

Town of Red Hook
Zoning Board of Appeals Meeting Minutes
May 14, 2014

CALL TO ORDER

The meeting was called to order at 7:00 PM by Chairman Annas.

ROLL CALL

Members Present: Nick Annas, Tim Ross, Ken Anderson, John Douglas, Trilby Sieverding
Absent: Jim Hegstetter, Chris Carney

PRELIMINARY BUSINESS

Minutes of April 9, 2014: Chairman Annas asked if everyone had read the April 9, 2014 Minutes and invited comments or questions. Hearing none, Tim Ross made a motion to accept the Minutes as written. The motion was seconded by John Douglas and all were in favor.

Planning Board Minutes and Letters: Chairman Annas discussed the possibility of the ZBA having an interpretation regarding a party on Lasher Road who's asking to run a hotel for prison parolees that are going to Bard College. It is not within the zoning standards and there is some argument over the interpretation so, it appears that the Planning Board will probably push to the ZBA to get an interpretation.

Building Inspector/ZEO Permits, Memos/Comments: There were no comments from the Board.

Comments from the Chairman: Chairman Annas had no further comments.

PUBLIC HEARING

7:05 Appeal 14-01, Donald W. Triebel application to increase the maximum number of children enrolled on a regular basis at a child day care center to 120 children. Section 143-77 A of the Town Zoning Law limits the number of enrolled children to 40. The applicant's property is located at 208 Rockefeller Lane in the R1.5 zoning district, Tax Grid #6273-00-921623.

Chairman Annas opened the Public Hearing at 7:10 p.m. and asked Mr. Triebel to review his appeal.

Chairman Annas specified that there were 60 children enrolled at Half Pint Day Care Center. Whether they are there or not, is apparently irrelevant based on our zoning code. He may have

60 enrolled children, at which there are only 30 there at a time. He's recognizing that fact. The State looks at how the property is occupied. There can only be so many people there because there is only so much space. What Mr. Triebel is asking for is a variance that would be within the State's limits but would exceed the Town interpretation.

Debbie Gillen, one of the Half Pint Day Care Center's neighbors introduced herself to the Board.

Linda Lovallo, also a neighbor near the Half Pint Day Care Center, asked what the square footage in the building was and how many children per employee.

Copies of the paperwork outlining these measurements were copied and handed out to the two neighbors.

There was discussion on the measurements of the rooms.

Ms. Pedatella gave the ratios of children to employees.

Ms. Lovallo expressed her concern for the increased amount of traffic that would be on the road with the amount of children that might be enrolled in the day care center.

Mr. Triebel explained that the school size between the Half Pint Nursery School and Funshine Nursery School would be the same size student wise. The difference is at Half Pint, the children would come on a daily basis and at the Funshine Nursery School the children would come to a 2, 3 or 5-day program.

There was much discussion regarding the amount of children that would be at the nursery school at one time.

Chairman Annas clarified that the Town code says 40 enrolled students. Back in 1992, Half Pint Day Care Center had gotten a variance requesting 60 enrolled children. Mr. Triebel is asking to double that number.

Ms. Lovallo stated that doubling that number will be too much of an impact for the people who live on Rockefeller Lane.

Ms. Lovallo asked to see daily enrollment numbers.

Ms. Pedatella stated that they were allowed by the State to have 56 children at one time. Their enrollment was more than that number.

There was a lengthy discussion regarding the back of the building and the garage.

Chairman Annas asked Mr. Triebel how many children the State will allow on the premise at any one time.

Mr. Triebel said according to the calculations and what the rooms are currently set up for is 93.

There was discussion as to how many trips would be made in and out of the nursery school daily and how that would create more traffic.

Ms. Gillen, is concerned about the trees, fence and snow removal. Are the trees on her property? Is the fence on her property? When Half Pint Day Care Center's driveway was plowed, the snow was pushed on her property and her property was dug up.

Chairman Annas said these problems that Ms. Gillen is bringing up have no impact on what Mr. Triebel is asking for. It doesn't directly affect how the Board will rule on this request for variance.

