Town of Red Hook Zoning Board of Appeals
Meeting Minutes
November 14, 2007

CALL TO ORDER

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

ROLL CALL

Members Present: Timothy Ross, Kenneth Anderson, John Douglas, Jim Hegstetter
Members Absent: Robert Latimer, Michael Mosher, Corinne Weber
Also Present: Bob Fennell, Building Inspector, James Ross, Town Board liaison

PRELIMINARY BUSINESS

Minutes of October 12, 2007: Chairman Ross asked for any additions, deletions or comments on the Minutes. He ascertained with the Clerk of the Board that corrections had been made in the places where the Minutes had said closed rather than continued to the following month. The filed Minutes will therefore reflect that the Lindsay, Simkno Farms and David Baker hearings were not closed, but continued. Chairman Ross made a motion to approve the Minutes with those changes. The motion was seconded by Jim Hegstetter and all were in favor.

Planning Board Minutes and Letters: John Douglas said that the Planning Board Minutes for Oct. 1, 2007 were incomplete and confusing. As the other members of the Board had also received incomplete Minutes, the Clerk of the Board will check those Minutes and send out correct copies to be reviewed at the next meeting.

Building Inspector/ZEO Permits and Memos: The Board reviewed the current Permits and memos.

Comments from the Chairman: Chairman Ross said that he still has not heard from Pace Land Use Law Center relative to the training session. Ken expressed interest in attending and slots have already been requested for Rob, Jim and John. Chairman Ross said he received an e-mail indicating that there is space in the Saturday, Dec. 1st class, but it does not sound as though there is any more space in the Friday class. The training session will be held at the Wallace Center at the FDR site.

PUBLIC HEARINGS

7:15 Public Hearing for Appeal 07-16, Lewis Ruge application to erect an addition to an existing building which would increase building coverage from the required maximum of

15% to 18% and reduce the side yard setback from the required twenty feet to four feet. The applicant's lot is located at 7293 South Broadway, Red Hook, in the B1 zoning district. Chairman Ross asked Bob Fennell how far the existing building is from the property line. Bob responded that it is four feet away and ascertained that they are not getting closer to the property line. Chairman Ross then asked for questions or comments from the Board. Jim Hegstetter said that it looks fine and will be a nice addition to the community. As there were no further comments from the Board, Chairman Ross opened the hearing to the public. *Glen Coon*, Metzger Road, asked what is the standard setback for commercial property. Chairman Ross responded that it is twenty feet. *Mr. Coon* asked if that was a standard for all commercial property. Chairman Ross responded that it is not twenty feet in every zone, but it is in that zone. Mr. Coon asked what kind of building they are going to construct and Mr. Ruge described the addition to him.

Bob Fennell stated that the coverage allowance in the B1 zoning district is ridiculously low. It should be treated like a village business scape. I think that the village of Rhinebeck is 60%, he said, and we have 15% coverage in the B1 zone. We should maximize those lots for businesses so that they can pay taxes and prosper doing business in the community. John Douglas, who is a member of the Zoning Review Committee, asked that Bob send a memo to that effect to the Clerk of the Board, who could send a copy to each of the members. If the Board feels that this should then be taken to the ZRC, John continued, he said that he would be glad to do so. Bob said that the problem would be the big box stores; but if you have a one acre parcel, you are not going to have a very big store. Chairman Ross suggested that John take the meeting Minutes with him to the ZRC, which would show that the Board discussed the relatively low allowed coverage in the business districts. John said that he needs Bob to send him numbers to work with and Bob said he would do so. Chairman Ross noted that it would also be a good thing for the Economic Development Committee to comment on this as well.

Chairman Ross asked for any other comments from the public. As there were no other comments, he closed the public hearing at 7:20 PM.

> Motion to Grant Variance
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> John Douglas made a motion to allow Mr. Ruge to have a maximum of 18% coverage and to reduce the side yard setback to four feet. It has no negative effect of any kind and should be allowed. The motion was seconded by Jim Hegstetter. Chairman Ross amended to motion to add that the reason for the request was not self created; it was forced upon Mr. Ruge by the large auto makers requiring more space for parts storage. It is not excessive for that district and the four foot side yard setback represents what is existing and is no further encroachment to the property line. A roll call vote was taken and all were in favor.

