

Planning Board Meeting
June 3, 2010 - 7:00 PM
Library, Elementary School
347 Route 125
Public hearings with applicants

Members present: Chairman John Huckins
Selectwoman Jackie Kessler
Alan Kelley
Edward Lemos
Steve Oles
David Mott
Dawn Hatch (Alt)

Town Planner Constance Brawders

Chairman John Huckins opened the meeting at 7:00. Planner Brawders said as Mott would be representing one of the applicants he should recused himself from that hearing and leave the room. Chairman Huckins asked how he could do this and still be available to speak for his client. Mott said that he would recuse himself from sitting with the Board but he would remain in the room with his client. All members said this was how we had handled members working for an applicant in the past and found it satisfactory. Both Huckins and Brawders read from the Guide Book for Planning Board Members. The Board moved to the hearings.

File # SR 10/377 - A.W. & Jules D'Antilio

**Rte. 125 - Map 238, Lot 42 - Town Center /Stratified Drift Aquifer
Overlay Construction of a 4-room bed & breakfast with
owner/operator living space**

A. W. D'Antilio represented himself. Huckins said the only item left on the D'Antilio proposal was the results of the re-review from Berger Group which had been done and found satisfactory from the former review. Berger Group recommended that a maintenance plan was made part of the approval. D'Antilio said he would do all maintenance as he would own and operate the businesses on the site.

Huckins asked if any member had additional comments. Kessler said she would recommend that the maintenance agreement become a note on the plan and part of the approval. All agreed. Huckins asked if anyone wanted to speak for or against the proposal. There were no comments. There were no abutters present.

Lemos made a motion to grant conditional approval with the note on the plan stating there would be a maintenance requirement agreement on the site, seconded by Kelley, all in favor. The hearing was closed.

File # SR 10/378 - Cheryl & Terry Hill

**6 James Henry Dr. - Map 250, Lot 102 - General Residential District/
Stratified Drift Aquifer Overlay**

An increase of 2 children to her preschool program for a total of 14

Cheryl Hill represented her proposal. She said the name of the school was Hill's Home Pre-school. She said she wanted to add 2 children to her program. Hill said she had met all of the

requirements necessary. She said when she was approved for 12 children the abutters took her to Superior Court which ruled in hers and the Towns favor.

Hill said some of the concerns were over stated. She said she had been told that she could use the 3 categories and later got different answers. Hill was told she needed to define her operation. She said the operation would fall under the definition of educational institution instead of a family day care as this best meets what would be provided. Hill said she was qualified for a license for a center based plan and preschool. Huckins said that he had talked with the Town's Attorney who stated that the Board decided what she was applying for and the criteria that needed to be proven.

Huckins said that if Hill disagreed with what the Board required she had the right to go before the Zoning Board of Adjustment for an appeal. Mott asked what we would base our decision on. Huckins said if we determine that 12 children are the limit or deny the application Hill would have the right to go to the Zoning Board. He said the abutters have the right to appeal also.

Hill said that there were 3 other daycares approved by the Board in the same time frame as she had been in 2008. These had between 17 and 19 children.

Hill said she had a backup septic system design in case hers failed. She said she was working with a member of the cluster development on traffic and speed. Hill presented a graph of various days showing drop offs. She picked April 26, 2010 as a typical day and explained the graph. She said that it showed that the children had staggered drop-offs. She said the graph represented 4 weeks, one for each season.

Hill said the preschool was open from 7:30 AM to 5:30 PM. The peak drop-off was between 7:30 AM and 5:30 PM. She said once a week one child was dropped off early. He said there was no build up or back up of children. She said between 7:30 and 9:30 there were approximately 10 cars. Hill said the average drop-off was 5 to 10 minutes. She spoke of different numbers and times when the parents drop off children.

Hill said she had had a certified appraisal done on her property. She said she had approvals for 14 children from the Fire Chief, Code Enforcement Officer and the State. She pointed out on the plan that the shed had been relocated where it actually sat on the lot.