Chairman Annas stated that Mr. Triebel has to meet all these requirements before he can ask for this variance.

Chairman Annas stated that the Board was concerned with how much useable space Mr. Triebel has indoors and outdoors. Apparently, he has adequate space to accommodate far more than what you're requesting.

Mr. Triebel said the Town is currently one child per 200 sq. ft. The State and Department of Health's regulations is one child per 75 sq. ft. According to the Town of Red Hook, we are at 90 and the State and Department of Health, we are at 240 kids.

Tim Ross said the outside play area exceeds the outside capacity of the building. It's not an issue from capacity; it's an issue of encroachment or interference with a neighbor's property.

Ms. Lovallo would like to see the accurate record of how many square footage is on the tax grid. What are they paying for school taxes and land taxes on? Divide that square footage by whatever Don claims the square footage is supposed to be per child. Ms. Lovallo's only concern is the traffic impact and safety for the residents on Rockefeller Lane.

Chairman Annas addressed Ms. Lovallo's concern of traffic impact. For however many students Mr. Triebel has enrolled, there's a certain amount of traffic in those facilities on a typical daily basis and Mr. Triebel is asking, in essence, to double that.

Chairman Annas asked Ms. Lovallo if that would be tolerable to her.

Ms. Lovallo said it would not be tolerable to her and it impacts her life every day.

John Douglas asked Mr. Triebel is he would be open on weekends and major holidays.

Mr. Triebel said no.

John Douglas asked Mr. Triebel what his operating hours would be.

Mr. Triebel replied 7 a.m. to 6 p.m. during the school year. During the summer months, the enrollment almost drops in half.

Ms. Gillen discussed parking issues at the Half Pint Day Care Center and where were the parents picking up and dropping off their children going to turn around. Ms. Gillen also said Half Pint Day Care Center's staff were parking on her driveway, but that stopped four years ago.

Chairman Annas asked Mr. Triebel how much parking space was available at the site now.

Mr. Triebel did not know at this time.

Chairman Annas said Mr. Triebel would have to satisfy both the Town and the State to show he has adequate parking to accommodate both the clientele as well as the staff.

Mr. Triebel suggested that if there is room to drive along side of the building, staff could park behind the garage. The fence could be removed which would allow for an additional 8-10 cars to park there.

Tim Ross said Mr. Triebel's idea for parking was a good one but there's a question about that property line; you don't want to interfere with that. Tim said that when he looked at the property, he saw the front pins but no pins going back to the flag lots.

In looking at the site plans from when Half Pint Day Care Center was in the planning stages, Chairman Annas noted that there are 16 parking spaces shown and they are all down the east side. There are 12 adjacent to Ms. Gillen's property and 4 on the west side of that. There is a septic system in front of the building, primary field lines that are directly in front, and you don't want to park over them, and you have an expansion which generally is supposed to be left vacant in the event you have to use that.

Chairman Annas asked Mr. Triebel if 16 parking spaces are sufficient for what he's asking for.

Chairman Annas looked at another site plan from the year 2000 when Ms. Pedatella was putting an addition on the building. On that site plan it showed 21 original parking and the addition behind the garage, an additional 7 spaces. There are a total of 28 spaces.

John Douglas said 28 spaces would be more than enough parking for Funshine Nursery School.

Ms. Gillen claimed she was never notified of the Public Hearing back in 2000. In looking back at the files, Ms. Gillen was indeed notified by certified letter and signed for it.

Trilby Sieverding said there was a lot of interesting debates going on about facts that she is surprised aren't already known. She was trying to figure out what our ZBA needs to make a decision. Trilby wanted to know if this was a use variance or purely an interpretation.

Tim Ross said it is an area variance, an increase of numbers.

Chairman Annas explained that Mr. Triebel's request was for an expansion of 60 enrollees to 120 enrollees. Mr. Triebel's argument is it will not impact the facilities as far as the State is concerned. The facilities will never be overloaded. One of the neighbors had brought up that it will double the traffic which is a legitimate argument.

