

Approved on October 17, 2012, 2012 - MJG

ZONING BOARD OF ADJUSTMENT MEETING
Early Childhood Learning Center
77 Ramsdell Lane
Barrington, NH
September 19, 2012
7:00PM

MEETING MINUTES

PRESENT: Ellen Conklin
Raymond Desmarais
Gerard Gajewski

ABSENT: Karen Forbes, Chair
George Bailey

STAFF: Marcia Gasses, Planner & Land Use
Administrator

CALL TO ORDER

Ray Desmarais called the September 19th, 2010 ZBA meeting to order at 7:00 pm.

ROLL CALL

A roll call was conducted confirming members present as stated above.

MINUTES REVIEW AND APPROVAL

1. A. Approval of August 15, 2012 Regular Meeting Minutes.
- B. Approval of September 12, 2012 Regular Meeting Minutes.

ACTION ITEMS

2. **234-1-VD-12-ZBA (Attorney Wirth representing Scott Dunn)** Request by applicant Attorney Gregory D. Wirth, P.L.L.C. to appeal the Planning Board decision of August 7, 2012 for approval of 3.4 Conditional Use Permits, for 1) Light Manufacturing Facility Use 2) Proposed 93,000 square foot facility located in the Village District (VD) at Franklin Pierce Highway (Map 234, Lot 1). By: Attorney: Gregory D. Wirth, PO Box 2209; Dover, NH 03821-2209
Request by applicant to continue to October 17, 2012

The Board discussed the question of whether the Barrington Zoning Board of Adjustment has jurisdiction to hear the case presented. It was decided the Zoning Board of Adjustment does not have jurisdiction with the following points made:

- The question is: the conditional use permit

Is the Planning Board decision a standard zoning ordinance action or an “innovative land use control”?

- RSA 674.21 requires “innovative land use control” with numerous topics possible and requires support by the Town Master Plan.
- The Barrington Master Plan makes numerous mention of commercial development being a ‘positive direction for Barrington utilizing ‘innovative land use control’.
- Therefore the conditional use permit is a Planning Board tool of “innovative land use control.”

III. If, in the exercise of subdivision or site plan review, the planning board makes any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance, which would be appealable to the board of adjustment if it had been made by the administrative officer, then such decision may be appealed to the board of adjustment under this section; provided, however, that if the zoning ordinance contains an innovative land use control adopted pursuant to RSA 674:21 which delegates administration, including the granting of conditional or special use permits, to the planning board, then the planning board’s decision made pursuant to that delegation cannot be appealed to the board of adjustment, but may be appealed to the superior court as provided by RSA 677:15.

Ellen Conklin made a motion to deny hearing this case because it is out of the Board’s jurisdiction. Gerard Gajewski seconded the motion which passed unanimously with a vote of three (3), to zero (0) in favor.

Gerard Gajewski made a motion to continue the approval of minutes from last meeting until the next meeting. Ellen Conklin seconded the motion which passes unanimously with a vote of three (3), to zero (0) in favor.

ADJOURNMENT

Gerard Gajewski made a motion to adjourn the September 19th, 2012 meeting of the Barrington Zoning Board of Adjustment at 7:05. Ellen Conklin seconded the motion which passed unanimously with a vote of three (3), to zero (0) in favor.

Respectfully submitted,

Patrice Lenzi