

draft  
**Town of Red Hook Planning Board  
Meeting Minutes  
May 3, 2004**

**CALL TO ORDER/ DETERMINATION OF QUORUM**

The meeting was opened at 7:35 p.m. by Chair Paul Thomas and a quorum determined present for the conduct of business.

Members present—John Hardeman, Mary Lou Muirhead, Sam Phelan, Paul Telesca, and Chair Paul Thomas. Christine Kane and David Wright were absent. Also present was Planning Consultant Art Brod.

**BUSINESS SESSION**

The minutes of the April 19, 2004 meeting had been sent to the Board members and reviewed. There was one correction—the draft minutes erroneously listed Member Paul Telesca as present when actually he was absent from the meeting. Sam Phelan made a motion to accept the corrected minutes. Mary Lou Muirhead seconded the motion, and all members present were in favor.

The Chair reported that there have been no responses to the Notice of Intent to Serve as Lead Agency in the SEQRA review regarding the Bard College Master Plan Update. The only response to the Notice of Intent regarding the Susan & Bob Davis Special Permit came from the New York State Department of Environmental Protection in New Paltz. That response had no comments on the project.

The Chair distributed to the Board Members a package of proposed zoning amendments and changes prepared by Keane & Beane. He has asked Keane & Beane to give a presentation explaining these changes and amendments at the May 17, 2004 meeting. By that time, the maps and overlays which reflect these changes should also be available. The Board will have forty-five (45) days to review the material and to submit comments to the Town Board.

**REGULAR SESSION (OLD BUSINESS)**

**Eugene & Martha Vos and Lisa Herman—Lasher Road—Subdivision Plat Approval/ Lot Line Alteration**

Eugene Vos, Martha Vos and Lisa Herman appeared before the Board in further support of their application for Minor Subdivision Plat Approval/ Lot Line Alteration involving a composite 2.06 acres at 151 and 175 Lasher Road in the RD3 District.

The Chair reminded the Board that Sketch Endorsement had been granted at the April 19, 2004 meeting and that the applicants had come to submit a professionally prepared survey of the two parcels. The applicants confirmed that the survey reflected the previously submitted sketch plan. The Chair said that the applicants had supplied the required number of copies of the survey map.

The Chair then summarized the following offered resolution accepting the survey and setting a public hearing date. Sam Phelan made a motion to adopt the resolution. Mary Lou Muirhead seconded the motion, and all members present were in favor.

The Town of Red Hook hereby acts as follows on the an April 6, 2004, Application by Eugene Vos and Lisa Herman for Subdivision Plat Approval to authorize an intended aggregate 2.06-acre Lot Line Alteration involving their properties at 151 and 175 Lasher Road in the RD3 District, with the intended lot line alteration depicted on an accompanying Survey Map prepared by Robert Zimmerman, L.S., and dated April 21, 2004:

1. Accepts the Application as adequate for Planning Board and public review.
2. Continues to classify the proposed subdivision as a "Minor Subdivision / Lot Line Alteration" under the Town's Land Subdivision Regulations and the proposed action as an 'Unlisted Action' under SEQRA.
3. Continues to advise the Applicant that the recording of consolidation, or merger, deeds in the Dutchess County Clerk's Office will be required upon filing of the Subdivision Plat and transfer of the annexation lands, with it further required that drafts of such deeds be submitted to the Planning Board prior to the Chair's stamping and signing of the Subdivision Plat.
4. Schedules a Public Hearing on the Application for Monday, May 17, 2004, at 7:35 p.m. and directs the Clerk to provide timely notice thereof.

The Chair advised the applicants that they must provide both the mylar survey map and copies of the consolidation deeds before final approval is granted, but neither is necessary either before or at the public hearing on May 17, 2004.

#### **Cary Kittner – Station Hill Road (Barrytown) – Certificate of Appropriateness**

The applicant did not appear before the Board but had submitted computer renderings of the exterior modifications she wishes to make to her residence at 54 Station Hill Road in the Hamlet (H) District in Barrytown. She understands that a building permit may not be issued for the work until a Certificate of Appropriateness has been issued by the Planning Board.

