

Town of Red Hook ZBA
Approved, **Revised** Meeting Minutes
June 9, 2021

Preliminaries

ROLL CALL and MINUTES

Chairperson Karakassis calls the remote Zoom meeting to order at 7:06pm. Jim Hegstetter states he is present, Chris Carney states he is present, Chris Klose states he is present, and Chairperson Karakassis states she is present. Also present are ZBA Attorney, Victoria Polidoro, and Town of Red Hook ZEO, Bob Fennell. Planning Board Chairman, Sam Phelan joins the meeting at approximately 7:20 pm.

At 7:07 pm Chairperson Karakassis asks for a motion to approve the March 10, 2021 draft meeting minutes. Chris Klose so moves, and Jim Hegstetter seconds. Chairperson Karakassis asks if there are any questions or comments regarding the draft minutes – there are none. At 7:08pm Chris Klose, Chairperson Karakassis, and Chris Carney vote in favor of adopting the minutes, as written. Jim Hegstetter abstains, due to his absence at the March 10, 2021 meeting.

At 7:09pm Chairperson Karakassis asks for a motion to approve the April 14, 2021 draft meeting minutes. Jim Hegstetter so moves, Chris Carney seconds. Chairperson Karakassis asks for comments – there are none. Chairperson Karakassis, Chris Carney, and Jim Hegstetter vote in favor of adopting the draft minutes as written. Chris Klose abstains due to his absence at the April 14, 2021 meeting.

At 7:10 pm Chairperson Karakassis asks for a motion to approve the May 12, 2021 draft meeting minutes, and comments there is a missing “h” in front of the word homonymous, on page four. Clerk Rubin states she will make the correction. Jim Hegstetter moves to approve the draft minutes with the correction, and Chris Carney seconds. Chairperson Karakassis, Jim Hegstetter, and Chris Carney vote to adopt the draft minutes with the correction. Chris Klose abstains due to his absence at the May 12, 2021 meeting.

REVIEW OF PLANNING BOARD MINUTES and COMMENTS FROM THE CHAIR

Chairperson Karakassis asks the Board if it has any comments or questions regarding the Planning Board minutes. There are none. Chairperson Karakassis informs all present she will be recusing herself for the second agenda item, and appoints Jim Hegstetter as Acting Chair for this portion of the meeting.

Public Hearing (continuation from May 12, 2021) ZBA 21-02, 21-02A Kanuk-Mighty Donuts

Chairperson Karakassis reads the remote meeting statement and description of the agenda item, as follows into the record.

“Pursuant to Executive Order No. 202.1, and advisories issued by Federal, State, and Local officials, related to the COVID-19 virus, the Zoning Board of Appeals will hold the meeting remotely. There will be no in person gathering at Town Hall. The meeting will be held by video conference and can be viewed at:”

https://www.youtube.com/channel/UCaDQcpNaCp3cV1Z6loBpPcA?view_as=subscriber

Dennis Kanuk application for two area variances to relocate a single-story vintage diner structure to the subject parcel, with the intent to create a new, specialty donut shop. The façade of said structure is approximately 38% of the principal lot frontage length. The Town of Red Hook Zoning Law, § 143-49.1(K)(10)(a) requires a *minimum building façade length of 70% of the length of the principal lot frontage line*, and § 143-49.1(K)(6) requires a *minimum building height of two stories within the Commercial Center*. The subject parcel is located at 7269 South Broadway, in the Traditional Neighborhood – Commercial Center (TND-CC) Zoning District of the Town of Red Hook.

Chairperson Karakassis notes the Dutchess County Planning Department [DC Planning] recommends no variance for frontage [sic] (required minimum building façade length), unless the site of the proposed donut shop be shifted 20 feet to the south, and were a variance for façade length to be granted, DC Planning is requiring a majority plus one vote. Chairperson Karakassis further notes the applicant’s Site Plan A002.4, revision 4, shows the requested relocation of the proposed donut shop. Chairperson Karakassis asks the applicant and his representative, Zak Hall, of KDA+FD, to review with the Board why they are seeking a variance.

