

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
April 11, 2007**

CALL TO ORDER

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

ROLL CALL

Members Present: Kenneth Anderson, John Douglas, Jim Hegstetter, Robert Latimer and Timothy Ross, Chairman.

Members Absent: Michael Mosher, Corinne Weber. Chairman Ross noted that Corinne did notify him that she would not be able to make it tonight.

PRELIMINARY BUSINESS

New Board Member: Jim Hegstetter was recently appointed by the Town Board to fill Gordon Denegar's spot. He was welcomed by the Board and gave the Board business and contact information.

Minutes of Mar. 14, 2007: Chairman Ross asked if everybody had a chance to review the Minutes from the March 14th meeting. John Douglas noticed an error in the determination drawn up by the Town Attorney for Appeal 06-19 by Raython Merrihew regarding interpretation of the Red Hook Farmland Protection Law. The motion for approval of the determination was made by Tim Ross, not Jim Ross. As there were no other corrections, Chairman Ross moved that the Board accept the Minutes with the correction noted. The motion was seconded by Rob Latimer and all were in favor.

Planning Board Minutes and Letters: Chairman Ross asked for questions or comments on the Planning Board Minutes. John Douglas stated that on April 3, 2007, they sent the Board a letter. Chairman Ross stated that the letter was in regard to SEQR. It was in response to the Board's request to schedule a coordinated review, which they would have done anyway. Rather than have the Scibelli's go to two SEQRs, the Planning Board is going to take the lead on that. The Board cannot take an action until the Planning Board has made a SEQR determination.

John Douglas asked if there had been another letter. Chairman Ross stated that he had received a letter regarding Ulster Savings Bank and the Board would be going through that in a little bit.

Building Inspector/ZEO Permits and Memos: Bob Fennell asked if the Board received the letter which he had just sent. The letter was in regard to a procedural question and Bob said he would explain it briefly. He stated that if you look at that section of the law which allows reduced side rear yards on undersized lots, it says that the rear yard can be reduced by 40%, down to 10% of the minimum lot width; but the one side yard can be reduced 60%. However, after that it says that this is provided that the total side yards are not reduced by less than 40% of the minimum lot width. Chairman Ross postponed further discussion of this matter until the end of the meeting in order to give Bob Fennell time to find the pertinent sections of the law.

PUBLIC HEARING

7:20 PM Continuation of Public Hearing for Appeal 07-02, Peter and Joseph Scibelli Application for three area variances to erect a 600 square foot addition to their existing auto repair facility. The maximum building coverage allowed is 15%; applicant is proposing 17%. Expansion of a non-conforming use is allowed up to 50%; applicant's proposed expansion will increase it to 85.5%. A 25 foot rear setback is required; applicant proposes a 16 foot rear setback. Chairman Ross said that because we do not have a SEQR determination from the Planning Board, the lead agency in our coordinated review, we will continue this hearing at our May meeting. Prior to continuing it, Chairman Ross asked if anyone had any objections or questions for Joseph Scibelli while he is here. Otherwise, he can go home. Rob Latimer asked if the determination would be back from the Planning Board before the next meeting. Chairman Ross said yes; with the coordinated review, they notify us. It is a minimum thirty day window when they send it out and that would have been two weeks ago. So by the next meeting Chairman Ross said that he hopes they will have acted by then . He advised Joseph Scibelli that this is something he may want to push at their next meeting if he is on their Agenda. He told Mr. Scibelli to say that the Zoning Board is in abeyance and ask them if they could act on the SEQR because the site plan can't be finalized until they have a variance from us.

Joseph Scibelli asked if there were any objections before he went to the site plan. Chairman Ross asked him to get the site plan together and asked if there were any specific objections. There were none. Chairman Ross stated that he certainly had no objections, given that all the neighbors are in favor of it. He said that nothing is final until the vote is taken, but it is fair to take a straw poll. Ken Anderson did not have any objections. He asked John Douglas, who said that he just needs to see the paperwork which Joseph Scibelli's brother is taking care of. John said that if he does not see that, he will not be able to vote. He will abstain. Chairman Ross asked if the stakes were still in the lawn where they want to put this little addition and Mr. Scibelli said that they were. Chairman Ross officially continued the Public Hearing until the May 9th meeting at 7:20 and said that hopefully, the Board would be able to make a determination at that time. Mr. Scibelli thanked the Board and left.