The Chair presented the computer renderings showing both the current exterior of the applicant's home as well as the proposed changes to that exterior.

The Board determined by consensus that a public hearing should be held. It also asked the Chair to request a written or personal response from Christopher Gilbert, Chair of the Hamlet Buildings Review Committee, before May 17, 2004. The Board determined, again by consensus, that an e-mail response from Mr. Gilbert was sufficient if the Review Committee deemed the project appropriate to the Hamlet but that it would like Mr. Gilbert to be present at the public hearing for the project if the Review Committee rejected the proposed changes.

Mary Lou Muirhead made a motion to adopt the following resolution setting a public hearing date and referring the project to the Hamlet Buildings Review Committee. John Hardeman seconded the motion, and all members present were in favor.

The Town of Red Hook Planning Board hereby acts as follows on the Request by Cary Kittner for a Certificate of Appropriateness to authorize subject to Building Permit the undertaking of exterior modifications to a dwelling at 54 Station Hill Road (Barrytown) in the Hamlet District:

1. Accepts the Request as adequate for initiating Planning Board review.
2. Classifies the Proposed Action as a Type II Action under SEQRA for which environmental quality review is precluded.
3. Refers the Request to the Hamlet Buildings Review Committee for review and recommendation within 25 calendar days, and preferably before May 17, 2004.
4. Schedules a Public Hearing for Monday, May 17, 2004, at 7:40 p.m. and directs the Clerk to provide timely notice thereof.

## **PUBLIC HEARINGS**

### **Gino Salvatico – 8299 NYS Route 9 at Scism Road—Special Use Permit**

This public hearing on an application for a Special Use Permit to authorize a Class 2 Home Occupation (Woodworking Shop) in the RD3 District pursuant to an Area Variance granted by ZBA had been opened at the April 19, 2004 meeting and, when the applicant failed to appear, continued until the current meeting. Since the applicant again was not present at the appointed time, the Planning Board proceeded to the next matter.

### **Susan and Robert Davis – Woods Road – Special Use Permits**

Susan Davis appeared before the Board in support of her application for Special Use Permit(s) to authorize construction of a single family dwelling on a 20-acre parcel within 1,000 feet of the Hudson River in the LD (Limited Development) and Historic Landmarks Overlay (HL-O) Districts.

The Chair explained that the public hearing would be opened at this meeting but could not be closed until a later date since the thirty (30) day limit for responses by involved and interested agencies named in the Notice of Intent to Serve as Lead Agency for SEQRA Review had not yet expired.

The Chair then read the Public Hearing Notice that appeared April 27, 2004 in the Kingston Daily Freeman. He also said that, aside from the previously mentioned letter from the New York State Department of Environmental Conservation in New Paltz which contained no adverse comments, the Board had received no responses from any involved or interested agencies.

The Chair then opened the Public Hearing. There were no public comments.

The Chair said that the hearing would be continued until the Planning Board meeting on May 17, 2004.

Sam Phelan reminded the Board that he, the Chair and Christine Kane will conduct a field visit to the site and will make their report at the next meeting.

The Chair said that Town Zoning Regulations require the Planning Board to look for an alternate site for the residence, one that is not within 1,000 feet of the Hudson River.

**Stephen Buscarino/ Lisa Racano (Kidz Kare Day Care) – NYS 9G and West Kerley Corners Road – Site Plan and Special Permit**

Stephen Buscarino; Lisa Ricano; Tim Ross, P.E.; Marie Welch, L.S.; and David Bruner, Landscape Architect appeared before the Board in support of applications for Site Plan Approval and Special Use Permit to authorize development and occupancy of an 80-child Day Care Center pursuant to an Area Variance granted by the ZBA on February 12, 2004, on a 3.36-acre parcel ( portion of a Subdivision granted Conditional Approval by the Planning Board on December 1, 2003) in the RD3 District.

The Chair read the Public Hearing Notice that appeared April 27, 2004 in the Kingston Daily Freeman.