Mr. Hall states the biggest change to the Site Plan involves moving the proposed Donut Shop 20 feet to the south, and from the parcel’s driveway, to allow for future development on the north side of the subject parcel. Mr. Hall states any future development of this type is pending the installation of municipal water and sewer. Mr. Hall also notes, a future two story building would be in compliance with zoning. Mr. Hall notes the Planning Board, at a recent meeting, asked about a bike rack, a concrete patio in front of the former Bottini building, and street front tree requirements.

Chairperson Karakassis states she has concerns about the two parking spaces which were removed in the revised Site Plan, to which Mr. Hall replies the applicant chose not to disturb the neighbor to the south’s fence, which appeared to slightly encroach on the subject parcel. Mr. Hall also states the septic field is enlarged in the revised Site Plan, as a result of a perc test, conducted by the applicant. Chairperson Karakassis notes the area which the field occupies appears to be the same, albeit with a more intensive use of the land. Mr. Hall states the laterals are longer, and turned 90°, to save an existing maple tree, and a third lateral was added. Victoria Polidoro states the County Health Department requires a septic system to accommodate a complete build out of the parcel. Chairperson Karakassis asks Ms. Polidoro to confirm if this is 200% of what is required now. Zak Hall states the expansion of the septic field is not for expanded use, but to counter a system failure.

Chris Klose asks Victoria Polidoro if the applicant is required to put in a septic system that is 100% of space available for it, to which Ms. Polidoro replies yes, and further comments it is not labeled on the drawing. Chris Klose asks Mr. Hall where the additional expansion is located, to which Mr. Hall replies he does not know, but can reach out to the project engineer. Mr. Hall further states he believes the County has had a chance to review the septic plan. Chris Klose asks the applicant if the septic system works with one expansion at a time, or all three at once. Mr. Hall states there is a pump station and a distribution chamber. Mr. Hall states there may be a Department of Health code the engineer, Aaron Berra, of Verity Engineering was working within.

Chairperson Karakassis comments the neighbor has a fence that is encroaching on the subject parcel, and suggests the applicant can ask the neighbor to move the fence, and restore two parking spaces, to achieve 29 parking spaces behind the former Bottini building. Chairperson Karakassis asks the board if it has any further questions for the applicant regarding either of the two requested variances. Chris Klose asks the applicant to display the renderings of the proposed donut shop, both daytime and nighttime. Zak Hall displays the renderings, noting the sign and fence, which are visible in the renderings, have been removed, and the building is relocated 20 feet to the south. Chairperson Karakassis asks Chris Klose if he has any further questions. Mr. Klose asks the applicant if he is planning a full-service diner, to which Mr. Hall replies the applicant is proposing a donut shop, with the donuts made in the back of the building, and eating spaces primarily outside. Mr. Klose asks the applicant how many employees are contemplated, to which Mr. Hall replies, between four and six, among full-time and part-time positions. Chairperson Karakassis asks the applicant what the proposed hours of operation will be, to which Mr. Hall replies 7:00 am to 7:00 pm, with seasonal adjustments.

At 7:31 pm Chairperson Karakassis asks for a motion to open the public hearing. Jim Hegstetter so moves, and Chris Carney seconds. All Board members present vote in favor of opening the public hearing.

Clerk Rubin asks members of the public to speak in the order their comments were received.

Steve Cole states he has concerns regarding the very first challenge to a carefully constructed Master Plan. He further states he wishes the Town of Red Hook to avoid the kind of sprawl he sees on South Road in the Town of Poughkeepsie. Mr. Cole states if the Board grants the requested variances, there will potentially be many appeals to the ZBA to go around the intent of the Zoning District. Mr. Cole also states he does not see a coffee and donuts operation, open from 7 to 7, as sufficient for a sustainable business model. Mr. Cole states nothing has been said about the use of the former Bottini building, and further states the project would set a poor precedent. Mr. Cole states his concern about the water layer under the septic system, and expresses concern about possible impacts to water and the aquifer.