Building Inspector/ZEO Permits and Memos: Chairman Ross asked if there were any further questions on the Building Inspector letters. There were none.

REVIEW OF APPEAL

7:40 Review of Appeal 07-04, Ulster Savings Bank Application for four area variances: to decrease front yard parking/access setback from the required 40 feet to 15 feet; to reduce front yard building setback from the required 80 feet to 25 feet; to reduce side yard parking/access from the required 10 feet to 3 feet; to reduce open space between front building line and public right of way from 20% to 13.83%. Chairman Ross noted that the circulation pattern had been changed since the meeting last October. Terry Dodd of Ulster Savings Bank introduced himself and said that he had been working for five or six months with the Planning Board and the Dutchess County Planning Office. The plan you have before you, he said, is the result of copious meetings. We started out with a lot of different placements and designs of the building. We had a sketch plan approval which had the setbacks different from how they appear now and it was the Dutchess County Planning Department that made a specific request, in keeping with their Intermunicipal Task Force on Villagescape. He then introduced David Souers of Optimus Architecture, who had just arrived. Chairman Ross asked if John Clark had asked them to put the building where it is presently located. Mr. Dodd said he had.

Mr. Souers pointed at the plan, showing the variances for which Ulster Savings Bank was asking. We also compare the setbacks which are required by zoning versus the setbacks that we propose. Chairman Ross stated that the Bulk Regulations require that this be provided. John Douglas stated that the plan is inappropriate. In my mind, you have to move the building, he said. It is way too close to the road. I've taken some measurements from buildings very near this lot. Right across the street, the Auto Parts building is 85 feet away from the curb and their parking is approximately 35 feet away. M & T is 88 feet and their parking lot is 22 feet away. Holy Cow is 87 feet away and Whalesback Animal Hospital is 61 feet. This is way, way too close to the road. Mr. Souers asked to explain. He said that this didn't start with John Clark. It started with the Planning Board and the Planning Board wanted this closer to the road. John Clark with County Planning recommended an adjustment in terms of its position relative to the road which the Planning Board agreed with. Basically, everything we've done here on the site plan is what the Planning Board has asked us to do.

John Douglas asked about the front door. Mr. Souers stated that it is a ceremonial front door. All of the activity relative to the customers will be coming in through there. Ken Anderson asked where they were in relation to Metzger Road. Mr. Souers stated that the building is 25 feet off Metzger Road and that was the specific recommendation. Chairman Ross stated that they are 25 feet from the property line, but they are farther than that from the edge of the pavement. It's a little deceptive. The aerial photo puts it in perspective. They might be another five or six feet closer to Route 9 than this building, he said, pointing to the map. Chairman Ross stated that they have to be 80 feet off the road and they want to be 25 feet off the road. You drive in and out of Metzger. John Douglas stated that he will not approve it that close to the road. Rob Latimer stated that putting the ugly areas behind what appears to be a rather aesthetic building is intelligent. Mr. Souers stated that regardless of what the Planning Board wanted, the site is very narrow. The setbacks that are required right now are very deep into the site. In fact, the building setback is way back and the parking setbacks are well into the site. It would be

impossible to design anything for this site and meet all of those setbacks. So most of the variances are required anyhow; it was a function of how much of a variance we needed and we designed this after several meetings.

In response to questioning, Mr. Dodd stated that you cannot enter by Route 9; you can only exit to Route 9. The only entrance is off Metzger. Chairman Ross clarified that it is one way out, north only. He stated that room has been set aside for future connection with whatever happens in Hardscrabble, which situation is in flux. Mr. Dodd added that they have left a little room in the back because this would be the road that would go to Hannaford. It would be the connector road, Chairman Ross clarified. Mr. Souer stated that the other thing that the position of the building has done is that it has provided more green space rather than condensing all of the pavement. Ken Anderson asked where the septic system would be. Mr. Souer stated that it would be back in the green area. Ken Anderson asked if they would be on village water. Mr. Souer stated that they are going to try to get village water. Chairman Ross stated that there is a hydrant in there somewhere. Ken Anderson said that the village water goes down into Hardscrabble. Chairman Ross said there is a hydrant there, but it might be the end of the line. Mr. Souer said he thought it was. Chairman Ross said that Hardscrabble has a well by the Holy Cow. Even if not, Chairman Ross said that they are not going to have an issue. You can put a well in the property somewhere; but there is an existing well on that property. Mr. Souer agreed. Chairman Ross said that the existing well would have to be abandoned if you put your septic there.

