

Town of Red Hook
Zoning Board of Appeals Meeting Minutes
June 11, 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, Chris Carney, Ken Anderson, Trilby Sieverding
Members Absent: Jim Hegstetter, John Douglas

PRELIMINARY BUSINESS

Minutes of May 14, 2014: Chairman Annas asked if everyone had read the May 14, 2014 Minutes and invited comments or questions. Hearing none, Trilby Sieverding made a motion to accept the Minutes as written. The motion was seconded by Tim Ross and all were in favor.

Planning Board Minutes and Letters: There were no comments from the Board.

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

Comments from the Chairman: Chairman Annas had no comments.

PUBLIC HEARING

7:05 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.

The day after the May 14, 2014 ZBA Meeting, the applicants withdrew their application for a use variance.

PUBLIC HEARING

7:06 Continuation of Public Hearing for 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 7:08 p.m. and asked if anyone had any comments.

Ms. Lovallo had a comment regarding the minutes that were published from the May 14, 2014 meeting. She continued to say that back in 1992 Half Pint Day Care got a variance for 60 enrolled children. Ms. Lovallo said she hasn't seen that variance yet. When she surveyed the Dutchess County Parcel Mapping, there was not even a building on the property in 1992 and the building doesn't even appear on the property until 1995.

Ms. Gillen said that they the Half Pint Day Care didn't open until 1996.

Chairman Annas asked Ms. Pedatella when the building was constructed.

Ms. Pedatella stated that in 1992 they broke ground.

Ms. Gillen expressed her concerns of parking, number of children, risks of contamination form black top, stones, etc.

Chairman Annas stated that should a variance be granted to expand the number of enrollees permitted in the day care center, Mr. Triebel has to conform to Town code regarding all those aspects that Ms. Gillen brings up.

Ms. Gillen explained that she went through everyone's variance at the Town Hall. She went through the Board of Health and the Office of Family and Child Services. She stated that she did her homework. She further stated that nobody has variances listed unless they can show them to her.

Tim Ross stated that he was on the Board at that time when the variance for 60 children was granted. They were then sent to the Planning Board. They went through site plan approval process. I am not aware, when the need arises to expand your parking, you're supposed to do that.

Tim Ross said, "We have the minutes and the approved site plan that the Planning Board gave to the Pedatellas."

Ms. Gillen said that when she came to the Town Hall to look for these, no one could find them.

Tim Ross stated it was interesting because the letter the Pedatella's got was from the zoning enforcement officer that said the maximum permitted was 60 children. Somehow, Steve Cole, ZEO, had evidence that the variance existed and Mr. Ross remembered them coming in because we had a similar discussion 20 years ago.

Ms. Lovallo said, "There is documentation here from 1996. The building engineer looked at the property and said it was approved for 50 but never to exceed 40. I have the documentation with me. It doesn't say anything about 60. I haven't been able to find any variance on 60 and in these minutes it says back in 1992 Half Pint Day Care Center has a variance requesting 60 enrolled children. If you look at the county maps, which I have up on the internet right now, there wasn't even a building on the property in 1992, so something is erroneous."

Tim Ross stated that you can't rely on Parcel Access and that the only way to verify when that was constructed is to look at the original building permit or actually go to the county clerk. They put that site into service in 2003/2004. It always has a disclaimer at the bottom that says no accuracy can be granted... There's a lot of things that are inaccurate on that Parcel Access.

Ms. Lovallo stated that the burden is on the party that is going to benefit from changing of variances and she couldn't find the variance anywhere or official record that says any 60 children were allowed. Ms. Lovallo further stated that if you look at the Office of Child and Family Services, they are allowed 44 on their license. There's been no increase since 1992 for more than 44 on the Office of Child and Family Services website.

Chairman Annas said that whatever the Board should grant, if anything, they must be in compliance with Town code. Whether they are in compliance or not at this point, I don't know.

Tim Ross said that during the discovery process, they found the site plan approval that the Planning Board of the Town of Red Hook approved. The existing conditions are consistent with that site plan. We, therefore, did not have a specific indication from our zoning enforcement officer that any other variance was needed. We are sticking to attendance levels only. No physical other changes are being proposed.

Chairman Annas asked Ms. Pedatella if she was in compliance with everything that was granted by the Planning Board back in 2000 and if she had approval by the State.

Ms. Pedatella said that she was in compliance and had copies of licensing that she could show from many years, if need be.

Chairman Annas said that this issue here tonight is that Mr. Triebel wants to expand to a much greater number of enrollees. The State will permit so many attendees on the site at one time and they limit that to the outdoor and indoor space and the parking and the number of caregivers that are in attendance at any one time.

There was discussion between Chairman Annas and Ms. Gillen about the variances granted and if they were self-created or not.