7:25 Continuation of Public Hearing for Appeal 07-09, Linda Lindsay application to change an existing non-conforming use to another, less intensive non-conforming use. The applicant's lot is located at 123 Old Post Road North, Red Hook, in the H zoning district. Chairman Ross stated that the Board is in receipt of the Lindsay's environmental review. He asked Mr. Lindsay if the Planning Board had taken action. Mr. Lindsay

responded that they had taken action and they had approved it. Chairman Ross confirmed that the Planning Board had given the Lindsays a negative declaration. He then read the analysis provided by Mr. Lindsay which delineated in detail the decrease in intensity of use.

Chairman Ross said that this material had addressed each item and had shown how each would be reduced. He said that the explanations made sense to him and asked for comments from the Board. Jim Hegstetter said that they are still putting an additional apartment into the building with the existing septic. You had someone in there previously and there is another office there as well. You maintain it as an office area for the fabrication business. Mrs. Lindsay said that this was always there. So you have an office which was always there, he continued, plus the fabrication business and an apartment that was there previously. You now want to put an additional apartment in there. Mr. Lindsay said that the office and the fabrication business are one and the same. Jim said that he could see that the business will be reduced. The second apartment, he said, is his concern. There were neighbors who came to the previous meeting and took issue. There are some parking issues. There was one driveway which was supposed to be eliminated. When I drove by, he continued, it was still there. You are not permitted two driveways on that property. Chairman Ross said that the Planning Board will go through and verify that.

They did go through it, Mrs. Lindsay said. They have current drawings of all the parking areas and they reviewed it and approved it. My only question, Jim continued, is whether it will truly be less of an impact on the property. Mr. Lindsay that they have been in the neighborhood for twenty years and have been compliant with regulations. The building hasn't really changed from what was originally there. We added the apartment. Mr. Brown (the previous owner) always had his business there. When we were at our peak, he said, the building was heavily used on a daily basis and the impact on the neighborhood was significant. I really do believe that going down to two apartments and the type of use we are projecting is still a significant decrease in overall usage, he concluded.

Chairman Ross asked if there were any comments from the public. Bob Fennell said that he was familiar with the facility and how it operated in the past. I can attest to what Mr. Lindsay said about the property being intensively used at that time. Chairman Ross agreed. He used to see tractor trailers on that road and now you don't see anything. Jim raised the issue of the parking spaces. Mr. Lindsay said that the Planning Board said that in order to have an apartment, you have to have parking for two vehicles. So the two apartments would have to be for four vehicles. That's why we made the arrangements with Mr. Hapeman for any additional parking which might be needed to accommodate a total of four possible employees plus the two apartments.

Ken Anderson asked how they intend to control or monitor the various activities cited in the solutions which were submitted. Mr. Lindsay said that the information re parts and inventory was developed with a database management program. We can keep very accurate records with that, he said. If we are looking at the business side, the projections are just possibilities. But the reality of where the business is today is that we have maybe

1% of the type of work we have asked for. It is not a very active facility. We have the capability of making it more productive; but it is not currently being used to its capacity. Some of those things could be verified if the Town Attorney did an annual audit of sales figures and materials ordered. UPS keeps tracking records which show how many trucks go to each facility annually. We now have much more modest usage than in the past.

Ken asked if Mr. Lindsay was striving to increase his business and Mr. Lindsay responded that clearly this would be a goal. We currently have one part time person who works there and maybe we have done $25,000 worth of sales since opening. So it is not a profitable business at this point. I think that to maintain the building and continue with it, we would like to make it modestly profitable. If you were successful in doing that, Ken said, the numbers for the solutions you submitted would probably change. I don't think so, Mr. Lindsay responded. We have tried to reduce every area to 50% of what it was and realistically, he continued, I would be surprised if we got it to 25%. But I don't want to restrict the building's potential because what we agree to will go on the record and continue historically with the building. My goal is just to try to pay the taxes. And you think you can do that, Ken said, by expanding your business somewhat but still staying within the parameters outlined in the solution. Mr. Lindsay said that if he came within even 50% of hitting those numbers he would be thrilled.