Huckins asked if the abutters wanted to make comments on the plan. Aaron Cleaver said regardless of the number of children the complaints were about traffic. He said he did not see other parents regardless of the definition when he dropped his child off. Huckins said we have to follow what was legal and abide by what was before us.

Cleaver said there was no clear definition of educational institution. Huckins again said that there was the appeal process if the applicant wanted to take that direction. He said clearly traffic remains the greatest concern. Cleaver said the operation must be defined first. Huckins said the Board was open to comments.

Tracy Bisson said she looked at other preschool programs and chose Hill because of the home environment. She said the parents received a monthly curriculum of what would take place. The routine was structured and each item was given a time slot as in any school program.

Attorney O'Connell said to look at the definition of 12 children then look at home business, home occupation, and educational institution. Huckins said that the only way what was proposed would work would be as an educational institution. Cleaver said what was going on the site was preschool and after school care. He said the only way to operate would be through the educational institution definition. Bisson said one would need to have a child in the program to know what the structural setup of the school was.

Leigh Hyslop said she was a lead teacher at the school and she had received her education in teaching. She said that the program was structured and not a daycare which was intended to entertain children.

Michelle Saccoccia said she had left her driveway at 8:30 AM and there was one car coming out of Hill's driveway and one waiting to go in. Colleen Fenton said traffic was a problem and especially for her as Hill and she share a driveway.

Hill said last month it was not clear what direction she should head. She said she had talked the Planner Brawdors. Huckins said he had talked with Attorney Whitelaw but because the meeting was not posted to discuss the Hill case he could not bring it up. He said the Board was not trying to blindside her. Hill said she was very frustrated. Huckins said the Board tried to do due diligence in every case. Hill said she appreciated this.

Mott said at this time the operation was for daycare which all agreed appeared to be a high quality one. Hill said she was asking for 2 more children and to change from a daycare to an educational institution. He said she had amended her application to show the change.

Oles asked how we set what was presented. Huckins said we needed to decide where we are going. Kessler said there was no definition for educational institution. Huckins said we would decide whether the operation was a daycare or educational institution.

Lemos said that the application was approved for a 12 children daycare. He said the change of use was in a residential area; is this a home occupation or home business. Should it be considered as a new application as it has changed to an educational institution? Huckins said it was definitely a new application as it was a change of use. Lemos said it had an impact on the neighborhood with traffic and noise.

Huckins said if the use stayed as a daycare it would need Zoning Board approval to have more than 12. Lemos said we could not grant more than 12. Mott said we needed to make a determination as there was no definition of an educational institution. Hill said she was licensed as a preschool. Mott said there were different levels. Hill said there were different types. She said the requirements were different from daycare to preschool. Huckins said we would need to rely on the State as the program would be licensed by the State. All agreed that we needed to make a decision on what Hill would qualify under.

Kessler asked if we could discuss this further at a work session. Huckins said not without abutters present. Oles said under state law preschool typically starts at age 3. Hill said it depended on the development of a child. Oles asked how many were in the program. Hill said that all would participate. She said that she had 3 children under 3, the rest were 3 older.

Kessler asked if there was an RSA that had a definition for educational institutions. Huckins said there were none as far as he knew just that the teachers had to be licensed. Brawdors said she had talked with the Superintendent of Schools who told her the definitions were under the State. Kelley asked about the 2 schools that have 17 to 19 students in the preschool. Hill said family group providers did not need a license from the State.

Kelley said that there was a conflict in numbers. Kessler said she did not think a case was made for a preschool. Huckins said we must go through the conditional use permit process. Lemos said that it would not meet the day care criteria. Kessler asked if the Board denied the new application would that mean that Hill would have to shut down. Lemos said Hill had been approved for a 12 child daycare. Lemos made a motion to define the application as an educational institution, seconded by Kelley, Kessler – yes, Mott –yes, Kelley – yes, Lemos – yes, Oles – yes; motion passed. Mott said the application had not been accepted. The checklist was reviewed. Mott made a motion to accept the application as reasonably complete, seconded by Lemos, all in favor. The Board moved to the presentation and discussion of the conditional use permit.