Chairman Annas explained to Ms. Gillen that all these variances are self-created and said Mr. Triebel was asking for what appears to be a doubling of the number of persons on site at any one time.

Tim Ross said there were no structural changes being proposed. There are no existing violations on the property.

Chairman asked Ms. Gillen what her objections were.

Ms. Gillen said there was already too much traffic on the road and the cars would be blocking her driveway entrance and leaving.

Chairman Annas asked Ms. Lovallo precisely, what her objections were, if any, to the potential expansion of these facilities.

Ms. Lovallo said her objections were her safety of the neighbors that use Rockefeller Lane daily for walking, running biking or any activity that they do today and, if you're going to put that amount of traffic on the road in the morning, in the afternoons and in the evenings, it is complete quality of life change for us. Ms. Lovallo also included any variance violations there may be.

Chairman Annas asked Mr. Triebel if he had anything further he wanted to add.

Mr. Triebel felt everything was talked about. He would like to see the building being used and not continue to be abandoned.

Chairman Annas said what was happening here was a tripling of the amount of children that were originally there when Half Pint Day Care Center first opened up. He continued to say that there are approximately 40 children on site at any one time. There would be at least a doubling potentially.

Mr. Triebel responded by saying the structure there now is capable of holding a certain amount of kids. The potential has always been there given the size of the structure and given NYS code, as well as Town code, hasn't changed.

Chairman Annas asked Ms. Gillen if she had any further comment. She said she was fine with 60 children but, 90 children would be too much for her.

Chairman Annas asked Ms. Lovallo if she had any other comments.

Ms. Lovallo stated that if you do the math on the amount of land and space there is right now, the numbers Mrs. Triebel shared at the April 9th meeting, right now she has about 46 children between the Benner Road and Fisk Street facilities. With the ratio of the ages of the children, she needs at least 10 instructors. If she has 46 children, she has 10 instructors. If she's going to double that amount, she's going to need at least 20 instructors and right there, there's not enough parking. It's not doable to expand. You can't even double the size physically.

Chairman Annas asked Ms. Pedatella, should a variance not be granted tonight, what the consequences would be or her.

Ms. Pedatella replied that she wouldn't be able to make a sale of and make mortgage payments on the building.

Tim Ross stated that the Boards job is to view the tenants of the law and make a decision based on our perception of the impact of the community relative to the benefit of the applicant and community as a whole.

As there were no more comments from the public, Chairman Annas closed the Public Hearing at 8 p.m.

Chairman Annas asked the Board for their comments.

Tim Ross stated that everyone's heard everything and we have to take in consideration of that. Traffic is a concern in knowing the way of the traffic patterns on Rockefeller Lane. Your biggest slug of traffic is when the games are letting out and that's every night of the week. Spring and fall, there were 45 heads on the field and 19 vehicles. That and the school, I think this area is

unique because the traffic patterns are already there. It is a youth care center, if you will, with an elementary school and a youth soccer complex. I think 120 children would be intense on that property but looking at what their attendance records have been, with peak of 78, I would think a number of 80 would be reasonable. It would represent a 33% increase of what's there which isn't substantial. It's far less than the number of soccer kids on the soccer field on a Saturday morning. The largest traffic generators on that road are not this day care. It's the soccer field and elementary school. If you sit by that elementary school in the morning, 30% of the kids get driven in by their parents. They don't even ride the bus. So there is a ton of traffic on that road by them. This is miniscule compared to that. It is a much smaller percentage. That's my opinion.

Chris Carney stated that he agreed with what Mr. Ross said. Elaborating on that, the question for him, with respect to traffic patterns, is when exactly the traffic patterns change. Just knowing that there would be an uptake, it seems too complicated to even discuss here. He further stated that he did not see it being that big of a deal. I agree that the soccer fields are a big contributor to the traffic as well as the elementary school. There's a lot of traffic that comes from both sides of town now, the east and the west. If they didn't get the variance and there wasn't anything there and the day care ended up moving to the elementary school, I'm not sure that would save on any of the traffic anyway because people are spread all over in the town.

Ken Anderson stated that so far as the parking was concerned, he didn't think there was anything wrong with the parking. There's plenty of parking that's outlined on the plan. So far as the traffic and the number of cars infringing upon your property Ms. Gillen's property, that's an issue that doesn't belong in our zoning board of appeals. Regarding the number of kids on the site, we are talking about enrollees and attendees. The attendees is going to be less than the enrollees. The State monitors that. The State counts heads every so often and you've always been in compliance. The number of enrollees can be increased and will probably increase the number of attendees, but at no time am I convinced that you would be over the populated with an increase in enrollees.

