

Town of Red Hook
Zoning Board of Appeals Meeting Minutes
SPECIAL MEETING
June 19, 2014

CALL TO ORDER

The meeting was called to order at 6:08 PM by Chairman Annas.

ROLL CALL

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

Members Absent: Jim Hegstetter

Also Present: Attorney for the Town, Christine Chale, and Town Board Liaison, Jim Ross

6:10 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 read each item from the Short Environmental Assessment Form (SEAF).

Some discussion took place after each question.

Motion to Accept the Short Environmental Assessment Form (SEAF)

Chairman Annas made a motion to accept this negative declaration.

The motion was seconded by Trilby Sieverding.

A roll call vote was taken and all were in favor. The motion was therefore passed by a 6 to 0 vote.

Chairman Annas asked if the Board members reviewed the minutes of the meetings where Public Hearings occurred, if they were not in attendance. John Douglas said he reviewed the Draft minutes from the June 11, 2014 Public Hearing and Chris Carney, who missed the May 14, 2014 Public Hearing, reviewed the minutes from that meeting.

Minutes of June 11, 2014: Chairman Annas asked if anyone had any comments or questions regarding the minutes. Hearing none, Tim Ross made a motion to accept the Minutes as presented this evening. The motion was seconded by Ken Anderson and all were in favor.

Chairman Annas asked if the Board had any additional comments regarding the Triebel application.

Tim Ross stated that he prepared a motion and, based on the discussion at the end of the meeting, there was a level of discomfort with his wording of “students present at one time from 60-80.” I know Chairman Annas had commented that the language in the code is “regularly enrolled” which is a little bit of a gray area for us. Tim further stated that he was ready to make a motion.

Motion to Grant Variance

Tim Ross moved that we amend my previous motion of June 11, 2014 to the following: Grant an area variance to allow an increase in the number of regularly enrolled students from 60 to 93 for the following reasons:

1. A variance to allow an increase in attendance of regularly enrolled students from 60-93 children (this number matches that permitted by State regulations) will provide a benefit to the applicant while, at the same time, providing a needed service to the community as a whole. The Board understands the proposed change will have an impact on the local area traffic, however, given its unique location near the elementary school and youth soccer complex, the relative increase will be minimal. In light of the fact that site has been used similarly since its construction in the early 1990’s, no other discernable impact has been identified.
2. In addition to this when reviewing the 5 tenants of an area variance, we find the following:
 - a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

The proposed change does not represent a change in use of the existing parcel, only a possible increase of 33 students over the 60 which are presently permitted.

- b) Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, other than an area variance.

The applicant has indicated that the request is driven by the financial business model and that this location or any other location would require a similar head count to be sustainable. The site in question is far better than most other locations in the Town given it previously mentioned neighboring facilities.

- c) Whether the requested area variance is substantial.

When comparing the increase of 33 students to the area’s daily flow of several hundred children traveling to and from school and soccer practice/games, it does not appear substantial.

- d) Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.

The only identified adverse impact is increased traffic. As mentioned previously, this will be minimal given the location near an existing elementary school and youth soccer complex which create considerably higher traffic volumes. The mentioned traffic will also not be present during evenings or weekends.

- e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

The difficulty is not self-created. It is a gating factor in the decision making process of the applicant. If the variance is not granted, the proposed business will not be able to follow through with the purchase of the property in question. The applicant is attempting to avoid a self-created hardship.

The Zoning Board of Appeals, in the granting of an area variance, shall grant the minimum variance that it shall deem necessary and adequate and, at the same time, preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

- 3. The Board, in its deliberations, has carefully considered all the information and concerns presented and as such, is recommending a reduction to the variance originally requested. The Board further believes, that given the fact that no expansion of the existing approved facilities is proposed, no adverse impacts to the character of the neighborhood and the health, safety and welfare of the community will arise from the granting of this variance.

The motion was seconded by John Douglas.

Attorney Chale stated that the Town Code includes in the special permit regulations, a requirement that they comply with the State regulations regarding Social Services. The intent is to require compliance with applicable state licensing requirements. Attorney Chale further stated that any approval that the Planning Board originally gave may have to be modified if the variance is granted.

Chairman Annas confirmed with Tim Ross that the 93 children was to comply with the State's 93 capacity. That's supporting. That's not part of the motion. Chairman Annas further stated that, in his mind, the 93 will convert to about 60 children on the premises at any one time. If we're looking at, historically, what was on there, Ms. Pedatella is reporting typically 40 children at any one time, when she has 60 children enrolled. It is my understanding that, just because you're enrolled, doesn't mean you're there. There's

almost no so-called full-time attendees. In essence, you're restricting them to about 60, depending upon how the enrollment works up.

John Douglas stated that we have been told by Don's mom and by Cricket, the present owner of the property, that it's very strictly run and these people will show up at all different times and counting heads. They are very well supervised.

Chairman Annas asked if there were any further comments.

A roll call vote was taken with the following results:

John Douglas -	Yes
Ken Anderson -	Yes
Chris Carney -	Yes
Trilby Sieverding -	No

Trilby gave her reasons why:

The Town should consider amending the zoning relative to the wording about day care centers, because the unfortunate words about 40 enrollees are really not appropriate for a day care center. On different days, you have different people coming in, and some people are half day. I think that very unfortunate wording in our current Town Code is a real problem for day cares and, I think it should be looked into and possibly amended.

I'm not in favor of granting the variance for the following reasons:

1. There is some detriment to those immediate neighbors who came out and spoke so strongly against it at the two Public Hearings.
2. The area variance is substantial as far as increasing the number of attendees.
3. It will have some negative impact on the traffic in that immediate area.

Tim Ross -	Yes
Nick Annas -	No

The motion was therefore passed by a 4 to 2 vote.

Tim Ross stated that he agreed with Trilby that the verbiage is somewhat unclear, "regularly enrolled." I don't think we should modify the number. I think 40 is correct for some locations. This is a unique location because it is next to the elementary school and soccer facilities. Like I said, if you had this on Kidd Lane or on Hapeman Hill Road, it would be a big increase of traffic on those two roads. So that 40 for Town wide is a good thing to limit it to but, when you have a unique situation, that's what this Board is here for, to grant relief so the Board can direct it to the correct location.

ADJOURNMENT

John Douglas made a motion to adjourn the meeting. The motion was seconded by Tim Ross and all were in favor. The meeting was adjourned at 6:40 p.m.

Respectfully submitted,

Jackie Fenaroli
ZBA Secretary