The 9 points for the conditional use permit request - Article 3 - Permitted Uses, Section 3.4 were addressed: Lemos read the requirement:

1. The building, structure, or use is specifically authorized under the terms of this Ordinance.

Reply from Hill:

1. Hill's Home Preschool is zoned such that the business would be a permitted use. I am requesting permission to increase from 12 to 14 children to meet my license capacity. I am currently approved by NH State licensing for 14 children. The Barrington Health Officer and Fire Chief have already approved in writing, the increase to 14 children.

Comments - Abutters - Bill Scott - square footage required per child – Hill - 40 square feet per child per State definition, total of 560 square feet for preschool.

Comments - Board - Within a residential structure, educational institution could be used as type of business represented - allowed use with 9 points of conditional use permit proven

2. If completed, the development in its proposed location will comply with all requirements of this Ordinance, and with specific conditions or standards established in this Section for the particular building, structure, or use.

Reply from Hill:

2. Hill's Home Preschool is in an existing structure with meets ordinance guidelines. The education and care of young children will be given in my home. The site plan depicts that all requirements of the zoning ordinance and planning board conditions have been met.

Comments - Abutters - None

Comments - Board - Hill had complied with the requirements and conditions required by the Board.

3. The building, structure or use will not materially endanger the public health or safety.

Reply from Hill:

3. Hill's Home Preschool will in no way endanger public health or safety. I am working with the NH Bureau of Child Services, the Barrington fire chief, and the Barrington building inspector to insure the highest degree of safety. The building will be licensed by the State for the intended use.

Comments - Abutters - Scott - who certify that the square footage was correct and met. Hill - The code enforcement officer for the Town and the State. Both have to sign off on the structure.

Comments - Board - None

4. The building, structure, or use will not substantially de-value abutting property.

Reply from Hill:

4. Hill's Home Preschool will not de-value abutting property. Please see the attached letter and evidence provided by certified appraiser, Ken Sakurai of Appraisal Connection. The market research clearly shows that there is no measurable impact on surrounding residential property values. I personally believe that the existing business on our road, Saccoccia's Construction, has a negative impact on the value of our homes due to the general appearance of their homestead. One can clearly see the additional work equipment, vehicles, dumpster, etc., littering their yard. My business will be conducted entirely within my home and yard.

Comments- Abutters - Attorney Shawn O'Connell, representing some of the abutters stated that # 4 was not met as the childcare business did devalue the homes. Colleen Fenton said the shared driveway for her home and the home and business of Hill devaluates her property.

Comments - Board - The certified appraisal seems to support Hill's response. The information from the abutters was not certified appraisals just comments from realtors. Hill represented that most of her business was within the home.

Comments - Board & Abutters - Mott said that Hill had had a full appraisal done where the ones for Saccoccia and Fenton did not address the market analysis. He said it needed to be a certified report not an opinion. Mott said a court would require a certified appraisal.

Huckins said there was an approved daycare for 12 children on the site now. The change would be 2 more children. Fenton said any increase would impact her home. She said she was not asked to get a full appraisal, she did what she was asked to do. Hill said she heard the same request from the Board and she had a full appraisal done.

5. The building, structure or use will be compatible with the neighborhood and with adjoining or abutting uses in the area in which it is to be located.

Reply from Hill:

5. Hill's Home Preschool will be compatible with the neighborhood in that it will not change the appearance of my home, yard, or neighborhood. Most of the people who reside in the neighborhood are gone from their homes during many of my operating hours, therefore, the children who attend Hill's Home Preschool are generally not seen or heard.

