VILLAGE OF RED HOOK
ZONING BOARD OF APPEALS MEETING
April 25, 2013
7:00 PM

Chairman Beekman opened the meeting at 7:00pm.

Present: Chairman Beekman, Member Duntz, Member Cuthell, Member Husted and Member Rider.

Motion made by Member Husted to accept the minutes of the ZBA Meeting dated April 4, 2013. Motion seconded by Member Duntz. All in favor.

#1. PAUL & NAOMI MOZER 90 W. Market Street USE VARIANCE

Chairman Beekman advised the applicant on how hard it was to obtain a use variance and asked the applicant if he was aware of requirements for a use variance and if he has reviewed the use variance tests involved. Dr. Mozer advised that he reviewed what was online at the Village website. Chairman Beekman advised that this property is in the R10,000 zone which does not offer two-family houses except if it is owner occupied when renting the other out. Chairman Beekman said in the future this may change, but that this will not happen for some time.

Dr. Mozer presented and read his proposal for 90 West Market Street.

Chairman Beekman again read aloud the New York State definition of a use variance. Chairman Beekman read aloud the use variance tests from Village Law.

Chairman Beekman asked the applicant if he had a copy of these tests. Applicant replied yes.

Chairman Beekman advised that test #3 would not be difficult because he felt it would not alter the character. Chairman Beekman said back in the day the zoning board would give special use permits but we no longer do that and it is done by the planning board. Member Husted asked if back in 1983 this property was given a special use. Chairman Beekman said yes to have a commercial office in a one family residential house. Member Husted asked if this was the only one in that section that needed it because there are others. Member Rider asked if it was before home offices because there is a home office thing – Chairman Beekman said he is not saying there aren't but that this is granted and they do exist. Member Rider asked if it was a special permit or a home office issue. Chairman Beekman said it was done by the zoning board of appeals as a special permit. Chairman Beekman advised that they tried to do this back in 1977 and it was denied and it did get through in 1983 which was allowed to allow for an office in there. Member Husted said right now it can stay as it is part business part residential and asked if the special permit runs with the property. Member Rider said that it why she was

asking about the home office because that would expire when the owner moved out. Chairman Beekman said there were other options one being a one-family. Member Cuthell said the issue is that the use variance being difficult and for which of the tests? Chairman Beekman advised he felt that it would be difficult for at least 3 of the 4 tests. Chairman Beekman again stated that meeting all 4 tests would be very difficult, especially due to purchasing this property with these restrictions. Chairman Beekman advised Dr. Mozer that he acquired the property with limited options. Chairman Beekman said owner would have to demonstrate those type of issues with competent financial evidence, say that a year from now that they tried to sell it and showing it was listed. Member Husted the Board spoke about changing the zoning and asked if it was the intention of the Board to combine these 2 zones. Member Cuthell advised that the committee is only in discussions rights now. Member Husted said if that is the ultimate intention then that makes it a lot easier for this board to consider a use variance in light of that. Chairman Beekman said he understands, but that we cannot work on the anticipation of it and among other options, you could file an Article 78 with the Village Board pointing out that it is unreasonable restriction given other ones in the area that exist and then you would have to figure out how many other 2-family homes are in that R10,000 zone. Dr. Mozer said he counted at least 15. Chairman Beekman said if he documented those things the Village Board could make a change in zoning, and that would be one option. Chairman Beekman read the permitted uses from the Village of Red Hook zoning book. Member Cuthell said the zoning states that owner has to be resident in one of the apartments, which also goes for the R20,000 zone as well. Dr. Mozer said that due to the size of this lot, technically there could be 2-3-4 houses built on this lot, but that is not his intention, but that this is an allowable use. Member Rider asked if something was said about a double lot. Dr. Mozer said this lot is .5 where other lots are .15. Member Rider asked if this was one lot and combined into 2. Dr. Mozer said he thought originally it was one. Member Rider said if it had been then 2 lots combined…. Member Cuthell said on the grid it is shown as a single lot and does not have a separate lot line. Member Rider said she knows it does not now, but wondered if maybe at one time it did. Dr. Mozer asked if the planning board could give a special permit. Member Cuthell said he does not think the planning board can give a special permit to something that is not allowed in zoning. Chairman Beekman said #2 of the test is an issue. Member Rider said that the fact that this was a double lot could make it unique. Chairman Beekman advised the applicant that he just wanted to go over other options and does not want the applicant to incur unnecessary costs. Dr. Mozer said he understands and is just looking to have the most minimal impact on the neighborhood. Chairman Beekman suggested that this be tabled to next month to give the applicant time to come up with other options. Dr. Mozer asked for a description of what would be substantial enough for the Board to look at it again. Chairman Beekman advised the applicant that legal expenses could be incurred and the responsibility of the applicant. Member Husted asked if applicant came back with factual information about financial hardship of the lot what would that need to be. Member Cuthell said then 1 & 3 would be ok and we would have trouble with 2 & 4. Chairman Beekman asked the applicant if he could market this as a large home. Dr. Mozer said that would certainly not be in the character of the neighborhood and that it is currently 2 units. Dr. Mozer asked if it were a mother/daughter situation what would the delineationof the larger space and the smaller space have to be.