Chairperson Karakassis asks Victoria Polidoro to comment on this statement, to which Ms. Polidoro replies the Planning Board was lead agency for SEQR, and issued a Negative Declaration [as to possible environmental impacts]. Ms. Polidoro states the Planning Board, in

its Negative Declaration, found there were no significant impacts to water, wastewater, and storm water. Ms. Polidoro also states these matters are not in the purview of the ZBA, since they do not deal with height or frontage[sic](minimum required building façade length). Ms. Polidoro states the impacts are the same, whether the buildings are closer to the road, or further back.

Alan Monarchi states he resides in the house that is to be demolished. Mr. Monarchi states it is a bad time to find alternate housing. Mr. Monarchi states he does not understand the septic requirements, and further comments another business to the north, plus businesses in the former Bottini building will clearly exceed the septic capacity of a house.

Lucy Monarchi states a donut shop is not good in Red Hook, since we already have other donut shops. She further states she finds it is wrong to destroy a good home.

Michelle Kaiser states she was born and raised in Red Hook, and is a teacher for the past 20 years. She states the proposed donut shop is not a project for Red Hook, and further comments local businesses have struggled during CoVid. Ms. Kaiser states Red Hook has several sweet shops, and the proposed donut shop will compete with local businesses. She further states she does not have the sense that a donut shop is something people want. Ms. Kaiser states she believes the variances should not be granted, since it would set a bad precedent for the future. Ms. Kaiser states the project is for a portable building in a space that doesn't fit, and further states there are other commercial zones that are more appropriate. Ms. Kaiser states Red Hook has small town life, and comments the Town should not open the door to big projects that may, or may not be there in the future. Ms. Kaiser asks the Board to consider the location, type of business, the variances, and the destruction of a home.

Bruce Ratliff states in terms of viability he thinks the proposed business will not survive more than a few years, and further comments, for a variance the Town needs something which will last longer. Mr. Ratliff states he opened a self-serve yogurt store, which did not survive, and further states he believes donuts and coffee, alone, are not enough for a business to survive, and he concludes the result would be an empty old-school diner, not adapted to other uses.

Sam Harkins states he was on the Town Planning Board for 14 years, and served as a ZEO for 30 years. Mr. Harkins states he worked on the Town Centers and Greenspaces Plan, which created the TND-CC. Mr. Harkins states granting the requested variances would set a precedent for future applicants, and result in Article 78 suits being brought against the Town, if it did not grant the variances. Mr. Harkins states this is the first challenge to the zoning in the TND-CC, and recommends the Board look to the future, before granting the variances.

Zak Hall introduces Mia Kanuk and Marc Stallard, as people working with applicant Dennis Kanuk on the project. Ms. Kanuk states she has attended culinary school, has 15 years experience in the restaurant business, is currently working as a donut producer, and states she is developing new donut recipes and trying out lots of new ideas. Ms. Kanuk states she grew up in Ohio, in a small town like Red Hook.

Rhianon Jones states Paul Sturz is new to Red Hook, and asks if his letter to the ZBA was received. Chairperson Karakassis states all ZBA members have the letters submitted, and Victoria Polidoro states all emails have been received and read.

At 7:48 pm Chairperson Karakassis asks for a motion to close the public hearing. Jim Hegstetter so moves, Chris Klose seconds and all Board members present vote in favor of closing the public hearing.

Chairperson Karakassis reads the resolution factors, one at a time, and the Board members comment.

- 1. The variances requested will not produce an undesirable change to the character of the neighborhood or a detriment to nearby properties.*

Victoria Polidoro states the Board must consider the current character of the neighborhood, not the future character, or future case law. Chairperson Karakassis asks Ms. Polidoro to explain the term “current character”, further asking if it includes hardscape, zoning, and anything else. Chairperson Karakassis asks Ms. Polidoro if there is a formal definition of the term. Ms. Polidoro replies it is based on a common understanding, in which a proposal would, or would not be, consistent with what exists in terms of physical characteristics, and what the district is used for. Chris Klose asks Chairperson Karakassis to reread the first factor, which she does. Chairperson Karakassis asks for comments, to which Chris Carney replies, based on his interpretation it is in keeping with the businesses nearby, especially Hardscrabble Plaza. Jim Hegstetter states Chris Carney summed it up, and states he finds the project is not an eyesore, and further notes he finds the renderings look good. Chris Klose states there is a direct detriment to the house, to which Victoria Polidoro replies any owner of the property can still tear it down.

