

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
November 21, 2013
7:00 PM**

MEMBERS PRESENT: Jim Banks, Chairman; John Hutton, Tobin Farwell, Craig Williams, alternate; and Frank Reinhold, alternate.

OTHERS PRESENT: Bonnie Winona- Whitemore-MacKinnon; Ed Bannister; Angela Monahan; Chuck Goss; and Caren Rossi, Planning/Zoning Administrator.

Tobin Farwell clerked and read the notice into the record.

-An application from Three Swallows Properties LLC, agent, Ed Bannister. The applicant request a Special Exception to Article V, Section D to allow for a Day Care Center in an existing building and a Variance to Article XV, Wet Soils Conservation Zone; Section F-2, to allow for parking to be 53' +/- from the edge of wet soils where 75' is required. The requests are to the 2013 Town of Lee Zoning Ordinance. The property is known as Tax Map #11-6-0200 and is located at 5 Mast Rd.

Ed Bannister explained that he has a current pending lease agreement with Angela Monahan who has an existing daycare in town now. She would be leasing the entire downstairs for the daycare. They will be expanding the parking back away from the road, a controlled access, approved by the DOT, having one entrance in and one exit with delineated parking spaces. The state DOT has asked him to put in a fence at the minimum to achieve this. They will be using the entrance on the back side of the building and not the front. The front access will be for emergency use only. They play area will be out back. The larger kids play area will be in the area by the town hall, and the toddler play area will be behind the L. The lighting will be downward lighting on the building. They will be at every entrance/exit. There will be a light pole at the one way entrance in, this will have downward lighting. There will be a fence installed along the play yard. This will be vinyl fencing. The extended parking area will be gravel and the existing paving will remain. This edge is proposed to be 53' from the edge of wet soils. The staff and tenants will park on the paved area and the other spots will be for the parents as it works best for the drop off and pickup. The soils were delineated by Marc Jacobs. The daycare currently has 20 children; they would, over time to increase to 32 children.

Jim Banks, Chairman asked if it was a seasonal business and what the hours are.

Ed Bannister explained that it is a year round daycare and the hours are Monday thru Friday 6:30am to 6:00pm. They stagger in and out. The busiest times are from 3 pm to 6 pm.

Jim Banks, Chairman asked how many were currently on staff.

Ed Bannister explained current 3 but as many as 5 when they are at their maximum of kids.

Jim Banks, Chairman asked what the septic capacity is.

Ed Bannister explained it was 825 gallons per day, but it has not yet been installed.

Jim Banks, Chairman asked where the well is.

Ed Bannister replied that he had the existing dug well expanded a couple weeks ago.

Tobin Farwell asked if any trees will be cut.

Ed Bannister commented that two bull pines will be cut. They need to be cut regardless.

Frank Reinhold asked about fire protection?

Ed Bannister replied that he will be putting in a dry system per the building code.

Jim Banks, Chairman asked what type of water source they will be using.

Ed Bannister explained that the well has adequate water, about 20 gpm.

Tobin Farwell asked what type of fencing they are installing.

Angela Moynihan replied that they are currently looking into privacy fencing, 6-8 ft high. She isn't sure at this point what type it will be.

Craig Williams asked what the planned use is for the apartments.

Ed Bannister replied that they will remain.

Public Comment

Chuck Goss spoke in favor of the application. Excellent use for the building and the town.

Bonnie Winona Whittemore asked where the play area would be, is it on her property line?

Ed Bannister replied that the toddler play area will be by her property.

Bonnie Winona Whittemore asked if he is leaving the pavement out front so people will still park there.

Ed Bannister replied that he was planning on leaving the pavement in place; they might possible put some planter gardens in that area to keep people from parking there. They will mark the existing pavement and mark flares for the turning lanes.

Bonnie Winona Whittemore stated that Mr. Bannister stated the pickup times will be from 3pm to 6pm. The road is very busy then, has a traffic study been done? Also, drop off at 6:30 am, her tenants are sleeping at that time, it will be noisy.

Ed Bannister replied that he lives on that road; it is busy all day, even at 4 am.

Angela Monihan commented that in the 4 years she has been open, she has a maximum of 3 kids who are dropped off between 6:30am -7:30am.