David Bruner, registered landscape architect, presented a landscape plan for the site which focused on a mix of native plants. The goal, he said, was to create a naturalistic landscape using trees of various heights, foundation plantings, and wildflowers. The trees and bushes would be a mix of deciduous and evergreen as well as a mix of both young and more mature. He had chosen plants that were deer and drought tolerant and that were conducive to the soils at the site. The plantings near the road would be salt tolerant. Mr. Bruner said his design would frame the building and would shield the parking lot from the road.

Doreen Ruff, representing Creative Homes, gave a Power Point presentation which described the business plan for the facility and gave some technical details. The facility would be open from 6 a.m. to 6:30 p.m. Monday through Friday. The applicants have planned for one car per child entering and exiting the facility, although they believe that in reality many cars would contain several children. The facility would make use of the existing school bus route and the applicants have cleared their plans with the Transportation Director at Red Hook Central School. The parking lot would contain 37 spaces, which would include 3 spaces marked for the handicapped. The light poles at the front and sides of the facility would be 10 feet high; those in the parking lot would be 20 feet high.

Lisa Racano presented a scale drawing of the proposed sign, which would be 12 square feet in area, made of wood, and with gold raised letters on a green background.

Tim Ross displayed an building elevation which showed a height from ground to gable peak of 18.1 feet.

The Chair then opened the hearing to public comment.

Robert Zises of Tivoli objected to the number of children allowed by the ZBA variance. He would be in favor of a smaller facility but believed the projected need for such a large operation was in error. If the business failed because it was too big, he said, the large building and parking lot would sit empty at the gateway to Tivoli. He also believed that the site was inappropriate for such a facility. He was concerned about increased automobile traffic and dangerous congestion resulting from parents entering and exiting the facility from NYS Rte. 9G. In addition, he worried about sewage runoff into nearby Stony Creek and the destruction of scenic vistas at the entrance to the village. Finally, he objected to the implementation of an Area Variance by the ZBA to increase the number of children allowed in the facility; he believed that the applicants should have applied for a Use Variance from the ZBA.

Anita Micossi, also of Tivoli, said she believed the applicants had seriously underestimated the number of expected car trips into and out of the facility. Instead of two trips per child per day as the applicants claim, she said, there would actually be two trips in and two trips out, resulting in a total of four trips per child per day with only one possible access driveway. In addition, she said the Planning Board must consider the possible dangers created by so many cars turning left into the facility and crossing lanes during peak commuting hours. Second, Ms. Micossi wondered how existing school buses could accommodate picking up and dropping off so many children at the facility when there are currently so few empty spaces on the buses. If the increase in the number of children exceeded the capacity of the present buses on that route, she asked if taxpayers would have to pay for the purchase of an additional bus. Finally, Ms. Micossi addressed potential problems with the facility's connection to the Tivoli water system. She said that the applicants' water usage estimate of approximately eleven (11) gallons per person per day appeared far too low for a facility that would be washing dishes, doing laundry, and irrigating plants in addition to using water for personal hygiene. She said that Tivoli had only recently achieved an adequate water supply for village residents, and she was concerned about the additional burden posed by the day care center. Ms. Micossi ended by saying that she felt that the Board should make a positive SEQRA determination for the project.

Phyllis Palmer of Tivoli asked Mr. Bruner why no trees surrounded the parking lot. He replied that an existing hedge row would effectively shield the parking lot from the roadways. Ms. Palmer then asked about storm water drainage from the proposed parking lot. Mr. Ross replied that the storm water would drain into an existing catch basin. Ms. Palmer then asked if the traffic generated and complicated by the facility would necessitate a traffic light at the intersection of NYS Route 9G and West Kerley Corners Road. The Chair replied that the Board has not yet received comments from the NYS Department of Transportation and so can give no answer to that question.

Ms. Micossi said that the three speakers from Tivoli were all asking for a positive SEQRA determination for the project.

The Chair said that if the three speakers, or anyone else, wished to make a written comment, the Board would continue to accept such submissions until the hearing was closed.

