VILLAGE OF RED HOOK
Zoning Board of Appeals Meeting
May 27, 2010

Present: Chairman, Victor Behoriam; Member George Beekman; Member Cliff Gubler; Member Paul Duntz & Member Roger Husted

Absent: Everett Pearsall, Member

Chairman Victor Behoriam opened the Village of Red Hook Zoning Board of Appeals meeting at 7:40 pm.

Motion was made by Member George Beekman to accept the previous minutes dated February 25, 2010; seconded by Member Cliff Gubler; All in favor. Minutes were approved as written.

Chairman Victor Behoriam introduced the application presented to the Board for tonight's meeting from Mr. Randy Haddad, whom is present this evening, and being represented by Jennifer Fier, for a relief from Section 220-9-b-36 of the Zoning Code – for accessory use of an apartment in the existing two-story garage located in the rear of the property at 20 Garden Street, Red Hook, New York.

Jennifer Fier spoke at this time to inform the Board that there are 2 existing structures on the property known as 20 Garden Street: one being a replacement for original barn that was there – had burned down and was rebuilt with an apartment above it - which apartment does not meet building code. They are going through the process now to bring everything up to code to make that an accessory use. There is no additional construction being made – everything there will stay the same – with the exception of building code requirements that would bring it up to building standards (of fire division portion and insulation portion). Jennifer advised if relief is not given for that portion of the code, then they would need to get a building permit to demolish what is there now.

Chairman Behoriam asked for removal of the apartment? Jennifer relied yes – the bathroom, kitchen and additional space. Chairman Behoriam advised Jennifer that the only item the Board would consider tonight is the variance request.

Jennifer advised that there was a correction that the acreage is .504 acres, not ¼ of an acre, as she indicated.

The SEQR Process (Part II – Section c - #C1-C7) was read by Member George Beekman.

C1. ZBA Board voted unanimously NO

C2. ZBA Board voted unanimously NO

C3. ZBA Board voted unanimously NO

C4. Member George Beekman indicated that the existing zoning is R-10,000 – 2 family maximum usage- Board previously had identified but Board did not see it having any environment impact on SEQR. Chairman Behoriam asked that the same wording from previous SEQR be used – all agreed.

C5. ZBA Board voted unanimously NO

C6. ZBA Board voted unanimously NO

A motion was made by Member George Beekman for a Negative Declaration regarding SEQR, seconded by Member Paul Duntz. All in favor. Chairman Behoriam declared a Negative Declaration.

PUBLIC COMMENT OPENED

#1. ***Brian Valley – 60 Garden Street, Red Hook, New York.***

Not agreeable to application. Mr. Valley asked if variances are a lifetime? Are restrictions on a variance forever? Mr. Valley indicated that the pole barn was an illegal building and that the restrictions were ignored.

Chairman Behoriam indicated to Mr. Valley that the Board is aware of the history and built in 1990 – to close to side lines – court ordered variance in 1990 for side setback for garage – 1991 fire inspection done for garage – letter written by Christian Haddad it be used only for a garage – Board does know how we got here.

Mr. Valley asked is variance still applies? Chairman Behoriam advised that the variance was granted for a side set back to build a garage.

Sam Harkins indicated that an area variance was granted with condition not to be used as an apartment.

Mr. Valley wanted to know if that was still in effect? Chairman Behoriam advised Mr. Valley that it is, but this application is to request a relief from that restriction.

Chairman Behoriam reiterated that Mr. Valley is not agreeable with granting of this variance. Mr. Valley indicated he is not. Mr. Valley indicated that this process goes on year after year and asked when does it end?

#2. ***Patricia Grassi – 21 Garden Street, Red Hook, New York.***

Ms. Grassi feels that we don't have to follow the law because this is not a legal apartment and is not up to code. She feels that this is blatantly looks at the zoning board and saying I don't have to follow your rules. The message that she is getting is that you can do what you want. She said that she has to deal with reckless ATV use; dog feces not being cleaned up; constant use of cars coming and going; kid in and out late at night; she has witnessed kids urinating outside. She wants her rights protected and is tired of coming in front of the Board because of someone violating the law. She feels that Mr. Haddad has gotten away with this for the past 19 years with no consequences. She does not feel that Mr. Haddad has a great loss in income for this variance. She feels that this is her home and that the 20 Garden St. property is a commercial venture. She wants to protect the quality of her home life and try to have it remain quiet.

#3. ***Don Douris 32 Phillips Street, Red Hook, New York.***

If the building was originally built and signed off with agreement of no apartment, why was the apartment in the back occupied? The law states it was signed off on – should be over and done with. He indicated it is the same with the Haddad property at 32 Garden Street. Chairman Behoriam spoke at this time to indicate the Board is only aware of 20 Garden Street. Mr. Douris feels if it was built illegally and signed off as not occupied - then it should stand forever.