Jim Banks, Chairman asked what the target date for opening was.

Angela Monahan stated early March of 2014.

Bonnie Winona Whittemore stated that this property has already diminished the value of her property. The roof lines have changed; extended the side and the back of the building; doesn't meet the setback requirements; traffic study should be conducted; parking on her lot to go to this building, her tenants will be blocked; she has lost money since the fire; she can't rent her building; plastic fence, she had cedar; kids and the noise along her property line. She is very much against this request.

Frank Reinhold commented that we are not here to address what happened to the building, they are here for the proposed use.

Chuck Goss states he abuts Tibbett's Field in Madbury and he isn't bothered by that noise at all.

Angela Monahan stated that the toddler play area will only have 4 small kids in it at a time. Weather permitting they go outside. The outside time is twice a day for forty minutes at a time. She stated that if Mr. Bannister rents to two families, the number of kids could be the equivalent to the kids in her center.

Angela Monahan commented that if parking in the front is an issue, she can speak to the parents, she has the same people daily, not like a store that would have different people all the time. She knows them and they will get the routine down.

Bonnie Winona Whittemore asked stated that the Conservation Commission was supposed to provide input to the Board, did they do this?

Caren Rossi provided the Board with a letter from the Conservation Commission.

Floor closed.

Tobin Farwell spoke and he stated that as far as the parking goes, it is better than a pizzeria.

Jim Banks, Chairman stated with regards to the front pavement and digging it up. He could use raised planters and place them on top of the pavement.

Tobin Farwell asked if the front door will be kept locked.

Ed Bannister replied yes, it will just be an emergency exit.

Frank Reinhold stated that he felt the parking was an improvement.

Jim Banks, Chairman stated that he feels the buildings location makes it hard to get retail space in it. You want buildings to be as successful as possible.

Tobin Farwell asked the length of the lease?

Ed Bannister replied 5 years.

Frank Reinhold commented that he feels a daycare is less of an impact than a retail use or a pizzeria.

Jim Banks, Chairman stated that you also have control over who comes and goes.

Caren Rossi clarified that the current approved septic design, that has not been installed, does not allow for any prepared food on site.

Ed Bannister replied that it does not limit food to be brought in and sold.

John Hutton stated that he feels it is a piece of property with a history, frustrated for both parties, he can see that. A five year lease will be a nice consistency, have the parking issues resolved with this use, as much as possible. Something here with structure will be good; will have more control with the site this way. He asked Angela Monahan if she can control where the parents park?

Angela Monahan explained that all parents have manuals of the rules and procedures. If they don't follow the rules, parking is one of them, they can be asked to leave.

John Hutton continued that now there are designated parking spaces for the renters and the proposed use. He isn't crazy about the proposal but it is a vast improvement over the past, as well as now have control. The other issues that the abutter's states, he doesn't feel are this Boards issues. He feels this is a better use that what is allowed.

Jim Banks, Chairman asked if there would be a dumpster and if so, where will it be?

Ed Bannister replied no, they will be using the towns recycling center.

The Board determined the following Findings of Fact:

PRELIMINARY FINDING

After reviewing the petition and having heard the presentation by the applicant, it is found that the Board **has (all)** sufficient information available upon which to render a decision. If there is sufficient information, the application will be deemed accepted and the public hearing will continue. If it is found that the Board does not have sufficient information, the public hearing will be postponed to a date certain on _____.

For Special Exceptions permitted under Article V:

The use is specifically permitted under the terms of Article V for a Special Exception.

Yes: (all)

Satisfactory arrangements have been made for the following as required by Article V of the Zoning Ordinance:

1. Ingress and egress to the property and proposed structures or uses with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and in case of fire or catastrophe;

Yes (all)

2. Off-street parking and loading areas where considered necessary by the board;

Yes (all)

3. Control of noise, glare, odor or other potentially adverse effects of the proposed use on nearby property and screening or buffering to alleviate such effects;

Yes (all)

4. Refuse and service areas; **Yes n/a**

5. Control of drainage and erosion; **Yes (all)**

6. Lighting must be installed with due regard to glare, traffic safety and compatibility and harmony with adjoining property and the character of the area.