Ken said that he saw that the one truck is being parked at Hapeman's now. Mr. Lindsay responded that that vehicle is actually off the road and will be retired. It is registered as a motor home. You have had a tractor trailer in the past, Ken said. Mr. Lindsay said that previously the company had a large truck. It was one of vehicles which contributed to traffic in the neighborhood. When the apartments are rented, Jim asked, is there any limitation on the number of occupants you can rent to? You could put three or four people in the apartment. Mr. Lindsay said that he is not sure of the answer to that question. He said that at one time he had a family in the approved apartment with two children. That is the heaviest usage that apartment has ever had. It is typically a single person. Currently there is a couple who are subletting. Mrs. Lindsay said that in her rentals she usually has one or two people. Sometimes, there are two people and a child.

Jim asked if the second apartment meets all the codes, e.g. for egress. Mr. Lindsay said that there is a fire escape which was part of the original requirements. Bob Fennell said that the requirements will be determined. If approved, he said, it will meet the code. Mr. Lindsay said that the building has a CO on the electrical inspection. He said that he is open to meeting all the requirements. There are multiple fire alarms and it is a well maintained facility. It is also burglar alarmed. The Fire Marshall has gone through and checked all the fire extinguishers.

Chairman Ross said that he had checked with the Planning Board office and the Lindsays were approved and there was a plan which addressed parking. There is a letter on file from Mr. Hapeman to address that issue. Also, the negative declaration on the SEQRA, which is what we have been waiting for, has been granted. He felt that with the proposal presented by Mr. Lindsay with the 50% reduction and the reduction from five to four employees, giving them the apartment is a less intense use and should be allowed.

As only four of the seven members of the Board were present, Chairman Ross offered the applicants the choice of having the Board vote then or tabling the vote until more members were present. They chose to wait and Chairman Ross continued the hearing until 7:20 PM on December 12, 2007.

7:55 Continuation of Public Hearing for Appeal 07-13, Jerry Simonetti of Sim-Kno Farms LLC application to display a twenty by twenty foot sign on the side of barn reading "Hudson Valley Fresh – Buy Local". The law limits the size of the sign to twelve square feet with only the name of the establishment and its principal service or purpose. The applicant's lot is located at 7782 Albany Post Road, Red Hook, in the RD3 Zoning District. Chairman Ross stated that he has a letter from the Town Attorney and her concern is that granting the variance solely on the basis of the content might set a precedent. He said that he does not feel that way because of where the sign is situated. It is a twelve or thirteen member local farmers' conglomerate which is sponsoring the sign at present; so it is really a benefit to the whole community. The Master Plan is pushing agriculture and it is certainly in concert with that.

Chairman Ross asked for comments from the Board. Jim Hegstetter asked what is the precedent that could be set. Chairman Ross responded that the concern is that someone else might build a hog farm and want a four hundred square foot sign. And if we agree to this, Jim asked, then that precedent holds water? That's the opinion portion. I don't think so, Chairman Ross said. Several farmers in the area are benefitting from this. Ken Anderson said that the sign is too big and it should be reduced in size and should be there for a specific amount of time and removed at the end of that period.

John Douglas said that he did not have a problem with the sign, but we should word it in such a way that there is a time limit and some other limitations. It is on the side of a barn. They renovated it, put on an addition and did a nice job. It is a working farm. It looks good and I don't have a problem with the sign; but I am thinking about future ramifications. So I need to see something in writing, some limitations built into this approval before I can say yea or nay. Jim Hegstetter said that it is not our purview to decide whether it is good sign or a bad sign based on what the content of the sign is. The problem is that if we do agree to do this, a precedent will have been set and we will have allowed it. I think, he continued, that there has to be something that says that the sign has to come down after a period of time. They have to write something that explains that the sign is there as a temporary advertisement for local farmers and it is not permanent. Chairman Ross said that Mr. Simonetti has said that his intention is to leave the sign up until the Fall of 2008. Jim Hegstetter asked that he put that in writing. Chairman Ross said that he doesn't really need to. If we grant a variance, Bob Fennell did find that we can time limit a variance on specific items like this.