Chairman Ross asked Jim Hegstetter if he had any questions. He said that there is something which has been raised which is curious. This would be the closest building to the road on the entire street. That's the recommendation of the Planning Board and he asked what was the reason for that. Mr. Souer stated that the reason is that they have been working on an Intermunicipal Task Force to bring the buildings closer to the road, put all the parking behind and create another village landscape. Chairman Ross stated that the intent is that when Old Farm Road comes out and Hardscrabble is finally developed, that there be a four way traffic light there and it will become a second village center. And the idea of bringing the buildings closer to the road does work. It gives you a more calm feeling. It acts as traffic calming and gives you a village feel. Mr. Souer asked if everybody on the Board had gotten the letter from the Planning Board. That should have come to you today, he said.

As the members studied the map, Mr. Dodd pointed out an ATM and Nite Drop in one lane. There would be no service in that lane. Ken Anderson reiterated that all the lanes would exit onto Metzger. There is only way you can get into the site. John Douglas stated that what you are doing is forcing people to park in the back and then making them deal with traffic. Mr. Souer said that most of the area in question had been delineated as employee parking. Rob Latimer asked how many banks do we have in town which have seventeen clients in the bank at the same time. The response was – none that I know of. John Douglas studied the map and made a suggestion about changing the front entrance and the parking. Ken Anderson asked how he would enter if he wanted to walk in. Mr. Souer stated that there are three entrances and pointed out the main one for the parking.

Mr. Souer showed the front door where people could enter who are walking in the village or are walking in the area or walking between Hardscrabble and other sites. He said they could walk up and down the sidewalk and into the front door. Ken Anderson asked if there were sidewalks in the plan anywhere and Mr. Souer said there were and pointed them out. Mr. Dodd said the sidewalks cover the entire length of Metzger and behind the row of trees and there is an entrance sidewalk.

The Board studied the map and Chairman Ross stated that he liked this better than the previous plan where there was circulation around the front of the building. He said that he thinks that it is a tight site and to make the front that everyone sees when they are driving around town look as nice as it does, you don't have a lot of options. Perhaps you could cram the whole thing back a little bit, but Chairman Ross said he didn't know whether that would buy you a lot. It would buy you more pavement here and a longer sidewalk to reduce the chance of someone walking in. Ken Anderson said that the village and town connector road would be in the rear of the property. Chairman Ross asked if anyone sees anything that they need additional information about before we go to Public Hearing next month. This chart, he said, lays out very nicely what you need for variances. Clearly, a couple of members may not be too happy about the idea. I know, having seen at least one other iteration, what you have been through on this; but you do have to keep in mind that it is 20 feet further to the pavement than this looks. It's not 25 feet from the pavement; it is going to be closer to 45 feet from the pavement. You've got almost another 20 feet of state property on Route 9.

Ken Anderson noted that three variances are needed. He asked if they had considered reducing the size of the building or changing the dimensions of it at all. Mr. Souer responded that it has to meet the functional requirements of the bank in terms of the number of tellers and offices for loans. Mr. Dodd added that the bank does offer other services, other than traditional banking services. They do have a full service insurance agency, tax preparation, financial planning, etc. All of those services will be operated out of the building. Mr. Souer said that reducing the size of the bank would not change the fact that they still need the variances. Chairman Ross said that if you reduce the variance by four feet or six feet, it would be insignificant relevant to what they are looking for overall.

Ken Anderson said that Metzger Road is a very poor road to get into and out of. He said that he has never been able to get out of there easily with machinery or his truck. That's a problem that the town has got. He asked whether the town had given the bank any idea what they are going to do with this intersection? Chairman Ross said that this will be addressed with the Planning Board site review and the SEQR review. Traffic reviews are rolled into SEQR. Our review here, he said, is really the balancing act of the benefit to the applicant relative to the detriment to the neighborhood. We will look at the traffic aspect, but that will be covered by the Planning Board with their SEQR review. No matter what you put on this site, the state probably won't give you more than one exit onto it because if you have access to a town road, they want you to use the town road.