Chairman Victor Behoriam closed the public comment at 7:53 pm.

Chairman Behoriam reiterated that the variance being sought is a use variance. Chairman Behoriam read the definition of a "use variance" aloud.

Mr. Valley asked what the "zoning" was for an apartment. Chairman Behoriam indicted that he would continue reading and get to that answer.

Chairman Behoriam indicated that an area variance would be necessary as well – for if use variance was granted – they would still need area variance for acreage since an accessory apartment can only be on ½ acres.

Chairman Behoriam read the definition of an "area variance" (Section 200-9b – Permitted Accessory Uses in R-10,000 Zone) aloud.

CEO, Sam Harkins indicated that with regard to section 200-19 a & b - 20 Garden Street was grandfathered in as a legal 2-family with continuation of non-conformance use.

Chairman Behoriam read the definition of Section 200-19 b aloud. Chairman Behoriam indicated that the more he read of this section, the less he can see that this could reach the criteria for either a use variance or area variance.

Member George Beekman indicated that he thought this was originally set up for a small secondary home for a family member or senior citizen.

Chairman Behoriam continued with reading aloud the use variance definition. Chairman Behoriam did indicate that any variances that get granted can have conditions on them – such as the variance that was granted back in the 1980's on this property.

Chairman Behoriam asked CEO Sam Harkins where the restrictions/stipulations come on to that variance? The Court? The Board? CEO, Sam Harkins indicated that the Court issued a variance and the Board granted an area variance for set back requirements for the building to remain with a Stipulation that it cannot be used for an apartment.

Member George Beekman read aloud the letter from Christian G. Haddad regarding his intentions not to construct an apartment in the barn at 20 Garden Street, Red Hook, New York (copy of letter for review on file).

Chairman Behoriam reiterated that the letter from Christian Haddad does not preclude anything – applicant could change their mind, but that the decision from the Zoning Board regarding the variance

with said Stipulation is permanent. CEO Sam Harkins advised that Board did ask for the letter from Christian Haddad for that reason.

Jennifer Fier spoke at this time to indicate that she mistakenly only put "use variance" and not both "use" and "area" variance. Chairman Behoriam made the change on the Application and Jennifer Fier initialed said change (copy on file for review).

With regard to "use variance" Member George Beekman read the worksheet for the "use variance" questions #1- #4. (copy of worksheet on file for review):

Chairman Behoriam asked the Board if they all had a copy of Mr. Haddad's financial statement. All members responded yes. Chairman Behoriam wants to discuss financial issue and indicated that he sees a business model and not a residential expenses list. Annual prep & clean-up, maintenance allowance; oil burner contract, water bill; applicance budget; garbage; lawn care, snow removal - etc. –

those are everyday expenses for most people – if most people accounted for all those expenses there would be a hardship. If the expense list was brought down, it works out fairly close breaking even of expenses vs. income. Chairman Behoriam feels there is no hardship and this is a residential neighborhood and the landlord/owner occupies one of the rental units.

Jennifer Fier spoke at this time to advise that there is no mortgage shown, but has loans listed. Member George Beekman said that was a substantial chunk of it and Chairman Behoriam said that this was an annual budget, so $3600 and showing $300.00/month for a mortgage. Chairman Behoriam again reiterated that as an individual and member of the Board he does not see anything that indicates hardship.

Chairman Behoriam spoke about owner living on said premises and collecting additional income from renting – that additional income is a wonderful addition to any individual around – why would Mr. Haddad's addition not be enough to survive?

Jennifer Fier spoke about Mr. Haddad wanting to stay in the community; having children in the school system and paying excessive taxes in the Village. Member George Beekman indicated that this was an investment and property and no one is guaranteed a profit.

Member Roger Husted advised that Mr. Haddad's indicated financial hardship is not enough to grant this variance.

Chairman Behoriam asked the Board if they had any other questions regarding Mr. Haddad's financial figures. Member George Beekman asked CEO, Sam Harkins to look at the taxes – house is assessed at $325,000 – but does not have school tax figure.

Chairman Behoriam indicated to Ms. Fier that since we have already been through this process in the past, and understand her situation and having a strong desire for this variance, that is why the Board is listening and trying to review and find a way, if at all possible, to see clear to grant variance, but assuring that if they cannot find a way, this will not work. The Board is addressing all issues in great detail because of this because whatever decision the Board shall make, the Board wants to make sure it was done with a lot of research and that everything is documented.

Member Roger Husted spoke at this time to indicate that although he was not present at the last Planning Board meeting and he does understand the applicant's needs and concerns, this is an investment property, but he does not feel that it is up to the Board to see that it functions that way. The Board's decision is based on the spirit of the zoning regulations, the spirit of the neighborhood's interest and everyone's interest and the spirit of a small Village that we all share. Member Husted indicated he feels it does not meet hardship.