Ms. Polidoro states the following considerations for the Board: Consistency with the Town’s Area and Bulk Regulations, Traffic and Parking, Noise and Glare, and Community Objectives. Ms. Polidoro states future precedent would require the future applicant to demonstrate similar facts, and a similar piece of property. Chairperson Karakassis states she finds there is a detriment to community objectives, in so far as the project does not consider the very specific design standards for the TND-CC. Chairperson Karakassis states the zoning for this area is intended to be transformational, and further states the applicant has shown his proposal, as it stands, does not comply. Chairperson Karakassis states Sections 149 and 149.1 of the Town Code created a new neighborhood, very different from the existing neighborhood, in terms of density, walkability, and its similarity to the Village core area. Chairperson Karakassis states the Town worked for many years on a design that creates interactions, and builds community. She further states not every parcel is intended for every use.

Chairperson Karakassis raises two points regarding resolution factor one. She states the requested variances, were they to be granted, subvert the goals of the Zoning Code. She also states these goals are set forth in Section 143-141 (A)(2). Chairperson Karakassis states there needs to be predictability of what the Zoning Law allows, and what expectations must

be met. She comments the business Plimpton and Sons modified their plans to be more compliant with the Zoning Law. Chairperson Karakassis states the granting of the requested variances introduces uncertainty as the first TND-CC property challenging the Zoning Law. Chairperson Karakassis further states the applicant has not shown he can **not** comply to a greater extent. Chairperson Karakassis states she does not want to compromise the design standards of the TND-CC, as it has a very specific aesthetic, and further notes Red Hook is growing, and granting the requested variances would add to the uncertainty.

Chairperson Karakassis states the Board is being asked to make a decision based on taste, which, she notes, is not the purview of the Board. She further states the Board should not entertain subjective aesthetic considerations when the Town has communicated very clearly what it wants. Chairperson Karakassis states the proposal is a detriment to future development along the corridor, and further notes the applicants propose to add no new housing, as a single-story building precludes a second story apartment.

Jim Hegstetter states Chairman Karakassis' comments are in line with his thinking. He further states granting the requested variances would have a profound effect – a massive change, as a result of effectively changing the law. Mr. Hegstetter states the Board should not do this lightly, even if it is a wonderful concept. Chairperson Karakassis states it is possible to agree with all of the individuals who support the project, and still find it is the wrong project for the area. Victoria Polidoro states the Board should find specific inconsistencies with existing zoning, to which Chairperson Karakassis replies the proposal subverts the goals and community objectives for the TND-CC. Chairperson Karakassis states she is not making the argument that the proposal is not consistent with the area, but instead, making the argument that it is not consistent with community goals. Chris Klose states the diner looks like a diner, and further comments the Town must not look like Hyde Park – roadside America. Mr. Klose states he 100% supports Chairperson Karakassis' position.

2. The needs of the applicant cannot be achieved by other than an area variance. The Board agrees the goals of the applicant can be achieved by other than an area variance. Chairperson Karakassis states the applicant has chosen a 1950s diner as a location for his donut shop, which could comply with zoning requirements with a second story. She notes the applicant could use the former Bottini building as 2/3rd restaurant, and 1/3rd retail, as mentioned at a previous meeting, and make other alterations to it. **Chairperson Karakassis states she finds the applicant has other options, since they have talented architects working on their behalf. She states she believes the applicant could enclose the diner, or raise the Bottini Building to create a wider, 40' deep two-story office, or residential structure. Chairperson Karakassis states the applicant has chosen to stand with his original structure, which he is entitled to do.** Chairperson Karakassis states the only accommodation the applicant has made is to move the proposed donut shop 20 feet to the south, and further notes the shop has only ten parking spaces planned. Chairperson Karakassis states the applicant needs greater compliance with the Code. Chris Klose states he agrees.