Ken Anderson went over the map and noted that you'd make a left turn to go to Route 9. He asked what they were going to have to facilitate entry to Route 9. Mr. Souer said that it's going to be a Stop sign. It's not signaled. You wait till you get a break in the traffic, which is what you do now. Chairman Ross said that this situation is better since the light went in for Hannaford. Before that you never got a break. There are gaps in the traffic there, he noted. He then asked Mr. Dodd what would be his anticipated hourly flow in a branch this size. Mr. Dodd said that they are currently developing that for the Planning Board and they have an engineer working on it. Jim asked if the County Planning Board had given any comments or suggestions about this intersection. Mr. Dodd responded that they had not. They have given their recommendations to the Planning Board and it did not include anything on that intersection. Chairman Ross asked if the Planning Board had given any information regarding their SEQR review. That's another one we get held up with, he said. Area variances on commercial properties need SEQR review and so do use variances, but residential properties don't. So we would need a determination from them. We also need to refer it to County Planning and I would expect a real quick turn around because they have been plugged in all along. We have a letter from the local Planning Board, but no official response from the County.

Mr. Dodd said they have redrawn the site plan on paper and some of it worked. They were able to make the 25 feet work, but the two lane parking just doesn't fit in here so we incorporated everything that we could that the Planning Board expressed an interest in having. This is a new concept that is going through all the different organizations involved. Chairman Ross said he knows that John thinks it is too close, but personally he likes it. And he would just like to see something on that property because right now it is not very nice. Ken Anderson said that their limitation right now is basically the fact that this lot is not very wide. Mr. Dodd said that essentially the Planning Board's concepts center around having a villagescape where pedestrians really have open access to all of the buildings and he said that he thinks that's what's driving both the County and the local Planning Boards. Chairman Ross said that by the Hearing next month we will have input from the Planning Board and we will also have a response from Dutchess County Planning. Mr. Souer said that they are not adverse to making some adjustments; but they can't keep bouncing between Boards. Chairman Ross agreed that this is not fair. So if you want to have a discussion with the Planning Board, Mr. Souer continued, and if you want to have us move it back five feet, ten feet, or something agreeable to both of you, we can do that.

Chairman Ross asked about getting on their agenda. Bob Fennell said that you would think that the Planning Board would come and advocate for their position. They should actually come and argue their case here at the Public Hearing. This is a significant change, since you have an 80 foot variance. Chairman Ross said that part of the intent of the Intermunicipal Task Force for areas such as this is to change the Bulk Regulations. So the setbacks aren't going to be 80; they're going to be 20 or 25 feet. Jim Hegstetter said that this will, in effect, create the change. Chairman Ross said that is correct, but for this lot only. Bob Fennell said that this is a one time only thing. The Zoning Law will have to be amended by the Town Board. Chairman Ross agreed, saying that these variance apply to this lot only, not the lot across the street or any other lot. For the bulk regulations to be

changed, they will have to be reviewed and approved by the Town Board. The applicant is interested in building now, not at some time in the future and that is the reason for the variance. John Douglas said that if you look at Sweet Lou's and Dunkin Donuts, they have a nice lawn in front; the buildings are placed in an appropriate location and they are not sitting on the highway. That's not the way to go, he said. Chairman Ross recognized that this was John's opinion and said that the intent is to bring the buildings closer. John said that this was somebody's philosophy; but it is not his and he disagreed vehemently with the Planning Board and their mentors.

Mr. Souer granted that there will be a rezoning at some time, but that doesn't help now. Chairman Ross recognized that they have to get shovels in the ground now and said that this will be something that he would make a point of talking about to Christine Chale, the Town Attorney, maybe John Clark. Mr. Souer said that his sense is that it is between the Zoning Board of Appeals and the Planning Board. John Clark has made his recommendations. The Planning Board has supported them and adopted them and now it is between you and the Planning Board as to what you can both agree to, he said.

John Douglas referred to the M & T Bank next to the old K Mart. He said that their front door is facing the parking lot and the back of the building, which is a very nice part of the building, faces Route 9W. He suggested that they flip the building and have their main doors in the back, as they did in M & T. John said that the proposed building is a nice building, a beautiful building, but he still has objections. Chairman Ross stated he thought this would look a lot better than Ulster Avenue. Mr. Dodd stated that there are some inherent things that will not be approved by the Planning Board and one of those is the traffic flow around the building. Chairman Ross said he liked this plan better than the traffic flow around the building. John Douglas clarified that he wasn't advocating a traffic flow around the building. Mr. Souer stated, with all due respect, there is no chance that this will be significantly reconfigured. The Planning Board might be willing to work with you on the exact amount of the setback, but they're not going to go along with pushing the whole site plan back. Chairman Ross stated that he was not an advocate of making major changes because it is not fair to anyone.

