

**VILLAGE OF RED HOOK  
Zoning Board of Appeals  
Workshop Meeting  
December 13, 2012**

**Present:** Chairman, George Beekman, Member Erik Cuthell , Member Paul Duntz and Member Roger Husted

**Non-Members Present:** Village Planning Board Attorney George Rodenhausen

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Chairman George Beekman opened the Village of Red Hook Zoning Board of Appeals Workshop meeting at 6:00pm.

Chairman Beekman asked the Board if they have all reviewed the ZBA minutes dated November 15, 2012.

***Chairman Beekman made a motion to accept the minutes dated November 15, 2012. Motion Seconded by Member Duntz. All in favor.***

Chairman Beekman announced the letter of resignation received from ZBA Member Cliff Gubler.

**#2. DGR Holdings, LLC (Rondack Construction) – 7412 S. Broadway & Firehouse Lane  
Use Variance/Area Variance  
Tax Grid #6272-10-388518**

Present representing Rondack Construction was Nick Di Gugno, Ron Goodman and applicant's attorney John Marvin.

Attorney George Rodenhausen spoke at this time to advise that the issue at this time is whether this Board can give approval of a use variance because the County did come back with their recommendation of denial for both use and area variance.

Attorney John Marvin, representing applicant, was present and indicated that this meeting was no adversarial, and that he is present this evening to get a feel of this Board, before applicant spends time and money, and with what they are applying for and this being a substantial area variance and sometimes when when you look at it with different perspective it can become not so substantial when looking at the surrounding buildings and what is there and that it is not as big as it seems when looking at the plans. Attorney Marvin said he is trying to help this

applicant by finding out what the initial impression is about what the ZBA wants and how this might go with other people in the Village that care about this, indicating that there were other issues as to what the Church has to show, and that the goal is to get this done. Chairman Beekman said the tests are specific as to area and use variances. Mr. Marvin advised that one thing that came up before this evening was that the letter sent by the County which sent a little bit of a scare, and feels that when the County sends something people take that as negative, but feels, after speaking with the Engineer, that they don't give a hard look at coming up and inspecting the site and looking at it and maybe saying this make sense, but they look at this as a big use variance. Member Husted asked if they have come to do a site visit. Lorraine Humphrey, representing St. Paul's Lutheran Church, said she has spoken with Noela Hooper, who advised that she herself has not come to inspect the site, and advised that the County does not override the local zoning boards and do not bring the Article 78 against anyone and never have, and this has happen before in the past, which she feels is encouraging.

Chairman Beekman said they point out that it does not come into zoning regulations as they are and that there are points that need to be addressed, specifically to a use variance. Lorraine Humphrey did state that there have been other public hearings on this and no persons appeared. Chairman Beekman said that this happens a lot but people can file after when they understand what is happening, and that is why these points must be addressed.

Attorney Marvin said he felt that looking at use variances and meeting the criteria, it is a tough criteria, but what happens is if the project makes sense to the Board, you do the best you can on each, and you make sure that the applicant gives all that they have, and feels that as long as you have enough you can rule either way you want, and probably if you rule on a use variance if you say no the chances of anyone changing that in an Article 78 are slim to none, but if you say yes, what you need is going to be ok and you will have method criteria because you might have the situation where nobody is going to do an Article 78 and if nobody does one and time goes by you are good and in the clear. Chairman Beekman said they would still have to meet with tests. Attorney Marvin said yes, but you can decide how strong that is. Mr. Goodman spoke at this time to advise that one reason the law is tough on use variances is to keep the roles of different Boards in balance. Mr. Goodman said that the reason the use variance provision is so difficult to meet is the general idea of those types of decisions about changing what the laws says should go back to the Village Board and not the different Planning and Zoning board and the use variance is saying that if you can't meet this test for a piece of property then you should go to the Village Board to change the law so you can build your building, and feels that these projects are equally valuable for the Village Board. Mr. Goodman