3. The requested variances are not substantial. The Board agrees the impacts, based on what it has seen in the past, are substantial, both numerically, and Victoria Polidoro states the initial comments of Chairperson Karakassis speak to this impact.
4. The requested variances will not affect the physical or environmental conditions in the neighborhood. All Board members agree to this statement.
5. The hardship, for which the variances is sought to rectify, was not self-created. All Board members agree the hardship was self-created.
6. The variances being granted are the minimum variances to meet the needs of the applicant. Chairperson Karakassis does not agree with the above statement. Jim Hegstetter and Chris Klose do not agree that the requested variances are the minimum to meet the needs of the applicant. Chris Carney states he agrees that the requested variances are the minimum variances to meet the needs of the applicant.

Chris Carney asks how number two differs from number six, to which Chairperson Karakassis replies number two refers to the question of whether or not the applicant needs a variance, and number six, to the question of whether or not the requested variance is the minimum to meet the needs of the applicant.

Chairperson Karakassis states the Board will not vote on these resolution factors this evening, but will have the ZBA Attorney draft a resolution, and also states the Board can schedule an attorney-client meeting, to discuss the resolution between this and the next meeting. Jim Hegstetter agrees to having the attorney draft a resolution to vote on at the next regularly scheduled meeting.

Review ZBA 21-03 Greig

Chairperson Karakassis recuses herself, and leaves the Zoom meeting for the next agenda item. Acting Chair, Jim Hegstetter, reads the next agenda item:

Norman Greig application for an Interpretation to remedy a violation, issued by the Town of Red Hook, on May 7, 2021, regarding a six-foot high fence, of a green tarp material, installed on the subject parcel, without a building permit, and which surrounds a neighboring, residential property on three sides. The Town of Red Hook Zoning Law, § 143-28 C disallows a Spite Fence. Said fence, which, by nature of its placement does not appear to have been constructed for the purpose of containing or protecting the farm operation, does appear to have been placed for the sole or dominant purpose of annoying the neighbor, whose property it surrounds, by preventing the passage of light, air, and/or view from the neighbor's property. The subject parcel is located at 144-150 Pitcher Lane, in the Agricultural Business (ABD) Zoning District, in the Town of Red Hook.

Acting Chair Hegstetter asks ZEO Bob Fennell if the fence had been taken down, as of the expiration of the last extension, on May 31st, to which Mr. Fennell replies, as far as he knows, the fence is still there, and further notes filing for an Interpretation stays any action against the applicant. Victoria Polidoro states the applicant disagrees with the ZEO, in deeming the fence a Spite Fence. Applicant Norman Greig states one of his business tenants, Ozone, came before

the Planning Board, and further states Ms. Karakassis requested screening from Ozone for traffic and headlights. Mr. Greig states his tenant says plantings were not enough for screening, and requested a fence which would block light. Mr. Greig states Ms. Karakassis tied a ribbon to a tree at approximately seven feet in height. Mr. Greig further states Town of Red Hook Building Inspector Stephen J. Cole, informed him the fence only needed to be six feet in height to be compliant. The applicant states he installed a six-foot-high fence, and further notes the ABD is exempt from zoning requirements for fences. Mr. Greig further states another tenant of his, a Mr. Ken Migliorelli, engages in intensive farming all hours of the day and night, further noting this operation is within 100 feet of the Karakassis property. Mr. Greig states he installed the fencing around the property for screening, and out of consideration for his neighbor, Ms. Karakassis, in order to better accommodate a farming operation with a residential use. Mr. Greig states this is not the fence Bob Fennell wanted, and further notes the Planning Board requested a type of fence that was very expensive. Mr. Greig states the existing fence does the screening allowed by law, and further notes her house is tall enough – some four feet above his property, to permit views. Mr. Greig also states Ms. Karakassis' yard now has more privacy from a large agricultural crew.