John Douglas stated that he did not have a problem with the building design or anything else; he just wants it farther away from the road. Just push the whole thing; move it and bring it back from the road. Chairman Ross said it would be helpful if we could get the front setback of the animal hospital. You can almost see it from there. John Douglas responded that it is 61 feet from the road. Mr. Souer said that they might be ten feet closer to the road. Chairman Ross asked if there were any pins in the ground. Mr. Souer stated that there were no pins there, but they could put two pieces of lath in the ground so it could be compared to the animal hospital. Mr. Souer told John Douglas that when you make a comparison with other buildings like Ruge's which are 100 or 150 feet, those are so far back from what the Planning Board and the Intermunicipal Task Force have as a goal that they don't even consider that as a measure. If you wanted to argue with them relative to the placement of the animal hospital, that might be something that they would negotiate or agree with; but they are not going to agree to examples where there is a lot of parking in the front of the buildings and the buildings are set way back. And, Chairman

Ross added, these are different businesses. Those are buildings from the 1950's and 1960's. John Douglas stated that Sweet Lou's and Dunkin Donuts are from 1999 and they are 99 feet from the road. Chairman Ross said that they were done in '90's, before any of this was brought up. He said he thought if we could see the front corners of the building staked out, we would see that it is not as close as people are envisioning. If you can get those in the ground some time before the next meeting, we can swing by. We probably all pass five or six times a week. Mr. Souer agreed.

Ken Anderson asked if they have an architectural drawing of the building as it will be viewed from Route 9. Mr. Souer pointed out an elevation on the map. Ken said that the front of the building actually faces Route 9. Mr. Souer said that they have tried not to design a front and back. We don't have a view for you for the other side; but that is all finished. Ken said he was concerned about the view from Route 9 because that's what the traffic is going to see. Mr. Dodd said that it will look like a very formal entry. Actually there are three sides which are all designed to give the appearance of the front of a building. We figure, Mr. Dodd continued, that if Hardscrabble is developing over that way, that side of the building also has to look good because it will be used by all of the businesses. Ken Anderson said that actually it looks like you are following the concept of the Rhinebeck Savings Bank where the front of that building faces the south, not Route 9. Yet you can enter and exit on and off of Route 9 and Metzger Road. You are doing the same thing, he said. If you are driving up Route 9, you are going to see something that resembles Rhinebeck Savings Bank. Chairman Ross said that prior to Public Hearing, they are going to get a couple of pieces of lath in the ground so the members of the Board can compare it to the animal hospital. He asked if there was any other information the Board members would like. Mr. Souers said that they will put stakes in all four corners. Chairman Ross said that is all the information the Board will need. If any questions arise, they will be channeled through Patrick Roberts of Optimus Architecture. When questioned by Chairman Ross, Mr. Souer said they would have the stakes in by Monday, April 16th. The Public Hearing will be held on May 9th at 8:00 P.M.

REVIEW OF APPEAL

7:40 Review of Appeal 07-03, Linda Lindsay Application for a Use Variance to create office space and apartments at 123 Old Post Road. The proposed site had been an apartment and a Certificate of Occupancy has been issued for it; however a Building Permit was not obtained. As the Lindsays are away, they are represented by attorney John Marvin. He stated that procedurally, he did not apply for a use variance. There was a citation by the Building Inspector for failure to get a Building Permit to install an apartment when no apartment was installed. There were always two sets of living facilities there. When the Lindsays bought the building, they went in for a variance. They used part of the building for their business and they filled an additional part. In 1987 or '88, they got a CO to use the building for their office and their apartment. They added to it. What was cited as a violation was that the existing living area contained a kitchen and a bath and when he downsized his business, he rented that out again. The violation was issued for that. But he didn't need a Building Permit. He didn't do any work which required a Building Permit. So, Mr. Marvin continued, I appealed the letter of determination saying the Lindsays are in violation. That is what we came here for. Bob

Fennell stated that Mr. Marvin wasn't really asking for a use variance then. Mr. Marvin stated that he had not applied for a use variance. He responded that he had put in a request for an interpretation. Bob Fennell cited a case in '80's where there was a very contentious change of occupancy. He said that there was a lot of information in the file about the current case and suggested that the file be reviewed very carefully to see what the Board really did approve at that time. Mr. Marvin stated that he would like the Board to look at the Feb. 27th letter and see if that letter was right; by the same token, if the Lindsays do need to do something, they'll consider doing it. Mr. Marvin emphasized that they didn't do any building without a Building Permit. But if there is something that they need to do, they want to make sure they're OK. The thing we are appealing now, he said, is that they didn't do any work without a Building Permit.