Comments - Abutters - Attorney O'Connor said that the use affects the neighborhood. It is not compatible and Hill had requested to enlarge it to 14. He said the evidence from the abutters shows that the neighborhood was impacted.

Comments – Board - Mott asked if this would be a good place to discuss open space which was set up under the 1989 Subdivision Regulations and Zoning. He said there needed to be compatibility of all structures. He said this was the real question. Would a change from daycare to educational institution be a compatible use in an open space development.

Huckins said a 12 children business exists and it has been stated that most of the time was spent inside. Lemos said there was the problem of traffic and children coming out to play. Kessler said they must spend some time outside during the day. Mott said in a conservation subdivision the purpose was to set aside space for open areas. He did not know the intent of open space in this subdivision developed in 1989.

Kessler said all of the structures in the subdivision were residential and this was a business in a home. Lemos said one of the reasons for the limit of 12 was to consider the abutters and to require any increase to come back before the Board.

6. The building, structure, or use will not have a substantial adverse impact on highway or pedestrian safety.

Reply from Hill:

6. Hill's Home Preschool will not have a substantial adverse impact on highway or pedestrian safety. The people that will be coming to my home are parents of young children so they understand the need to make safety a priority. I am motivated to keep the road safe for my own family. I have mandated a 5-10 mph speed limit which is indicated in the parent handbook. I also reserve the right to refuse care if policies in the handbook are not adhered to. The two additional children who would attend, if permission is granted, are the younger siblings of children currently attending. This means that the number of cars using the road would not increase.

Comments - Abutters - Jeremiah Colbath said the handbook was given to the parents with a warning that if they do not abide by the rules they could be required to find daycare elsewhere. Hill could refuse their children. He said he did not have the time to print the items that he wanted to give the Board. He said Hill represented that there were no complaints. He said that was not true.

O'Connell said the traffic study shown was done during school vacation. He said Hill represented that the addition of the 2 were siblings. This was not represented as possibly temporary. He said there could be 14 children in 14 cars which could mean 60 to 70 trips per day. O'Connell said to change to educational institution would add teachers as well as children. At this time Saccoccia said that complaints have been received and the police have been on James Henry Drive.

Attorney O'Connell said Hill was not outside to see the neighbors' concerns on what happened, traffic, speed, and to see the huge impact on the road and neighborhood. He said in 2008 there were 60+ trips per day in and out. He said since 2008 there was no guessing as the impact has been observed on a daily basis. O'Connor said a good reason to deny the increase was the additional traffic and impact on pedestrians.

Fenton spoke of the pictures she had given to the Board. Members viewed them. She also spoke on the emails sent and received. Fenton said that Hill stated that she had the right to do what she was doing so everyone was stuck with the situation.

Colbath said these were just statements. He said he did not see anyone when he dropped his child off two days a week. He said as far as the neighbors there would be no safe speed as they did not want the preschool there and would never be satisfied. He said the neighbors were a group of hostile people and what they were saying was not evidence just their opinion.

Scott said that Hill did not see the issue of the traffic. He said the neighbors were not hostile. He said the Town would not accept the road but wanted it safe. Why is it the business of the Town it should be up to the land owners that live on the road? Scott said he could not understand why the Town wanted to make the decisions when they do not own the road.

Colbath said Hill did not see the speeding. He said she was talking with his wife concerning speed. He said she does not see the cars first hand, speed just happens. Saccoccia said complaint on speed happens. He said as President of the Association people complain to him as well as the police. He said the police have been on the road. Saccoccia said the people were good people and the daycare was good. At time people just go too fast and need to slow down. Dan Fenton said Hill had represented that she would put up signs. He said he put up the sign on the road himself.

Hill asked to respond. She said that there would be no increase in staff. The State allows 1 teacher to 8 children and she would have 1 to 7. She said she had stood in the road with Tina Miller and discussed options. She said 5 to 10 miles an hour was too fast in her opinion. She said she had not put up a sign as it was not one of the Board's conditions. Hill said some of the emails that she had received were threatening in her opinion. Huckins said he did not want to get in a he said/she said situation.