Yes (all)

In addition, the following criteria have been satisfied:

1. A landscaped buffer zone must be maintained between the Special Exception and any residential lot line.

Yes (all) neighboring lot is a commercial use by special exception.

2. Signs must conform to requirements of Article XVII of this ordinance.

Yes (all)

3. Only one (1) residential structure and/or one (1) business shall be permitted for that use on each lot.

Yes (all)

For all Special Exception requests, findings and rulings.

After reviewing the above, the Board has determined the following findings of fact, all of which must be satisfied to grant a special exception as required by Article XXII.3 of the Zoning Ordinance.

- 1) The proposed use **will not (all)** be detrimental to the character or enjoyment of the neighborhood or to future development by reason of undue variation from the kind and nature of other uses in the vicinity or by reasons of obvious and adverse violation of the character or appearance of the neighborhood or cause diminution in the value of surrounding property.
- 2) The use **will not (all)** be injurious, noxious or offensive and thus be detrimental to the neighborhood.
- 3) The use **will not (all)** be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk of life and property, unsanitary or unhealthful emissions or waste disposal, or similar adverse causes or conditions.

Tobin Farwell made a motion to grant the request for a Special Exception to Article V, Section D to allow for a Day Care Center in an existing building and a Variance to Article XV, Wet Soils Conservation Zone; Section F-2, to allow for parking to be 53' +/- from the edge of wet soils where 75' is required. The requests are to the 2013 Town of Lee Zoning Ordinance. The property is known as Tax Map #11-6-0200 and is located at 5 Mast Rd. Subject to the following condition.

1. A landscape buffer on the north side of the property. The side and length be delineated by the Planning Board. As referenced on the submitted plan by Michael Grover.

John Hutton second.

Vote: all, motion carried.

The Board determined the following Findings of Fact:

PRELIMINARY FINDING

After reviewing the petition and having heard the presentation by the Applicant, the Board finds that it does not have sufficient information Upon which to render a decision. The public hearing will be postponed until _____.

There is sufficient information before the Board to proceed.

Yes (all)

FINDINGS

After reviewing the petition and considering all of the evidence as well as the Board members' personal knowledge of the property in question, the Board makes the following determinations pursuant to RSA 674:33. The Board has checked each statement that applies.

- 1) **Granting the Variance will not be contrary to the public interest.** Yes (all)
- 2) **Granting the variance would be consistent with the spirit of the Ordinance.** Yes (all)
- 3) **In granting the variance, substantial justice is done.** Yes (all)
- 4) **In granting the variance, the values of surrounding properties are not diminished.** Yes (all)
- 5) **Literal enforcement of the provisions of the ordinance would results unnecessary hardship to applicant.** Yes (all)
 - A) To find that an "unnecessary hardship" exists, the Board must find:
 - There are special conditions on the subject property that distinguish it from other properties in the area; *and*
 - No fair and substantial relationship exists between the purpose of the ordinance and its application to the property in question.
 - B) In the alternative, if the above criteria are not satisfied, the Board may still find that an unnecessary hardship exists if it finds:
 - There are special conditions on the subject property that distinguish it from other properties in the area; *and*
 - The property cannot be reasonably used under the ordinance and therefore, a variance is necessary to enable a reasonable use of it.

John Hutton made a motion to grant the request for a Variance to Article XV, Wet Soils Conservation Zone; Section F-2, to allow for parking to be 53' +/- from the edge of wet soils where 75' is required. The requests are to the 2013 Town of Lee Zoning Ordinance. The property is known as Tax Map #11-6-0200 and is located at 5 Mast Rd. Subject that the Best Management Practices be followed, including silt fencing or other accepted erosion barriers should be installed at the edge of the proposed 53ft setback from the Bog. Any excavated materials stockpiled for regarding should be stored close to the road to minimize erosion into the bog during rain events.

Frank Reinhold second

Vote: all, motion carries.

Jim Banks, Chairman explained the 30-day appeal process to the applicant.

MINUTES TRANSCRIBED BY:

Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

Jim Banks, Chairman

Craig Williams, Alternate

John Hutton

Tobin Farwell

Frank Reinhold, Alternate