Trilby Sieverding didn't see how this request could be an area variance when they were talking about the number of children within the building and they aren't increasing the footprint of the building. The public hearing doesn't say whether it's a use variance or an interpretation. Trilby was under the impression this was an interpretation.

Tim Ross explained the original to increase the number from the bulk regulations, from 40 to 60 was an area variance. This is a request for an increase from that to essentially the 90 because enrolled is not defined so, therefore, it is really maximum on the property at any given time. It's a change in the number.

Trilby Sieverding said we have to consider whether it's an area variance, a use variance or an interpretation to determine what criteria we have to consider when narrowing down the criteria to make a decision.

Tim Ross said it's a permitted use in the zone so it's not a use variance. It's an intensity, so it's an area variance.

Chairman Annas assured Ms. Gillen that whatever was going to be done on their property, not yours.

Chairman Annas further stated that Mr. Triebel and Ms. Gillen have to appropriately identify that boundary and agree on what that boundary is.

Discussion of the site plan and maps took place.

Tim Ross stated that ambiguity and definitions favors the applicant. Enrolled is not defined.

There was further discussion on the term "enrolled."

Ms. Lovallo asked for a letter of the law that states there are 93 children that are allowed to be on 2,940 sq. ft. of property. Ms. Lovallo also asked if there was a map of the building that would show the square footage of the building.

Tim Ross said if the building inspector went out to the property, measured the building, put it in a letter and included the copy of the law, this would be an official document.

Ms. Lovallo agreed to this.

There was some confusion as to what was trying to be accomplished at this meeting tonight.

Chairman Annas explained that Mr. Triebel's request is for a variance from 60 enrollees to 120 enrollees. What does this actually mean? It's not ambiguous. It's erroneous. What Mr. Triebel is saying is 120 enrollees may only be 40 a day or could be up to 93 a day, only what the State allows.

Discussion ensued between Mr. Triebel and Ms. Lovallo regarding the amount of children that could be enrolled at the day care center.

Chairman Annas asked Ms. Pedatella how many children she typically had at one time at Half Pint Day Care Center.

Ms. Pedatella stated typically, at least 40 children.

Chairman Annas stated that you're talking about potentially doubling this number. That's the point. They want to potentially double the number of children on the premises at any one time.

Based on that simple fact, does that cause a problem for either of you two (Ms. Lovallo and Ms. Gillen), and if so, what is it?

Ms. Lovallo said the problem for her was the safety concern of increased traffic on Rockefeller Lane. The road is a secondary road. There are no markings for a bike path. There's already lots of traffic on the road.

Ms. Gillen said the problem for her was the same as Ms. Lovallo's.

Ken Anderson said that was an issue that the Planning Board has to look at, the traffic. Mr. Anderson further stated that he had a dilemma – regarding attendees and enrollees. They are not the same number. You can have a certain number of enrollees but at no time can you exceed whatever number we come up with and that's important.

Chairman Annas stated whatever conditions you have there now, it's going to double. In the eyes of the State, you can accommodate up to 93 children. In the eyes of the neighbors, they see a doubling of the clientele in your facility and that's their concern.

Trilby Sieverding said that per the Town rules, its 40 children and they have a variance already for 60 children.

Ken Anderson said that when the State comes in and takes a look at what's going on there, I think they have a magic number of 93 and if they are counting heads and come up with 94, then they have exceeded the State capacity.

Ms. Pedatella stated that if this ever happened, they would get a violation and no one ever wants this on their records.

Ken Anderson further stated that the Zoning Board has no choice but to go along with the State requirements and he sees that as the difference between the attendees and enrollees. You can

have so many enrolled but if there are no more than 93 there at any one time, you're operating under the parameters of the law. That's where we should look at it.

Chairman Annas stated that the State looks at from a safety issue. They don't care what the neighbors think. The Town has to look at it from the residential area, what the neighbors think. You can't throw a facility amongst others.

Chairman Annas further stated that the Town has, when they built this code, put a far greater limitation on it than did the State. There's some reason for that.

John Douglas stated that lots of times these codes are put together by taking other codes from other places and lots of times things are not scrutinized. That sounds good, it's not an issue at the time and they move on.