Bob Fennell stated that their assertion is that the second apartment was always there. The elements of the apartment, the kitchen and the bathroom, were always there. Mr. Marvin stated that they were always there. They were repaired, but they were always there. They never stripped out the kitchen or the bathroom. That was the original plan. Bob Fennell asked how long they owned the apartment. Mr. Marvin responded that they owned the property since '88 or '87. Bob asked if it had always been two apartments plus the business. Mr. Marvin responded that he did not know if anyone was living in that apartment, but the elements were never removed. They were always there and then they added an apartment. So basically you had a house and they got a site plan approval to add an apartment and then they used the rest of the house for the offices for their business, Rock City Sound. Bob said we have to look at what the Planning Board and the Zoning Board approved at that time. John Douglas asked if this is the house that faces Starbarrack Road and Mr. Marvin said it was.

Bob Fennell said that the previous owner, Mr. Brown, had an electrical or a plumbing business. John asked if historically this was a single family home with a business. Mr. Marvin said he thought that was correct. John traced the history of the house, saying that the Lindsays then bought the home and they added an apartment and we have to research the process by which they did that. In adding that apartment, they then had two apartments. They had the one apartment which no one was utilizing and they built the other apartment which they rented out. They also had their music business and an empty area which was used for storage. The exact area which is in question is rented now but the tenant is leaving this month. That area was actually used as an office, but it had a kitchen and a bath. At some point, several years down the road, they decided to make it an apartment again. When Rock City Sound closed, the Lindsays started a new, similar business which was scaled down significantly and they didn't need that much space. They didn't need the office space, so they scaled back and they rented out the upstairs space again. Now there are two apartments being rented and the business.

Chairman Ross reiterated that the Board has to dig into the file to see what was actually approved at that site. Mr. Marvin said that this is one part; the other part is whether it was a correct determination that they installed an apartment without a Building Permit. He reiterated that they didn't do anything which required a Building Permit and said that this is the question which is specifically before the Board. Bob Fennell told Mr. Martin that

he was therefore not asking whether they can use that apartment, he was challenging the letter saying that they installed that apartment. Mr. Marvin stated that he is asking for both; but the immediate reason we are here, he said, was because we had a citation with a violation and a cease and desist by a certain date. I need to stay that; so I needed to appeal that decision here and ask you for your interpretation. I think it also makes sense to look at that file and determine that maybe this violation didn't occur and also if there is something they need to do. You might as well do that determination too, viz. can that apartment be used. Ken Anderson asked if perhaps there might be something in the file which stated that he did not need a Building Permit because there was no change to the footprint of the building. All the work for this additional apartment was done inside the walls of the current plan. Mr. Marvin stated that he got a Building Permit for that. He got a site plan approval in '87 or '88 to add the apartment and to do some other work. He got a Building Permit and a CO was issued for the additional apartment they built. One of the questions is whether that is still allowed.

Bob Fennell stated that he wanted to know what they are asking and be clear about the application. Upon questioning as to the actual wording of the application, Mr. Marvin read from the application which stated he was appealing the decision of the Building Inspector and Zoning Enforcement Officer made the 27th day of February, 2007. Chairman Ross summarized that the Building Permit was not obtained for the apartment in use; however the space was an apartment. No work was done on the apartment that required a Building Permit and a Certificate of Occupancy had already been issued for this space. He observed that there was a change in use; it was used as an office. Mr. Marvin said that he wasn't involved in that. Rob Latimer said that perhaps the file will provide some clarity. Chairman Ross stated that the Board needs to hash out any questions they have for Mr. Marvin between now and the Public Hearing.