Ms. Micossi asked if, under Town Zoning regulations, the Planning Board could or should consider the financial viability of the business.

Sam Phelan replied that the responsibility of the Planning Board was to consider safety, and adherence to Town Zoning regulations but that its charter did not include assessing the viability of a business. That was for the applicant to decide. One question that the Planning Board could consider was whether the facility was too large for the site.

The Chair added that projecting the possible failure of a business was not a legal reason for denying an application.

Mr. Zises said that other day care centers should be checked to see if there were vacancies.

Lotte Kittner of the Village of Red Hook commented that New York State is in favor of locating day care centers on State and County roads.

The Chair then read a written comment from the New York State Department of Environmental Conservation regarding storm water discharge during construction. Mr. Ross said that he had included drainage during the construction phase of the project into his overall Storm water Prevention Plan.

Sam Phelan asked if there was a risk of oil and/or gasoline draining from the parking lot into the catch basins and from there into the creeks and Hudson River. Mr. Ross said that the risk was extremely remote. He added that the State does not require an oil/water separator for such a small parking lot. Sam Phelan suggested that Town Engineer Dan Wheeler confirm this with the N.Y.S. D.O.T.

Mary Lou Muirhead asked if the State had approved the applicants' use of a State culvert for storm water drainage. Mr. Ross said that the storm water drainage from the facility and parking lot would not overload the culvert.

The Chair read an e-mail from Amy Dubin. This e-mail is annexed to, and made part of, these minutes.

The Chair then read a letter from Christine Chale, attorney for the Village of Tivoli.

Asked if she had sent site plans to both the Town of Red Hook and Village of Tivoli fire departments for their review, Ms. Racano replied that she had just submitted to the Planning Board a letter from the Village of Tivoli Fire Department.

Sam Phelan said that a series of sign-off letters was needed. The applicants' file, he said, should include such letters from the two fire departments, the Village of Tivoli Water Board, the Red Hook Central School Transportation Manager, and others. A list should be drawn up delineating those from whom the applicant should request a letter.

Mary Lou Muirhead reminded the Board that it needed to look again at the applicants' EAF. During its first review, the Board had found blanks and inconsistencies that needed to be corrected.

Mary Lou Muirhead then brought up the subject of a traffic study to help project the impact of the proposed business. The Chair said that Mr. Wheeler was inquiring about such a study from the NYS DOT. He said he would specifically ask Mr. Wheeler about any progress regarding that study. John Hardeman said that usually the applicant is

responsible for arranging such a study. The Chair will ask Dan Wheeler, Town Engineer, to attend the May 17, 2004 meeting. Ms. Racano said that probably many people who were already using NYS Route 9G during their commute to work would also be stopping off at the day care center and so would not constitute an additional traffic load on the highway.

The Board generally agreed that it should focus on the traffic, scenic and environmental aspects of this project. Sam Phelan said that the Board had two (2) options: it could make a positive SEQRA declaration for the project and then work with the applicants to fix all the problems, or it could ask for all the technical solutions first and then make a negative SEQRA declaration.

The Board then discussed with the applicants the definition of the qualifying phrase "an enrollment of 80 children", which appears in the Area Variance granted by the ZBA for the project. Ms. Racano said she understood that phrase to mean that no more than 80 children could be in the building at one time. Sam Phelan asked whether, theoretically, if 80 children were brought to the facility in the morning and taken home at noon, another 80 children could be brought at noon and taken home in the evening. Ms. Racano replied that, realistically, that scenario would never occur. Mr. Phelan then said a different interpretation might be that only a maximum of 80 children could be "on the books" at one time, no matter how many were in the building or off campus attending school. A third interpretation might be that 80 children could be considered "enrolled" on Monday, Wednesday and Friday and that a different 80 children could be considered "enrolled" on Tuesday and Thursday.