Comments – Board - Kessler said we needed to check with the Police Chief to see if there were complaints or not, if there was speeding or other violations. She asked if there was an association and or road agreement. Saccoccia said there was an association and the members were responsible for the road. He said home businesses were not addressed in the covenants. M. Saccoccia said her father the developer had to pave in from Lee Road when it was cluster was developed. She said there were 8 houses on the road. Saccoccia said there was a 10 foot walkway to the open space around the perimeter of the development.

Mott said had we asked for appraisals the neighbors would get them. Kessler said we should continue the hearing to July to give the neighbors time to have appraisals done. Mott said the applicant had done so. Hill said she felt that she and the neighbors had had the same length of time to get an appraisal and felt to make her wait another month was not fair.

Huckins said he had tried to drive 10 miles an hour on the road and found it difficult. He said it would be hard to enforce a 5 to 10 mile an hour speed limit. Lemos said the circle was small and not in good repair. He said the culvert was raised like a speed bump. The length of the road was asked. No one knew for sure.

Mott said that he thought that the road was 18 feet wide. Issues were the length of the road, condition, and shared driveway. Oles said there were probably 100 trips per day. Mott said this was far less than what was allowed by the Geometric Design or Low-Volume Local Roads for rural low volume impact roads which allowed 400 trips a day on an 18 foot wide road.

7. The building, structure or use will not have a substantial adverse impact on the natural and environmental resources of the town.

Reply from Hill:

7. Hill's Home Preschool will not have an adverse impact on the natural and environmental resources of the town and the business will not use any of these resources in any excessive way.

Comments - Abutters - none

Comments - Board - Huckins said we would have to look at whether the use would have a substantial adverse impact.

8. Adequate public utilities, community facilities, and roadway capacity are available to the property to ensure that the proposed use will not necessitate excessive public expenditures in providing public services.

Reply from Hill:

8. Hill's Home Preschool will not necessitate any public expenditure in providing public services.

Comments - Abutters - Attorney O'Connell said that the road was suitable for 8 homes, the addition of the business would add 65 to 70 additional trips per day.

Comments - Board - The road was designed for 400 trips per day by the requirements of class 6 or private roads. This would allow 400 trips per day. For the addition of 2 more children would not affect the trips per day negatively. Again Huckins said a 12 child day care business was already in place.

9. Where deemed necessary when considering an application for Conditional Use approval, the Planning Board may require that adequate visual buffers be established to screen the proposed development from adjoining properties or roadways.

Reply from Hill:

9. The planning board's condition dated January 2008 required me to, as owner of Hill's Home Preschool, to install a 36 foot fence as a visual buffer. I have installed a 200 foot long fence.

Comments - Abutters - Fenton said she was not happy with the fence. She said her appraiser said that as the fence was not in good condition it devalues her property.

Comments - Board - The applicant went beyond what the Board had required for buffering. Trees were also on the site. Lemos said he would not want this fence next to his yard. Kelley said in many cases a person is damned if he does and damned if he doesn't.

Hill said she had come before the Board in 2008 for 12 children for which she was approved. If the Board did not approve the addition of 2 children would this mean that the former decision would be overturned. Huckins said no she had approval of a 12 children operation in 2008 regardless of any change.

Kessler said that she felt that the hearing should be continued to get the update of the letter from the Fire Chief, a detailed letter from the Police Chief, and the appraisals from Saccoccia and Fenton. The members agreed. Huckins said if Hill did not want the hearing continued she could ask for a vote tonight. Hill agreed to continue the hearing. Kelley made a motion to continue the hearing to July 1, seconded by Kessler, all in favor.