Member Cliff Gubler spoke to indicate that the previous court ruled to let Mr. Christian Haddad have the building, with condition from brother to never put and create an apartment there – it was put to sleep –

a few years later Mr. Randy Haddad acquires the building – with an illegal apartment and now is in front of this Board once again to make this apartment legal – when does this stop? Zoning rules must be enforced for everyone. Member Cliff Gubler indicated that he feels there is no financial hardship.

Member George Beekman spoke at this time to indicate that nothing was paid for the house, and if Mr. Haddad cannot, on 2 rents, support the house – something is wrong. The proper thing to do would be to sell the house.

Mr. Haddad spoke at this time to talk about the circumstances of the property when his brother owned it – tragic fire – valuables lost – Mr. Haddad spoke about the neighbors the Valley's and advised that his brother Chris applied for the loan – got the money – starting building the new barn – and the neighbors complained. Randy indicated that his brother said to the neighbors (the Valleys) that his barn looked better than their house and that this is how it all started. It was 5 feet – and it should have been 15 feet setback from their yard. Randy indicated that when they acquired the property in 1995 – they kept it going – kids came along – wife – around 2001-2002 – graduated high school – Chris was granted a special permit for a two-family – wherein he was in front of the Board – nothing illegal about the 2-family house. When he was renting for full rent $900- he was still paying 100% of utilities. He needs a resolution because the building is sitting there and will get moldy. Mr. Haddad is willing to have stipulation set that it only be rented to senior citizen; one person.

Member George Beekman read next question. (#2 – Unique Hardship. Copy on file).

Chairman Behoriam said it is not unique hardship. Everyone has similar circumstances – there are many ½ acre lots without buildings newer than the zoning code. Everyone in the Village has the same size lot and everyone in the Village has out buildings – one sort or another. The two family house is not being considered – that is an accepted use.

Member Roger Husted asked how many other situations are like that on that street that were grand-fathered in? CEO Sam Harkins indicated 3 to 4 but two family houses – all pre-zoning. Chairman Behoriam advised that Mr. Haddad only had two grandfathered in – one of which we are reviewing. All members indicated that this was not a unique hardship situation.

Member George Beekman read next question. (#3 - Essential Character of Neighborhood -Copy on File.)

Member Beekman said the character of the neighborhood would change. Member Paul Duntz indicated it would increase traffic, increase people on the lots and in the streets. Chairman Behoriam advised that if the stipulation indicated one person – one bedroom apartment – it would not cause that much of a difference in that regard. Applicant did offer to accept stipulations.

Chairman Behoriam advised of the last time Mr. Haddad was in front of this Board for the same variance, that there were some other people that voiced their opposition to this variance, whom are not present tonight, and they should be considered tonight.

The neighbors present here tonight have spoken about how they feel it would be negative to the neighborhood.

All members indicated YES – it would change the character of the neighborhood.

Member George Beekman read next question. (#4 – Not Self-Created - Copy on File.)

Member George Beekman advised that having a garage that has already been altered was self created. Member Roger Husted indicated especially since it has been used illegally for some time.

Randy Haddad spoke at this time to indicate when he acquired the property and installed a septic system which was not Board approved. Mr. Haddad again reiterated history of premises.
Mr. Haddad indicated he did what he had to do to make a profit. Member Paul Duntz confirmed with Mr. Haddad that there is no mortgage on the property. Mr. Haddad indicated correct.

All member are in agreement – YES, it was self-created.

8:45 pm . Chairman Behoriam again opened the public comment.

Mr. Brian Valley spoke asking back in 1990 what was original intent? In his opinion, what he saw was not a garage, but an apartment.

8:48 pm. Chairman Behoriam opened to the Board for discussion and to make a motion.

Chairman asked the Board if they we wanted to site stipulations or skip stipulation? Stipulations would have to be a motion. Could be limited to any reasonable stipulation.

Chairman Behoriam indicated the stipulations would be as follows:

1 person maximum occupancy
Board of Health Approval
Compliance with County, Local Laws and NYS Building Codes
Compliance with Septic Permits
Compliance with Building/Fire Codes
Granting of Area Variance which includes 400 sq. ft. minimum - 600 sq. ft. maximum
Planning Board Approval
No Violations
No more than one vehicle
Subject to site plan approval from Village Board

Member Paul Duntz made a motion to approve the use variance with above stipulations to 20 Garden Street. Seconded by Member Roger Husted.
All in favor – 0
Against – 5
Board voted unanimously NO on use variance.

8:55 pm. Meeting adjourned.

LARA HART
Planning Board Secretary