Since there were only four members present, Chairman Ross read through the four tenets so that the members could consider them until such time as there is a full Board. The first is whether benefit can be achieved by other means feasible for the applicant. He could probably put a sign up which is two hundred square feet and you could still read it pretty

clearly from the road. They could advertise elsewhere, Bob Fennell said. Secondly, Chairman Ross continued, is there an undesirable effect upon the neighborhood or the character of nearby properties? I don't believe so, he said. Thirdly, is the request substantial and it is. It is twenty times what the law allows. Fourthly, will the request have adverse physical or environmental effects? I don't see how it would, Chairman Ross said. And finally, is it self created? I don't think so. I think he is just working with the consortium. Jim Hegstetter asked whether benefit could be achieved by other means? Certainly, Chairman Ross said. You could have smaller signs or flyers. There are a lot of things you could do; but it is a balance.

Referring to the agriculture and market laws, attorney *Jon Adams* said he thought they did not need a variance and Chairman Ross said he was going to ask the Town Attorney to do a cursory review to check that. Bob Fennell said that the agriculture and market laws do not preempt our sign laws. We do have a right to farm in this state, but it doesn't extend to billboards. Chairman Ross will have the Town Attorney's letter distributed to all the members for consideration. He continued the Public Hearing until 7:40 PM on December 12, 2007.

8:05 Continuation of Public Hearing for Appeal 07-12, David Baker Construction Co., Inc. application to subdivide the existing flag lot into two parcels and reduce to twenty five feet the fifty foot flag pole width which is required throughout the length of the flag pole. The applicant's lot is located at 40 Kristen Lane, Red Hook in the RD3 zoning district. The David Baker Construction Company was referred to the Planning Board. When Mr. Baker arrived for the meeting, the building was not open. The Planning Board has continued their Review of his proposal, Chairman Ross said, and so we will also continue it until 8:20 PM on December 12, 2007.

8:20 Public Hearing for Appeal 07-17, Teviot LLC application to change a non-conforming use by constructing a 1200 square foot studio to replace an existing accessory structure on a parcel which currently has four separate living units. The applicant's lot is located at 40 Davis Lane, Red Hook, in the WC zoning district. Jon Adams, attorney, and Sam Trimble, architect, were present to represent the applicants. The members of the Board reviewed the sketches and maps with Mr. Adams and Mr. Trimble. The old greenhouse is going to be converted to a poolhouse. Bob Fennell said that they do not need anything from the Board for the pool.

There is an existing three bedroom structure with an attached garage behind the barn, Mr. Trimble said. The current plan is to demolish that structure and build a smaller garage behind the barn. The brown building will be removed. Bob Fennell verified that they would be eliminating one of the accessory structures. How many accessory structures does that leave you with, he asked. Chairman Ross said that there is a limit on accessory structures. Right now there are six accessory structures and there will be five when they are done. Bob Fennell said that the law limits them to three accessory structures. So I would argue, he continued, that you are changing a non-conforming use to another less intensive non-conforming use. A variance is needed for two accessory structures. Chairman Ross said that a studio which does not have full living facilities is certainly less

intense than a residence. Bob verified that the application for the studio, as it is now structured, is not for a dwelling unit. It will have heat and water, Chairman Ross said, but it will not have a full kitchen and would not be considered a dwelling unit. Jon Adams added that it will not have bedrooms either.

Neighbors *Bob* and *Susan Davis* came forward to examine the maps and sketches. They live immediately north of the property. Mr. Trimble said that the basic idea is to renovate and restore the existing house, to remove the small brown cottage and the structure (stall) behind the main barn, renovate and restore the barn, restore the white house and maintain it, restore/build a new structure in place of the garden shed which would act as a poolhouse for the proposed pool, put in an apple orchard and build a glass enclosed pavilion/studio in the woods. *Mr. Davis* verified that they are building to the north and said that they were told that the building would be to the south.