In summing up the public hearing, Mr. Ross said that the comments and letters from the public echoed the concerns brought up in the technical reports submitted by the Planning Consultant and the Town Engineer. He also said that the applicants are working to address these concerns. The Board determined by consensus that the applicants could make new submissions while the public hearing remained open, and the Chair requested that any new documents, maps, letters or technical schematics be submitted to the Planning Board on or before May 28, 2004. The Chair also said that the Board would look at these new submissions and then decide when the applicants should next appear at a meeting. He said that the Board would probably discuss the project at the May 17, 2004 and continue the public hearing at the June 7, 2004 meeting.

The Chair declared that the public hearing remain open.

#### **ZBA REFERRAL**

##### **Ronald Rhynders – Old Post Road and Starbarrack Road – Change of Use**

Tim Ross, Chair of the Zoning Board of Appeals, was present to discuss Mr. Rhynders' application for a change of a non-conforming use. The applicant proposes to change the use of an existing building from office and storage for a painting contractor to the conduct of a powder coating business.

John Hardeman said he had attended the ZBA meeting at which this proposal was discussed. He said that the powder coating process was self-contained and emitted no fumes or pollutants. Mr. Ross added that the procedure was a form of electro-static coating. The Chair asked if air compressors or other noise producing machinery would be used. Mr. Ross said that very probably air compressors would be used. Mr. Ross

said that he believes Mr. Rhynders has not sufficiently explained why this change in use should not be considered “more intense.” The current office and storage “use” will not be eliminated; it will be moved to a building located at the front of the parcel. Sam Phelan concurred saying that, if the applicant were granted the variance, the parcel would then contain two non-conforming “uses”. Mr. Ross said that in actuality a “use” was being added, not changed.

Sam Phelan said that the proposed process was probably not consistent with hamlet guidelines. He added that the original office and storage space for the painting business had been “grandfathered” in.

In contrast, John Hardeman said he believed granting a variance for this new use would be in keeping with the overall goals for the hamlets. He said that the hamlet guidelines encourage mixed uses and that this non-polluting process could co-exist with the existing residential and small business uses.

The Chair said he regarded the powder coating business under discussion to be a B1 “light industrial” use and therefore not consistent with allowed uses in the hamlets.

The Board by consensus determined that the applicant was not changing a non-conforming use but was in fact adding a use to the parcel and that therefore the application ran counter to Section 143-25 (C ) of the Town Zoning Code. That paragraph reads in part: *A nonconforming use shall not be changed to another nonconforming use without prior approval by the Board of Appeals and then only to a use which, as determined by the Board of Appeals, is of the same or more restricted nature.* The Chair will write a response to the ZBA saying that the Planning Board would be willing to entertain a change in non-conforming use but not a more intense or added use. He added that if the applicant does apply for a change in the non-conforming use in the future, he must submit a site plan to the Planning Board for review.

#### **Gino Salvatico – 8299 NYS Route 9 and Scism Road – Special Use Permit**

Having waited throughout the evening for the applicant’s appearance, the Chair stated that the public hearing on his application for a Special Use Permit would remain open until an unknown future date. A decision about a date for rescheduling the applicant’s appearance before the Board would be made after speaking to the applicant.

#### **Adjournment**

Upon being advised by the Chair that there was no further business to come before the Board, John Hardeman made a motion to adjourn. Paul Telesca seconded the motion, and all members present were in favor. The Chair adjourned the meeting at 9:55 p.m.

Respectfully submitted

Paula Schoonmaker  
Assistant Clerk to the Planning Board

**Annexed Attachment** - E-mail from Amy Durbin regarding Kidz Kare Day Care Center

Sent: Monday, May 03, 2004 12:46 PM  
From: Amy Knoblauch Dubin  
107 Pitcher Lane, Red Hook, and  
Doriedale Farm, Red Hook  
Date: May 3, 2004  
Re: Proposed Day Care Center, West Kerley Corners Rd. and 9G

I quote from the language in "4-8 Construction", under Conservation Advisory Council: This chapter shall be deemed an exercise of the powers of the Town of Red Hook to preserve and improve the quality of the natural and artificial environment on behalf of the present and future inhabitants thereof.

