansen's lot be only one acre instead of the required three acres. The land had been determined to have soils of statewide significance.

Mr. Hansen said that he wishes to raise pheasants. According to the law, he continued, he can only have twenty adult birds. However, he can hatch more and sell them before they reach maturity. After discussion, it was determined that there are several parcels in the

neighborhood with various types of farm animals, including cows and chickens. Basically, the lot is surrounded by other ABD parcels.

Mr. Hansen said that he has obtained a DEC license to raise the pheasants and he submitted a copy of that license to the Board. He said that he has taken down the chicken wire pens and put up a more sightly structure. He submitted pictures of the new coops. The Board commented on the improvement from the previous structure.

Chairman Annas reviewed the hearing process for the applicant and set the Public Hearing for April 11, 2012 at 7:05 P.M.

## **REVIEW OF APPEAL**

7:20 Appeal 12-03, Roger Hoffman application to create a two lot subdivision from a 10.02 acre parcel. Creation of this subdivision will require the following variances: 74.1 foot front yard setback where the maximum allowed by the code is 18 feet; 11.8 foot rear yard setback where the minimum required by the code is 20 feet and 14 parking spaces where 28 are required by the code. The applicant's property is located at 19 Old Farm Road in the TND-CC and TND-RES districts. He was represented by surveyor Marie Welch. She said that Mr. Hoffman's son Stephen will be acquiring the lots which will be created.

Ms. Welch said that there are two businesses on the property at present, Mr. Hoffman's antique business and his son's shop. She said that Stephen has two metal buildings where he runs an automotive repair shop. Both have site plan approval from the Planning Board as additional structures on the overall property in addition to the building which houses Mr. Hoffman's antiques business. The Board reviewed the maps of the property, noting the features of the proposed lots and identified the various individuals who own the abutting properties.

There is an existing well and an existing septic system on the property. Mr. Hoffman would like to subdivide this out of the remaining land. He has a potential future use for the remaining property. He wants to make sure that Stephan becomes the owner of his piece of property and so that he will have the right to continue to use his building. Since these are already existing buildings on an existing lot with little or no road frontage and it is affected by two zones, both the commercial center and the residential, the only way to create this lot without further subdividing the land would be to follow the plan laid out on the maps. The 11.8 foot rear yard setback cannot be moved or it will go over the well.

Ms. Welch said that right now only one of the buildings has the use of a well and septic system. The other houses a weekend business. In response to Chairman Annas' question, Bob said that now it is not possible to have a business without lavatory facilities; however this situation has existed for a long time. Ms. Welch said that if they get the variances, the Planning Board will require a feasibility study relative to this issue.

Ms. Welch mentioned that the original site plan had been approved with nineteen parking spaces. Now the zoning law requires 28 spaces. She said that they are asking for a variance for the original number of parking spaces which had been approved because they do not need more than that. In response to Chairman Annas' question, Stephan Hoffman said that fourteen spaces has been adequate for his business. Most of the vehicles are in and out quickly. Only a few stay for a period of time.

Chairman Annas set the Public Hearing for April 11, 2012 at 7:20 P.M. He asked if the members of the Board can visit the property to assess the situation. Ms. Welch said that this would not pose a problem.

## **REVIEW OF APPEAL**

7:35 Appeal 12-04, Patrick Sheehan application for an interpretation of Section 143, 49.1.H (1) which lists the permitted uses and standards in the TND-CC zoning district. He wishes to operate a retail sales and rental business of used cars; however the rental and/or sale of used cars is not listed as a permitted use in the zone. The applicant's property is located at 7311 South Broadway in the TND-CC zoning district. Mr. Sheehan said that a year ago, a site plan approval and a survey map would have been all he would have required. However Mr. Fennell has ruled that since the new TND-CC district does not list the rental/sale of used cars as a permitted use, it is prohibited.

If you look at the TND-CC legislation, Mr. Sheehan continued, it addresses vehicular oriented commercial land uses. It prohibits uses which would have a disruptive effect on the pedestrian orientation of the district. You can have a gas station, but you cannot sell cars. He said that he wants to address both that section of the law as well as the one pertaining to retail services and office uses. He does not want to be allowed a variance based on one subsection, only to have to return because of he is not considered to be in compliance with another subsection.

Mr. Sheehan said that he was scheduled to be heard at the Planning Board on Feb. 6th. However, he was told on Feb. 3rd that the use he proposes would not be permitted under the new law. Because of this, the Planning Board did not accept the application and referred him to the ZBA. Mr. Sheehan said that the TND-CC legislation permits retail services and office uses to serve the needs of the neighborhood, i.e. stores and shops for the conduct of retail businesses. This is a store which sells/rents parts. The property in question is next to Treibels where Majestic Auto was and where Ruge's Chrysler was. It has been a car sales place since we got out of the horse and buggy business.