ZEO Bob Fennell states Code Section 143-32 identifies the sole or dominant purpose of annoying a neighbor, and not allowing passage of light, air, or view. Mr. Fennell further clarifies it does not have to be intended as a Spite Fence, in order for it to have this effect. Acting Chair Hegstetter states he wants to visit the fence, and asks the applicant if he discussed the fence with his neighbor before putting it up. Chris Klose states he has no comment, and plans to visit the fence. Bob Fennell asks Planning Board Chair to discuss its requirements for Ozone with the ZBA, to which Mr. Phelan replies the Planning Board never ruled on a fence in its Minor Site Plan review for Ozone, which, he notes, was a year late in coming to the Planning Board. Mr. Phelan states the Site Plan plotted out parking, and handicapped parking, with five to six spaces facing east, toward the Karakassis property, and which were unscreened. Mr. Phelan stated bushes would not grow fast enough. Mr. Phelan states the Planning Board recommended the owner of Ozone spend time with Ms. Karakassis to find a workable proposal, and further notes the very next day, the existing fence went up. Mr. Phelan states Amelia LeGare [owner of Ozone] came up with a plan for a fence, which would have been three to four feet high, and further comments this height would have been sufficient to block the light from headlights. Mr. Phelan states the Planning Board has no decision-making on the Violation Order, issued by Mr. Fennell.

Chris Klose asks what is the approximate distance of the existing fencing to Ms. Karakassis' house, to which Mr. Phelan replies it is some 100 to 150 feet, and Mr. Greig states it is more like 200 to 250 feet. Sam Phelan asks if it would be possible to limit the fencing to a north-south axis, close to the parking lot. Chris Klose agrees this is preferable. Victoria Polidoro asks Bob Fennell and Sam Phelan if there are requirements for fence materials. Mr. Phelan replies there are some design specs, but none are required. Acting Chair Hegstetter asks Chris Carney for comments, to which Mr. Carney replies he wants to do a site visit.

Mr. Greig states he does not know of discussions between Amelia LeGare and Ms. Karakassis, and maintains Ms. Karakassis tied a ribbon to a tree to indicate the height she wanted the fence to be.

Amanda Greig states the south and east parts of the fence comprise an agricultural fence for buffering from a farm operation. Ms. Greig further states the Code is confusing – on the one hand allowing for a buffer from agricultural operations, but not allowing for the blocking of light, air and view. Bob Fennell states the section that limits fencing also applies to agricultural fencing. Victoria Polidoro states the requested Interpretation turns on the interpretation of a buffer – is it physical, or something else. Mr. Fennell states Ms. Karakassis showed a video of the fence at the public hearing held by the Planning Board. Victoria Polidoro states the ZBA should do a site walk, but if members go together, they may only observe, and not discuss the application amongst themselves. Bob Fennell states the Board should also view the fence from inside the Karakassis property. Acting Chair Hegstetter asks Mr. Phelan to confirm Amelia LeGare is the owner of Ozone, which he does.

At 8:32 pm, Acting Chair Hegstetter asks for a motion to set a public hearing at the next regularly scheduled ZBA meeting, on the agenda following the Mighty Donuts application. Chris Klose so moves, Chris Carney seconds, and all three Board members present vote in favor of scheduling the public hearing.

Clerk Rubin informs applicant Norman Greig of the cost of certified mailings to his neighbors within 300 feet of his property line, for notification of the public hearing. Mr. Greig asks how many neighbors, and Ms. Rubin informs him the County GIS identified 15 neighbors. Mr. Greig states he does not believe he has so many, and further states he thinks it is only two or three. Acting Chair Hegstetter asks the Clerk to discuss this with him after the meeting.

Chairperson Karakassis returns to the meeting, following the Greig Review.

At 8:39 pm Acting Chair Hegstetter asks for a motion to adjourn the meeting. Chris Klose so moves, Chris Carney seconds, and all **four** Board members vote in favor of adjournment.

The next regularly scheduled ZBA meeting is on Wednesday, July 14, 2021, at 7:00 pm. It is not presently known if this meeting will be remote, or in person. Members of the public are asked to consult the Town website, or call Town Clerk, Deanna Cochran, at (845)758-4606.