In paragraph after paragraph of the Master Plan, the Zoning Code, the Town Code, and the subdivision guidelines, the following language exists: all development and related reservations of land shall be in harmony with Dutchess County and Red Hook Comprehensive or Master Plans and shall be consistent with the town;s historic and coastal management districts. The specific language related to Special Permit (143-51 G) states: character and appearance of the proposed use, buildings, structures, and/or outdoor signs shall be in general harmony with the character the appearance of the surrounding neighborhood. This language, by the way, refers to the "following specific standards to be complied with for a Day Care Center", which is a maximum number of children of 40.

In order to treat the above goals and guidelines with the seriousness they deserve, the following questions need to be answered by the applicant:

1. Traffic: Please ask the applicant to walk the Planning Board through the hour-by-hour, day-by-day schedule of classes. How many children in each class, and of what age. How many car drop-offs and pick-ups for each class. Will the total enrollment for the entire program of the Center be 80, or will there be up to 80 for each class period, each age group?

Please describe the logistics of traffic in and traffic out. I understand there is one curb cut. How many children, for example, will be dropped off at 8 a.m., noon, 3 p.m., etc. Will this create a back-up on 9G of cars waiting to get in and out of one curb cut, with some turning north and some turning south.

What about pick-up? Will children be picked up at the same time as others are being dropped off?

Please present a complete analysis of peak time traffic throughout the entire day and week. The TRAFFIC IMPACT warrants a long form environmental analysis.

2. After School Program: what is the anticipated enrollment? How will these children get to the Center, and get home? Is there any pedestrian or bike linkage so that the Center does not have to function 100% based on car usage?

I understand that the applicant plans to use Red Hook School District buses to transport children. How many children, how many buses?

Does the School District currently have the capacity to handle this route without increasing its fleet? How can the bus stop safely on 9G with the other Day Care Center traffic coming in and out?

Why is the Red Hook School District, and therefore the Red Hook taxpayer, providing transportation for a private after-school program? Please have the applicant provide a cost analysis detailing the additional transportation expense proposed to be borne by the public in support of a private enterprise. This should be presented as a request for PUBLIC SUBSIDY, and reviewed as such.

3. The Red Hook zoning document states the following: Recommend that the Planning Board require a pedestrian connection between the site and the Village of Tivoli and the subdivision of which it is a part.

Consider the following facts: 1. pollution is increasing rapidly in Dutchess County, 2. gas prices are rising, 3. children are increasingly overweight, 4. and that the current planning analysis has finally woken up to the fact that it is ridiculous to create a residential subdivision where you literally cannot walk to anything.

As a Special Permitted use in a residential zone, I believe that the intention of the zoning was to consider a Day Care Center as integrated within the residential zone, with pedestrian linkages. The language limiting this Special Use to 40 children reinforces this, by essentially defining a Day Care Center as an ancillary residential use, not a business. The decision of the Zoning Board, to fallaciously call the applicant's request for an increase to 80 children, an area variance rather than a use variance, undermines this.

I believe that the increase to 80 children has created a DE FACTO COMMERCIAL USE on this site, with all the characteristics of commercial development: a pre-fabricated commercial structure, commercial-type parking, commercial-type garbage collection, commercial type snow removal, and traffic consistent with traffic generated from commercial development.

In light of this, please request the following information from the applicant: 1. complete accounting of the total development cost of the project 2. Pro Forma Operating Statement 3. Detailed Business Plan

No amount of landscaping and screening is going to hide the fact that there is a business at this corner. It is imperative that the Planning Board require that this site be developed in a manner consistent with the goals of good residential development. The Village of Tivoli, for which this corner is the gateway, has been painstakingly restored with both private and public money. The same high standards must be applied to this site.

The VISUAL IMPACT of this proposal should be scrutinized in light of the impact on community character and the natural landscape. This is another reason to require a long form environmental assessment.

4. Topsoil removal. There is a specific prohibition in the zoning against removal of any topsoil from a site. This must be strictly enforced. Otherwise, the beautiful and natural mound at that corner will be sliced away, and the ugly process of suburbanizing our rural landscape will continue.

Thank you for your consideration of these items.