Mr. Powers runs the NAPA store. The NAPA store is in the old showroom, the glass front area of the store. To the right of that is that service department and the service office. Six months ago, Mr. Sheehan continued, I asked Mr. Powers if I could use his office to start a little business renting/selling cars. Perhaps, I could also rent some garage space to work on the cars. But at the moment, this is a small operation. It is only me, he said. I know, he continued, that the sale and rental of cars on that property were very successful. In keeping with the TND-CC concept, people are going to have to leave their

TND and, since they won't have garages, they may need to rent a car. Perhaps at some point I will get into the sale/rental of Vespas or Rascals to ride in the neighborhood.

Chairman Annas asked if the Board has to go with only those things which are specifically listed in the law. Bob responded that it is a law which was adopted by the Town Board. Mr. Sheehan said that the details of the law are not so finely tuned that they can support a wholesale denial without a hearing. Right now, he said, there is enough gray area that it is arbitrary. Bob explained that the laws are permissive laws. They tell you what you can do. They don't tell you what you can't do and automobile sales and services are allowed in the town in the BI and B2 zones. Mr. Sheehan said that the corridor from the village line to the movie theatre is where people have traditionally gone to get vehicle oriented services. It is not specifically allowed, yet it is not specifically prohibited. Bob said that this is not true. What is not specifically allowed is specifically prohibited.

Mr. Sheehan responded that what is specifically prohibited is vehicular oriented commercial land uses. Vehicular oriented land uses are lands that are used for the purposes of very high impact vehicle uses. This addresses strip malls, dry cleaners, places where people go to conduct some sort of business and leave. How many people will be going into this property for the sale and rental of cars. The impact of vehicles on that land is already high because of NAPA, Triebels, CarQuest, etc. People are coming into and going out of these properties all the time. This use by me on this property, Mr. Sheehan continued, would have negligible impact. The pedestrian traffic is already accounted for; it is a major thoroughfare. The exception under vehicular land uses has to be better defined. The specific rejection of the application, he said, was based on Section 143-49.1. H(1) D.

Mr. Sheehan said that the rental of vehicles in the TND-CC zone is consistent with the type of development about which this law was written. There is a town outside of the neighborhood and there are really no car sales/rental businesses. My business would be in keeping with what has been there. In response to Bob's question, Mr. Sheehan said that the property is owned by Lew Ruge. Mr. Ruge signed the Application Consent Form and the tenant, Mr. Powers, is in support of the establishment of this business. In response to John's question, Mr. Sheehan said that he would call his proposed business a retail business. Jim asked how many cars Mr. Sheehan would put on the lot. He responded that he did not know yet.

Chairman Annas said that the law states that uses are prohibited unless provided for. Mr. Sheehan said that they are prohibited if they fall under vehicular oriented land use, but this is not vehicular oriented land use. It does not have a high number of vehicles coming in and going out. Having cars on the lot is not a use to which this prohibition refers. Mr. Sheehan said that he has looked at other municipalities and the impact on vehicular traffic is what the vehicular prohibition refers to.

Even though this has become a TND, this area will never eclipse Route 9, Mr. Sheehan continued. The roadway will always be a state highway and will always have high levels

of vehicular use. Inside that zone is where you cannot have a heavy, commercial vehicular use. This is at the edge of that zone and the type of use is not going to bring vehicles into that property. Just because I am selling cars, he said, does not mean that I have 300 cars coming onto the property and going out every day. In conclusion, Mr. Sheehan said that he needs the Board to define the subsection for retail, commercial uses. This property is already zoned for service and repair.

Bob said that this section of the law was intended to stop drive-in restaurants. John said that the law states that you can have stores and shops for the conduct of retail business. He felt that all the land in the TND is a vehicle oriented land use because most of the town does not live within walking distance and people would therefore have to drive. He then referred to the vehicular impact within that zone of certain businesses, in particular the Holy Cow ice cream parlor.

Bob said that the TND is an attempt to extend the villagescape down through that area. They want small shops and small stores with apartments above. They do not want to have large commercial uses. It is supposed to have a village, small town flavor. Chairman Annas acknowledged that, but said that there are several existing businesses with substantial parking areas. In this respect, he could not see how a Mc Donald's would differ from the Holy Cow. Jim Ross said that the intent was to prohibit drive throughs with the exception of banks.

*Mr. Lewis Ruge* was recognized and pointed out that the building in question was built for automotive use. He also expressed concern about existing businesses. The Board responded that they would be grandfathered.

Chairman Annas set the Public Hearing for April 11, 2012 at 7:35 P.M.

## **ADJOURNMENT**

Tim Ross made a motion to adjourn the meeting. The motion was seconded by Jim Hegstetter and all were in favor. The meeting was adjourned at 8:10 P.M.

Respectfully submitted,

Sheila Franklin  
Secretary