Chairman Annas stated people buy property because they are looking at what they are buying, what's there, what's surrounding it and what the limitations are that can surround them. Now all of a sudden we change the rules and there's no fairness.

Trilby Sieverding read the five criteria the ZBA would consider for an area variance. Trilby continued to say that she mentioned the five criteria because this is what the Board needs to base their decisions on; the Board has a legal obligation. These decisions have to be based on fact, not all the other, although interesting and heated, issues.

John Douglas suggested that the entire Board should be here to rule on a decision.

Tim Ross asked Jackie to have Steve Cole, CEO, to get the exact square footages of those rooms 1-6 to give to Linda. Tim asked Mr. Triebel to get the realistic daily head count that you would expect to show up on a daily basis as a regular enrolled number. Go back, look at your enrollment records. Let's get real numbers not as regular numbers which you would qualify as regular enrolled full time equivalence.

You have to make this an honest projection if this were to were happen what would the real regular full time equivalent be at that site so that we can make a realistic judgment of what the impact of traffic would be because I think this is the biggest concern here

John Douglas requested from Mr. Triebel to show the Board a one week schedule of how many students, a head count/attendance sheet basically, from what time the children arrive and what time the children leave, etc.

John Douglas requested that Ms. Pedatella bring in her OCFS licenses, a copy of same shall be given to Jackie, so that you have everything associated with how many children are allowed on the property by OCFS. Anything that mentions square footages, appropriate numbers.

Chairman Annas asked Mr. Triebel, "If you don't know how many attendees you will have on any given day, how do you know how many staff to have for that day?"

Mr. Triebel said they were always overstaffed. They were always prepared to have the maximum in each classroom

There was discussion on how many children there were at both of the Funshine Nursing School sites.

Chairman Annas said that no matter what the ratio of attendees to enrollees is, the fact remains that if you double one of those, you double the other. If you go from 60 to 120 on enrollees, then you are going to double the amount of attendees no matter what that is.

Mr. Triebel emphasized a day care and a nursery school are two different businesses.

Ms. Pedatella said that in the past two years, they have had an average of about 30 children that were in the daycare on a daily basis, on the premises at any one time.

Ms. Pedatella stated that when the economy was better, approximately 3 yrs. ago, her typical low was about 46 children.

Chairman Annas asked Ms. Lovallo and Ms. Gillen what future impact this would have on them should the number of children double.

Ms. Lovallo stated she's comfortable with the way things are now. She doesn't want to see more traffic on the road. That's why she is here tonight.

Ms. Gillen stated that her concern is the increase of the cars coming in and out of the driveway and the increase in traffic as well.

Tim Ross stated that the Board understands that Mr. Triebel has a business decision to make and needs a specific head count for it to make sense and, the Board has an issue to make; what's reasonable for the Town as a whole.

There was discussion as to whether or not Mr. Triebel would like to have the Board make a decision tonight or wait until next month when there would be a greater possibility that the whole Board would be in attendance.

Tim Ross said another month would answer some of the neighbors questions: Mr. Triebel could get some supportive documentation for what his real enrollment is so the Board would have a better handle on that and, Mr. Triebel could get a little more data on actual trips, which is a concern.

Tim Ross stated that we evaluate Ms. Lovallo's and Ms. Gillen's comments with the facts in front of us. That's what we do. That's the reason we have Public Hearings, so that we do get the input from the public.

John Douglas stated the number can be modified down, if Mr. Triebel can come in next month with a different enrollment.

Chairman Annas asked Ms. Lovallo and Ms. Gillen, “With everything you have heard, is there a number with which you can live?”

Ms. Lovallo stated she has no problem with the amount of children that are at the Half Pint Day care center now.

Ms. Gillen stated that she is not comfortable at this time with the doubling of traffic

Ken Anderson said he would like to see a draft in motion.

Ken Anderson wanted to know if the motion that we are dealing with tonight applies to all of the future day care centers that may come into this area.

Chairman Annas said, “No. We are only granting a variance for this single facility.”