At 8:20 PM, Chairman Ross officially opened the Public Hearing. He said that he had walked the property and ascertained the location, which is in an area which is protected from everything. *Mr. Davis* said that his family were going to object to building to the south, but not to the north. *Mrs. Davis* said that it is within one thousand feet of the coastal zone. She said that their concern was the closeness of the proposed building. She asked why it is necessary to put it within the coastal zone area. Chairman Ross verified that it is within the WC (waterfront conservation) zone She that this zone is state and nationally designated and is supposed to remain unchanged. This being an accessory use and not a major domicile, she continued, I am curious about whether it is going to get past the Planning Board. How did it get to the ZBA before it went to the Planning Board, she asked. Chairman Ross responded that it is because they proposed it and it was denied because there are more than the allowed number of accessory structures. They want to change an accessory structure to a less restrictive use. To do that, he continued, they need a zoning variance. The issue for us is whether the proposed non-conforming use is less intense than the existing use. She verified that Board is here now for an interpretation.

Mrs. Davis asked Mr. Adams if he realized that he needs a permit for demolition. He said that he did and she added that the structure was built in 1843 at the same time as the barn was built and he might have a problem with that. Mr. Trimble said that they would follow the appropriate process. *Mrs. Davis* asked if they had the papers which authorize them to come before the Board. Chairman Ross verified that the Board does have the approriate papers. *Mr. Davis* said that he represents both himself and his brother in Ohio.

Mr. Adams asked if the Board could take an informal poll. Chairman Ross said that they generally do that in the comments. *Mrs. Davis* asked about the procedure followed by the ZBA and Chairman Ross outlined that for her. What we are looking at, he concluded, is their proposal to remove one residence from the property and construct a studio. *Mr. Davis* said that their question is, with sixty five acres to build upon, why pick a location with WC restrictions? Chairman Ross said that the Board does not do the site plan approval and the Special Permit; however, if the Board does approve it, they still have to go back to the Planning Board for a Special Permit. *Mrs. Davis* asked whether, in giving approval to change the use, the Board is saying that is OK to change the use in an area

where they should not be building. Chairman Ross responded that the Board is not considering a specific area. The question before the Board is replacing a residence with a studio. Then, *Mrs. Davis* said, you are just concerned with taking one away and putting one back and where they build it will be up to the Planning Board. That was verified. Bob Fennell explained that approval is not being granted for the specific site. Chairman Ross added that they have to look at the specific site, though, to see if it makes sense.

Bob Fennell read from the Code, saying that customary accessory uses or structures incidental to the special permitted use and located on the lot are not permitted in the WC district under the district schedule of use regulations. Chairman Ross said that that led the Board to where they are now. Mr. Adams said that this issue comes under another section, the non-conforming use section. *Mrs. Davis* suggested another location for the structure and verified that it will be up to the Planning Board to decide the specific site. She said that the Planning Board may say that they cannot do this as an accessory structure because of the coastal zone management program. Bob Fennell said that if the Planning Board asks for his determination, he will say that accessory structures are not permitted in the WC district. The law says that the building cannot be where they are proposing to put it. *Mrs. Davis* responded that then the Board can approve that they can tear down one structure down and put the new one anywhere as long as it not in the WC zone.

Mrs. Davis then discussed with the Board the survey, the laws regarding the thousand foot coastal zone and where that zone is actually located. They reviewed the maps and sketches and Bob Fennell researched the Code.

Mrs. Davis then cautioned Mr. Trimble to be careful about clear cutting as there is a clause in the Red Hook Zoning Code regarding cutting down trees. He said that all the trees on the property will be surveyed. She said that the landscaping was established in the 1920's and follows an English plan. Mr. Trimble said that this would be maintained and reinforced.

Chairman Ross said that the parcel is in two districts. He asked what is the percentage which falls in the WC zone. Jim Hegstetter said that it looks as though it is about half. After discussion, *Mrs. Davis* said that it would be worth the investment to have a new survey done using the mean tide. Chairman Ross asked for a copy of the current survey. Mr. Adams said that he will check with the surveyor to determine what methodology he used. Mr. Trimble said that this is just a boundary survey and they are doing a topographical survey. *Mrs. Davis* said that they should specify that they want it from the mean tide.