said use variance is difficult to meet because it is trying to kick you back to the Village Board and in some cases you don't have to do that because there is something unique about the property or owner. Ms. Humphrey asked if he was referring to the Board members who did not want to make it in the NMU. Mr. Goodman said the two of the Board members helped draft the NMU and feel strongly about the NMU, but he does not feel that they would not change it, but that they would rather have it be over there than here. Chairman Beekman said the problem with changing the zone is that will open up whatever they don't want here to the whole zone. Mr. Goodman said maybe it could be moved back and re-shaped. Mr. Goodman said that there are big buildings at the end of that Street, and the applicant put a good case in stating that this building is smaller than the ones there already. Lorraine Humphrey advised that there may not be any other buildings on that Street because the Church owns the cemetery land, which will never be for sale, and the Village owns the ½ acre on the corner that she believes they are not going to sell, and the Village owns across the street by the firehouse which has the firehouse septic in it so she does not think there will be any more building. Mr. Goodman said that this is a good argument that the Village should shrink this district down because at the other end maybe it makes more sense to maybe have neighborhood retail. Mr. Goodman said that a use variance is difficult because usually you have to make that appeal to the Village Board as an exception to change the zoning law and that exception is only where you have property with unique hardship.

Attorney Marvin said he has a little map but that on that whole concept maybe you can look at it as this is unique because you cannot really do a spot zoning change, and that would go into the hardship, so he feels that if the dialog can go along these lines of "what do we need and will the burned be and what are they going to need to bring back", in order to have a shot at this would be really helpful to them, so that both the buyer and seller can assess in order to know their chances.

Mr. Goodman pointed out in the code there is one sentence which is very strong... "financial disadvantage to the property owner is no proof of hardship within the purpose of zoning" and it is very important for everyone one in the community, for the use variance, the Board, by zone law, cannot consider the hardship of the church but needs to consider the hardship presented by this applicant.

Attorney Marvin advised he is doing a similar case to this one in Rhinebeck and they brought in affidavits and a lot of information from marketing efforts that it all fell through and failed and the cost to what would be a conforming use. Attorney Marvin again asked the Board what they

are looking for to really being able to consider this use variance. Mr. Goodman said you have to look at the State Law as well as the Village Law and the State Law has 4 tests for the use variance, and he thinks they have met 2 already. Mr. Goodman said that the two that have been met is the use variance, in his opinion, will not alter the essential character of the neighborhood and the alleged hardship was not self-created, and not self-created because the Village changed the law because it was industrial and now is something else. Chairman Beekman advised they made it an NMU zone encompass some in the R10,000 zone. Mr. Goodman said the 2 tests which are harder, is the difficulty of the hardship and that it cannot be used for the uses, and the uniqueness of the property. Mr. Goodman said this property is pretty flat and normal and that the location is unique. Chairman Beekman said we would need something from the applicant showing they tried to market it and no one was interested. Attorney Marvin said you have to go through each item and give them all you got.

Attorney Marvin said where he has seen the self-created come up the most is where someone did something they were not supposed to do and then they go in to create. Attorney Marvin had to leave the meeting at this time, but again stated that he is looking to help and direct this workshop to help both sides in deciding what needs to be done to get this use variance.

Chairman Beekman said we need to have criteria that the property itself is not contusive for what it is designed for and for what the zone allows for.

Attorney Marvin left the workshop meeting.