Tim Ross stated that any decisions the Board makes would have to be made with the same logic at a different site based on its unique location but, each spot is unique and you make a decision based on the facts you have for that site and pertinent matters.

Chairman Annas asked Ms. Lovallo and Ms. Gillen how they would feel if the request for variance was revised to 90 enrollees but restrict it to 60 children on site at any one time.

Ms. Lovallo said she still had a problem with that. The problems is that one person that could be there for eight hours instead of being an enrollee that’s there for eight hours, can turn into some three attendees for the day or some onsite for the day. You’re increasing that one car to three cars which is nine trips.

Chairman Annas said that based on the variance that they currently have that’s in force for perpetuity, they can have 60 children.

Ms. Lovallo stated that even though Half Pint Day Care Center and Funshine Nursery school are run honestly, she still has a problem with safety issues and the impact of her quality of living. Ms. Lovallo further stated that she grew up here and she loves it here. She’s not trying to create problems for anyone. She just wants to sustain the quality of life she has now.

Motion to Continue Public Hearing

Tim Ross made a motion to continue the Public Hearing to June 11, 2014 at 7:20 p.m. The motion was seconded by John Douglas and all were in favor.

REVIEW OF APPEAL

9:55 Appeal 14-02, Susan M. Simon and Elizabeth A. Jones application to convert a 500 sq. ft. portion of the second story of an accessory building (barn) to be used as an accessory apartment. The District Schedules of Use Regulations (143 Attachment 1) does not permit an accessory

apartment in the hamlet zoning district. The applicants' property is located at 38 Spring Lake Road in the hamlet zoning district, Tax Grid #6373-01-319857.

Ms. Jones presented their appeal. The applicants wish to provide living space for Ms. Simon's mother. Ms. Jones explained that they have invested a significant amount of money around their property and have improved the neighborhood dramatically. They are trying to refinance and have been turned down because they won't count the improvements in the barn project because it is not residential and they consider that improvement to be commercial and it is not. It is a residential property and we have a variance for a home/office in that accessory building. The Wells Fargo appraisal is \$400,000 except for that building. It's for the house only. Wells Fargo will not count that building unless there is a residential space in that building. Ms. Jones explained that Ms. Simon's mom is 86 years old and lives alone and further explained other mental and physical issues with Ms. Simon's mother. They would like Ms. Simon's mother to live with them but, she refuses to live in their space. Ms. Simon's mother will only consider moving to their property if she had her own separate space because that is what she is used to. The space is there, it doesn't change the footprint of the property whatsoever.

Tim Ross told the applicants that what they have done to the property is very nice. He explained that this isn't an area variance, it's a use variance. Use variances are very difficult.

Ms. Jones feels they have met the criteria for a use variance.

Chairman Annas asked if Ms. Jones and Ms. Simon had any objections to the Board members coming to look at their property.

The applicants did not.

Tim Ross explained to the applicants that the language of the use variance hasn't changed. Tim read the four criteria that need to be met for a use variance.

Tim Ross further stated that he thinks they have competent financial evidence but they're losing some benefit. The "all" is a little harsh, but it is a very high hurdle to get over.

Tim Ross further stated that an accessory apartment, within the principle dwelling, is a special permitted use. All four of these criteria have to be met. The Board needs pretty strong evidence to say that you're not getting any return on the property.

Trilby Sieverding mentioned that number 4; demonstrate that the hardship was not self created. That's a tough one to meet.

The Board reviewed the floor plans provided by the applicants.

Tim stated that Dutchess County will have to be notified of this use variance because the property is on a county highway.

Trilby Sieverding reiterated that all four criteria have to be met and if everybody agrees that they have been met, then a restriction could be written in but, that's a tough one.

The Public Hearing is scheduled for Wednesday, June 11, 2014 at 7:05 p.m.

ADJOURNMENT

Trilby Sieverding made a motion to adjourn the meeting. The motion was seconded by Tim Ross and all were in favor. The meeting was adjourned at 10:25 p.m.

Respectfully submitted,

Jackie Fenaroli
ZBA Secretary