Huckins said that the Board has a policy that no new hearings were started after 10:00 PM. He said if the abutters wanted to stay he would poll the Board to see if they would continue to hear cases. The abutter of the Connick proposal thought that to present the proposal at this late hour would mean we all would hurry through it. They agreed that it would be better to continue the hearings to July 1. This would also apply to the Farrell hearing.

Hatch said the John Farrell hearing, File # SR 10/380 would be held first on July 1, with Jim Connick, SR 10/379 held second, Cheryl Hill, File # SR 10/378 would be heard third and all new hearings would follow. Lemos made a motion to continue the hearings for Jack Farrell and Jim Connick to July 1, seconded by Kelley, all in favor.

Request for continuance of the conditional approval Landry Conservation

Subdivision, File # 08/585

Rtes. 202 & 9 – Map 231, Lot 37

James Landry represented his request for continuance of his conditional approval of his conservation subdivision. He said that times had been tough for him and his family. Abutter Lynda Brushett said that Landry had received conditional approval 18 months ago. Huckins the Board had given Landry an extension of his conditional approval in November. A list of items was presented at that time, some of which had been done and some were remaining to be completed. Brawdgers said as the plan had not been signed the extension of the conditional approval can be done. She said the rules change if the plan was signed.

Huckins said that he could not apply to Army Corp of Engineering until certain items were addressed. Landry said he was trying to accomplish as much as possible. Huckins said that a hearing was held in the November. Landry said that he had to re-pin the area toward the well site as they had been removed.

Brushett asked if any of the changes that were made from the Town Meeting would have any effect on the Landry subdivision. Huckins said no, the changes voted on would not impact the development in fact the amendments would make it more conforming as items were allowed in the wetlands that had not before the changes.

Huckins said that a wetland permit was good for 5 years. Landry said the wells had to be on the top and he had to get an excavator to the site to build a road for the drill rig. Landry said the well would need to be drilled first, then a septic system could be submitted and approved. Landry said he was unsure whether there would be 1 well or more.

Landry said he was working on a homeowner's association agreement that would take in no further subdivision, a certified forest management plan, and road maintenance in effect until the road was accepted by the Town. If the road was not accepted the maintenance agreement would remain in effect. Landry was using a model for a homeowners association, agreements, declaration, and by laws.

Lake Association members Lynda Brushett and Jay Corcoran said they were sure that Landry would like to get things done on the subdivision and move on to the next item. She said they too would like to see it moving ahead as it could not draw on forever.

Huckins said that everyone knows that the economy was tough and in many cases a bond could not be obtained. Brawdgers said there were statutes that bonding could be accepted in lieu of it being in place. Huckins said this would need to be reviewed by our Attorney. Mott said the bonding should be discussed before the 6 month extension had expired. Kelley said that the discussion on bonds should be a general conservation.

The items that would be addressed within the 6 month period from June 3 to December 2 would be:

- 1. Writing of the homeowners association declaration and bylaws including deed restrictions of no further subdivision or land development in open space**
- 2. Review of homeowner's association declaration and bylaws by Town's Attorney.**
- 3. Drilling of the well**
- 4. Septic system approval**
- 5. State driveway permit**

As there were no further comments Oles made a motion to grant a 6 month extension to December 2, 2010 for the conditional approval for the Landry Subdivision, File # 08/585, seconded by Kelley, all in favor.

Brawdgers said she recommended that the date for hearing notification be changed to the Monday before the review session on the third Thursday of a month so the number of days before the hearing on the first Thursday of the following month would never be in question as to the necessary 10 days between notification and the date of a hearing. Members agreed that it was better to be safe than be challenged. **All information to be presented for a hearing will have to be in the office by the Monday before the third Thursday of the following month.**

Huckins said that he would like to have Brawdgers order books that he felt would be valuable to the Board. Brawdgers said she would take care of this. The next meeting will be held on July 1. Oles made a motion to adjourn, seconded by Kelley, all in favor. The meeting adjourned at 10:50 PM.