Lorraine Humphrey advised that the congregation of St. Paul's has approved the use and everything else on the block is similar. This will not be the only structure on the block with construction vehicles and equipment. Chairman Beekman said the problem isn't specifically excluding because of that and that they have a zone for that in Red Hook. Member Husted said that the Board that wrote this zone had a certain intent in mind and if this Board is going to override that, we need to have good reason. Member Cuthell asked what is really involved in changing an NMU. Member Husted asked why would they purposely want to exclude something like this given what was already around there, and was there a reason given or did they just never foresee anything like this. Chairman Beekman said when they created this zone, like for the Chocolate Factory, it was very difficult because the owners did not know what they wanted or what was going to go there. This Board has to deal with what they wrote and to change the zone itself, and adding anything to NMU, it would open it up to anything in that NMU zone. Member Husted said once you make a use variance you are saying this is an allowed thing for anywhere. Mr. Goodman said he understands a use variance is permanent,

but it also creates the opening that the next guy could ask for it too because the last guy got one. Member Husted asked if we redraw the line, then what are we leaving this as. Member Cuthell asked what the classification is as to the other side of the street. Mr. Goodman did not have a map. Member Husted the other side of the street is all NMU. Member Cuthell said this entire side of the street is non-conforming to that. Member Husted said there is LIB down the street, but you would have to rezone that and could not move the line. Member Cuthell pointed out the spot piece on the map and asked how many more properties could be affected if we grant a use variance for this property. Member Cuthell said he feels that this could be considered unique property. Member Husted, Member Cuthell, Attorney Rodenhausen, Mr. Goodman and Lorraine Humphrey reviewed the site plan, lots and surrounding area. Member Cuthell said this is an acceptable use with the exception that they want to store vehicles in it and that is what kicked it out. Mr. Goodman said there will be a truck that Nick drives and one other truck. Mr. Goodman said this came out as storage, but is not and that they are a commercial contractor and everything they have is in transit and goes in and goes out. Member Cuthell said when this started the issue was that in the NMU there is nothing that allows for vehicles being stored on a property. Attorney Rodenhausen said the use in the highway business is for shops with a contractor. Mr. Goodman said a lot of contractors would have equipment, and this is not what they do and that they are commercial general contractors and equipment is material handling. Mr. Di Gugno said 95% of the time the equipment is on the job site. Attorney Rodenhausen said this has to be a use variance. Mr. Di Gugno said the application was a bad choice of words and that the equipment is out in the fields with no intent for long time storage. Member Cuthell said if the LIB was created for the Chocolate Factory how could we get the same rezoned for this parcel. Attorney Rodenhausen said we would have to connect them and rezone the other side of the street. Attorney Rodenhausen said it is best to keep it residential because it is on a residential street. Attorney Rodenhausen said it makes sense to connect the Chocolate Factory with this lot. Member Cuthell asked how. Attorney Rodenhausen said through the Village Board. Ms. Humphrey asked why would we need to do that. Member Cuthell said because it would allow the use suggested for the lot in question. Mr. Di Gugno asked what do we have now that we can work with and feels that this Board agrees that it is really not obscene for that street to have something like this. Attorney Rodenhausen said yes but it is not an allowed use, and it is actually very different from these commercial uses. Attorney Rodenhausen said this is more light industrial business.

The Board Members, applicant and all persons present continued discussions and review of the site plan submitted.

Mr. Goodman said it comes down to what Nick and himself are looking for and if it is worth pursuing.

Lorraine Humphrey said that the Church will not exist in another 2-3 years without selling this property and that the Church is running out of money. Member Husted asked how long can you demonstrate that you tried to market it, and that it already failed at the firehouse. Ms. Humphrey advised that they subdivided the property and it finally came through in 2010 but they tried to sell it before that, but the water issue held them up. Attorney Rodenhausen said It has been there for six years which is in your favor because of trying to sell this. Mr. Goodman said he should have something back in a few weeks with each criteria and they will have Attorney Marvin draw up something and they will see how it is accepted. Chairman Beekman asked if they would rather have another workshop. Mr. Goodman said whatever the Board would like.

***Chairman Beekman made a motion to adjourn the ZBA Workshop meeting at 7:15pm. Motion seconded by Member Cuthell. All in favor. Zoning Board of Appeals Meeting adjourned.***

Submitted by,

Lara Hart  
Secretary for the ZBA

(Note: Secretary Hart took minutes from recording but was not present at meeting)