Chairman Ross said that the Hearing will be continued to 8:00 PM on December 12, 2007. John Douglas asked for clarification as what they are asking for. Chairman Ross responded that they are looking at removing a structure in the LB district and construct a studio in the WC district. He asked Mr. Adams to look at the section of the code regarding the majority of the parcel and get him his interpretation of that. He also said that he would talk to the Town Attorney about the legal issues. Mr. Adams said that he

would send his interpretation and his further comments to the Board within two weeks so that the Town Attorney can review that prior to the next meeting.

REVIEW OF APPEAL

8:55 Review of Appeal 07-18, Krinitsky application to reduce the side yard setback of proposed shed from the required fifteen feet to zero feet. The applicant's lot is located at 29 Glen Ridge Road, Red Hook, in the R1 zoning district. Chairman Ross told the applicant that zero feet is really tough. We can live with three to five feet. Before the next meeting, look at the most you can move it away from the lot line. Mr. Krinitsky presented e-images of his property and they were reviewed by the Board. Mr. Krinitsky said that it doesn't have to be zero, but twenty feet will put him in the center of the property where he wants to put in a pool. Chairman Ross said that twenty feet was not necessary. The only issues I have, he continued, are storm water and utility easement. That's plotted on your lot and is probably in your deed. If they have to dig in there, you'll have to do whatever is necessary to move the shed and then put it back.

The Board reviewed the pictures regarding the placement of the shed. Mr. Krinitsky said he had the Town put rebar in the storm water drain so that a child could not crawl into it. He also asked for a fence, but one was not put up. The drain empties into the field and is dry in the summer time, but can flood in the winter. The location he has chosen, he said, would block the view of any winter flooding. John Douglas asked Mr. Krinitsky what is a realistic setback that he could live with and Mr. Krinitsky said three feet. Chairman Ross said that the property backs up to an open field, not another house. The biggest issue is that there needs to be some clause stating that if excavation or disturbance of the utility or storm water drain is necessary, it will be your responsibility to relocate the shed. Mr. Krinitsky said that he would get a chain and pull it out. Bob Fennell asked how big the shed would be. Twelve by fourteen or fourteen by sixteen, Mr. Krinitsky responded.

Chairman Ross said that the variance request should be amended from zero to three feet. Normally, he said, he would request five feet; however village property is behind the parcel. He asked if the pins were still there. Mr. Krinitsky said that they have been buried but he could tell the Board where they were. Chairman Ross said that the deed shows a storm water easement and that easement says that it is supposed to be left forever open. We can let you put the shed close to the line with the understanding that if it needs to be moved, you have to move it. Mr. Krinitsky agreed. The Public Hearing was set for 7:15 PM on December 12, 2007.

ADJOURNMENT

A motion to adjourn was made by John Douglas, seconded by Jim Hegstetter and all were in favor. The meeting was adjourned at 9:15 PM.

FINDINGS AND DECISION

Appeal #07-16, Lewis Ruge application to erect an addition to an existing building which would increase building coverage from the required maximum of 15% to 18% and reduce the side yard setback from the required twenty feet to four feet.

FINDINGS:

1. The property is located in the B1 Zoning District at 7293 South Broadway, Red Hook.

2. Tax Map #6272-00-230310.

3. The zoning law requires a maximum coverage of 15% and a 20 foot side yard setback.

4. The applicant wishes to increase coverage to 18% and decrease side yard setback to four feet. The four foot setback represents what is existing and is not further encroachment on the property line.

5. There were no objections from the audience.

6. A variance would be of benefit to the applicant with no detriment to the community.

7. There will be no change in the character of the neighborhood.

8. There will be no impact on the health, welfare or safety of the community.

9. The request was not self created; it was forced upon the applicant by the large auto makers requiring more space for parts storage.

DECISION: John Douglas made a motion to grant the variance based upon the above findings. The motion was seconded by Jim Hegstetter and carried by a 4-0 roll call vote.

Dated: Nov. 14, 2007