Trilby Sieverding mentioned the criteria that the Board members have to consider and the three that stand out for Ms. Sieverding is if the area variance is substantial, we are talking at least 30% or more, depending on how you make the numbers, enrollees vs. attendees. The proposed variance will have an adverse impact on the neighborhood and specifically, the traffic. The alleged difficulty is really self-created because the Town law clearly says that the day care center can only have 40 enrollees. The variance was granted a number of years ago before my time on the Board, to increase that to 60 enrollees and, coming back again for another variance, is really outside the purview of what we really are doing here. We can't really consider it.

Tim Ross said that self-created would be if you purchased the property and then came for the variance and further stated that it is really a limiting factor on the deal even going through. He's actually doing it correctly. It's not self-created at this point because nothing has happened. Mr. Triebel is trying to get approval to make it work for him.

Chairman Annas said that he was torn on this one and said that what we have here is a day care system going on right now and you simply want to move it from two separate campuses to one. It's not going to change the market situation at all. It's just simply going to relocate. He further mentioned that these neighbors are going to experience much higher density of use on those facilities even though by State law, they are permissible. I still feel that people have some rights to code pretty much staying the way it used to be but, as Tim Ross stated, that piece of road is

high density children. You've got the school and you've got the soccer field. The variance has already gone from 40-60 and now the number I've seen put forth here is possibly 80.

There were no further comments from the Board.

Motion to Grant Variance

Tim Ross made a motion that we grant an area variance to allow an increase in the number of students present at one time from 60 to 80 for the following reasons:

A variance to allow an increase in attendance from 60-80 children will be a benefit to the applicant and provide a service to the community as a whole. Understanding the proposed increase will have an impact on local traffic which has been identified. It will be minimal when compared with the other facilities on the road with it being the school and the soccer complex. When going through the five tenants when you say that undesirable change will be produced and character of the neighborhood are a detriment to nearby properties, I would say the proposed change does not represent a change in use and with 80 it's a maximum increase of 33% over what is presently allowed. That's a number which is lower than what the State would allow. Can the benefit be sought some other way by the applicant? The applicant has indicated that the increase numbers are driven for financial reasons, so if it's not here anywhere, you're going to need a head count similar to that to sustain the business, otherwise it won't be sustainable. Is the area variance substantial? This is a judgment call. Again, it's in a good location relative to the school and the soccer fields. Will it have an adverse effect on the environment or the conditions of the neighborhood? The only adverse effect heard was the parking density. That is a major concern. Is it self-created? This is a gating issue on a decision whether he purchases this property and moves forward. If the variance is not granted, Mr. Triebel may not purchase the property and we could have a whole different issue where you have a vacant property. The Board has carefully considered all the information before us and I think it's a reasonable compromise to grant a variance from 60 to 80 for this property. I don't see any adverse impact to the health, safety or the welfare of the community as a whole.

The motion was seconded by Ken Anderson.

Chairman Annas asked if there were any comments from the Board.

Ken Anderson said 40 is unreasonable and we are trying to compare 40 to what we think is a reasonable figure. I would like to see the number go from 90 to 100. Ninety-three is the State number. I think as long as we can stay within the compliance of the State, let's make it 90 instead of 80.

Trilby Sieverding commented by saying that the Board is here to interpret the Town code and make variances on the Town code and the Town code is 40 and the Board has already in the past, granted the variance to 60. I think the Board should have to work off those numbers.

Chairman Annas asked Trilby Sieverding if the Board is working off of the 60 or the 40.

Trilby Sieverding said your baseline is the 40 and then you take into consideration of the fact that a variance was already granted in the past taking that to 60. You work from the 40 and I see that as a 100% increase.

Chairman Annas felt it was a substantial increase. It started out with a certain facility with a limitation of 40 and then they expanded the facility and expanded the number of enrollees. Now they are asking for another expansion on the enrollees.

A roll call vote was taken with the following results:

Trilby Sieverding -	No
Ken Anderson -	Yes
Nick Annas -	No
Chris Carney -	Yes
Tim Ross -	Yes

The motion failed; 3 in favor; 2 against.

There was further discussion regarding the number of children that attend the day care center on any given day.

There was discussion of getting all the Board members together to hold a Special Meeting in the next couple of days. Time was a factor for Mr. Triebel because contracts have to be signed by June 15th on the leases for the buildings Funshine Nursery School is currently in. Mr. Triebel's mother, Kathy Triebel, would be meeting with the church on Friday, June 13th to do this.

The Board could not reach the absent Board members in time for a Special Meeting to be held by the June 13th signing of the contracts for Funshine Nursery School.

ADJOURNMENT

Tim Ross made a motion to adjourn the meeting. The motion was seconded by Trilby Sieverding and all were in favor. The meeting was adjourned at 8:45 p.m.

Respectfully submitted,

Jackie Fenaroli
ZBA Secretary