Member Cuthell said it wouldn't – it would be owner occupied with an apartment which is acceptable. Other options were discussed among the board members and applicant. Dr. Mozer asked if a special permit goes away once the property is sold. The Board was not sure, but would ask CEO Harkins. Chairman Beekman said he thought it was revocable. Member Rider said the Village attorney would know that. Dr. Mozer asked what proof would constitute financial hardship. Member Duntz said it would need to put on the market and sit for years. Member Husted said the law is not very explicit as to what that means, but it is explicit enough. Chairman Beekman said #4 of the test, hardship, would be the toughest to meet. Dr. Mozer asked that he would need no further approval if it sold as the current apartment as the primary residence. Member Husted said correct that is an allowable use. Dr. Mozer asked if because it was a special permit could he ask for it to be revoked or is it automatically revoked. Member Husted said he does think this permit says he can only use it for that and he can still use it for all the other allowable uses as they always have been. Chairman Beekman said yes, unless it is a use variance because that locks it in with the property. Member Rider said it could be advertised as owner occupant with an apartment without actually changing the situation pre-binding buyer. Member Cuthell said that could open the market up because if someone was looking for a large house and not a dental office with an apartment, so that could enhance it. discussions of options were continued. Member Husted asked how many people can you rent to in one dwelling that are not related. Chairman Beekman said there is number and can compare it to the R10,000 in that in a one-family house not keeping more than 2 boarders. Member Cuthell felt that that description was intended to imply that if one wanted rent other rooms in a home that you cannot rent 4 bedrooms in a house, and that there is a limit, and when you reach a certain number of rentals is can be considered a boarding house. Member Cuthell advised to talk with CEO Harkins regarding number of rooms allowed to be rented.

Chairman Beekman advised the applicant that the money paid towards certified mailings could be refunded if not used.

Member Cuthell said the original intention in the R10,000 is to maintain residential status.

Dr. Mozer thanked the Board for their time and their insight. Chairman Beekman advised the applicant that this would be tabled to next month and that the applicant would need to inform the building department secretary of his decision if he is going to move forward.

Member Husted suggested that CEO Harkins be asked 1.) special permit and if it is revocable and 2.) number of renters in an apartment before it is considered a boarding house.

Chairman Beekman made a motion to table this matter to the next ZBA meeting which would be held on May 23, 2013. Motion seconded by Member Rider. All in favor.

#2. LISA GRIFFIN 7361 SOUTH BROADWAY USE VARIANCE
Tax Grid # 6272-14-278485

This matter is a continuation of a use variance application to allow for the sale of outdoor plants, by property owner's friends, on Sundays in the parking lot when their deli business is closed.

Lisa Griffin was present.

Chairman Beekman said this matter was tabled from last month and that he was in contact with Jane Simonetti from the Office of the Conference of Mayors and Ms. Simonette sent case law to this Chairman, and Chairman Beekman advised that based upon that it is a 3 month span – one day per week – when business is closed and only affecting a portion of the parking lot – and that the Conference of Mayor titles this as "distinguished" which allows for an expansion of a use variance where no further use variance is required and that he proposes the following motion:

That with facts from the applicant and information received from the Conference of Mayors and according to Chapter 29 of the New York State Zoning Law that no further use variance is required to expand the use as requested for the sale of flowers in the parking lot while the business is closed. Motion made by Member Cuthell. Motion seconded by Member Duntz. All in favor.

Member Duntz made a motion to close the April 25, 2013 ZBA meeting at 7:55pm. Motion seconded by Member Cuthell. All in favor.

Submitted by,

Lara Hart, ZBA Secretary