Bob Fennell addressed Mr. Marvin, saying that the onus is on him to prove that this element was approved by the Planning Board, approved by the Zoning Board in the past and that it was never taken out of use and it continues today. Addressing Mr. Marvin, he stated that the burden is on you, not on us. Mr. Marvin asked if the burden is not on the person who issues the citation to prove that their citation is legitimate. Otherwise it is arbitrary and capricious. Bob Fennell said that we don't have access to the building. If they want us to go through the building, we can look at that site. Mr. Marvin asked what was the basis of knowledge for the citation. Bob responded that it was based on information that it was believed that a new apartment had been installed. Mr. Marvin asked if it was strong heresay. Bob Fennell said that the person who lives in the apartment told us. Mr. Marvin said that the citation was for installing an apartment without getting a Building Permit. But they didn't do any work that required a Building Permit. The appeal is to stay enforcement of that. Mr. Marvin was questioned as to how long have these apartments been rented for. He responded that one had always been rented and the other had been rented about a year.

Chairman Ross said that historically, if we have made decisions we have to review our records. John Douglas said that the Building Inspector has to inspect the premises every three years. He has the right to inspect them now as part of that three year cycle, so he

can go down and do what he needs to do to inspect them and also determine if there are two apartments and people are living in them. He has to do a building inspection anyway. Chairman Ross asked if the Lindsays can dig up any records they may have from previous years and we will research our files. He asked Mr. Marvin to see what CO's were actually issued, if they are in the electronic database. Bob Fennell said that there are ZEO and Planning Board files on this. The Clerk of the Board will research these files. The Public Hearing will be held May 9th at 7:40 P.M. Chairman Ross asked that Mr. Marvin obtain a signed letter saying that the Lindsays authorize him to represent them.

REVIEW OF APPEAL

8:20 Review of Appeal 07-05, Jeffrey Koster Application for a variance to reduce the side yard setback of storage building from 20 feet to 5 feet. Chairman Ross asked Mr. Koster if his septic system is in the front yard and if there is a hill there. Mr. Koster said that the house is lower; the back yard is hilly, but the septic is raised. Chairman Ross verified that the septic is in the front yard and asked what is in the back. Mr. Koster said there was a hill. This is probably ten or fifteen feet higher than the house and then there is a steep slope toward the house. I have about 12 feet behind the house that is flat, Mr. Koster said, and then it just goes up. He stated that he wanted the storage building there because there is a gentler slope; the other side is steeper. It shoots up higher behind it. Pointing to the map, he said that the other area which was a possibility is nicer for family to gather and if he puts the storage building there, then everything has to happen in the front. The side is tight and low and holds water. Chairman Ross asked if there were pins there so the Board members could get a good idea of the plan. Mr. Koster said there were. He said that the neighbor has just put up a fence which is three feet from the property line. There are pins along the front and back by the lot line and there are lot line flags. Chairman Ross asked if Mr. Koster would have a problem with members of the Board stopping if they are going by to take a quick look. Mr. Koster said this would be fine.

Chairman Ross asked if anyone wanted any other information on this matter. Some of the members asked Mr. Koster to show them on the map exactly where the storage building would be located. He did so and said that it would be hidden by a cluster of pines. John Douglas suggested that Mr. Koster be placed first on the Agenda for the next meeting. Chairman Ross agreed and asked if anyone had any problems with this. He said that there had been several applicants in Forest Park with the exact same thing. Mr. Koster said that his written application had been for a 10 by 16 shed and he asked if he could change that to a 12 by 16. He said that he does not have a basement and wants to have more storage. Bob Fennell verified that Mr. Koster did not want to make it closer than five feet and the variance would give him that. He suggested that this be changed now on the application. It was then changed on the official copy. Bob Fennell said that if Mr. Koster wanted to put in a 10 by 16, that would still be alright. John Douglas asked if the storage building would be a prefab. Mr. Koster said that he had building plans that he wants to get going on. Chairman Ross said that the Public Hearing would be on May 9th at 7:15 P.M. He advised Mr. Koster that his neighbors would be notified by certified mail and suggested that Mr. Koster let them know this. Mr. Koster submitted a check for the certified

mailing. Ken Anderson verified that the shed would be five feet from the property line and eight feet from the neighbor's fence.

ADJOURNMENT

Chairman Ross asked if there was any other discussion. There was a brief discussion of the procedural matter raised earlier by Bob Fennell. As there was no further discussion after that, Chairman Ross made a motion to adjourn at 8:30 P.M. Rob Latimer seconded the motion and all were in favor.

Respectfully submitted by,

Sheila Franklin
Clerk of the Board

