TOWN OF ESSEX ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
February 6, 2020

ZONING BOARD (ZBA) MEMBERS PRESENT: Justin St. James, Chair; Nick Martin, Vice-Chair; Hubert Norton; Tracey Delphia and Michael Plageman.

OTHERS PRESENT: Sharon Kelley, Zoning Administrator; Dawn Irwin; and David Irwin.

Chairman Justin St. James called the meeting to order at 5:59.50 p.m., and provided the oath to the public.

AGENDA ITEM 1: CONDITIONAL USE: LYON & BLUNT PROPERTIES LLC IS PROPOSING A 20-CHILD DAYCARE FACILITY IN THE 1,800 SF COMMERCIAL SPACE LOCATED AT 71 CENTER ROAD IN THE RESIDENTIAL-BUSINESS (R-B) ZONE, AND BUSINESS DESIGN CONTROL (BDC) OVERLAY DISTRICT. TAX MAP 57, PARCEL 52.

Sharon Kelley, Zoning Administrator, reported on this application. Kelley noted that the landowner was not present. Kelley reported that the State now refers to a daycare center as a 'Center Base License', which is reflected in Finding 4. Kelley reminded the ZBA that a former daycare, and more recently, the Town of Essex Recreation Department used the facility for its programs. Kelley noted that she has been in the unit with the State Fire Marshall and confirmed that very minor issues existed at the site. Kelley did not have any changes to the staff report.

The applicant, Dawn Irwin provided comments on the proposed use. Irwin stated that she was the owner of 'Growing with Wonder'. She has been looking for a place to open for her child care business. She reported that she has been looking for a property that does not have issues, such as covenants, parking issues, etc. She was excited that she found the property under review as it is "key-ready." Irwin reported that she did a walk-thru with the State Fire Warden and noted minor issues such as a change to an outlet, and adding a cover. She stated that the State child care licensor was excited for her to open as other daycares are closing and they need the space.

Board Member Delphia asked if the state license was to operate her business. Irwin said yes and described the different types of permits. As she is seeking Center Based, she will need a state approval.

Chairman St. James confirmed the landowner was not present. Irwin confirmed and said the other person present was there for moral support.

Board Member Norton noted that the state requires the children to be walked into the daycare. Irwin said that was correct and continued to note that there are 24 parking spaces, which is plenty. She reported that she has a staggered drop-off/pick-up schedule to avoid congestion.

Vice-Chair Martin asked if the unit could house 60+ children. Kelley noted that the 1999 approval allowed for 69 children, however the unit has been decreased in size to accommodate two residential units. A discussion ensued around the square footage needed for state requirements. Kelley confirmed that if the ZBA approved with application with a specific number, the applicant would need to return to the ZBA for an amendment.
Board Member Norton calculated that the current state regulations could allow as many as 57 children in this unit.

Board Member Plageman asked if she was planning on an April start, and asked what the maximum number of children the applicant was requesting should she wish to expand. Irwin said she was hoping to open as soon as possible, but felt April was realistic. She believed that the maximum number of children she wanted remained at 24. Irwin reported that the landowner may expand the space by removing the 2nd residential unit. If that occurred, she would still not take on more kids.

Vice-Chair Martin MOVED and Board Member Norton SECONDED a MOTION to Open the Fact Finding/Public Hearing. The MOTION passed 5-0.

There was no one from the public present.

Board Member Norton MOVED and Board Member Plageman SECONDED a MOTION to Close the Fact Finding/Public Hearing. The MOTION passed 5-0.

Board Member Delphia MOVED and Vice-Chair Martin SECONDED a MOTION to approve the child care application for 71 Center Road, subject to the Findings and Conditions of a Staff Report dated 2/6/2020, as follows:

**FINDINGS:**

1. The landowner is Lyon & Blunt Properties, LLC, c/o Chris & Kristen Lyon.

2. The applicants are Dawn Irwin and Holly Beckert, d/b/a Growing With Wonder, L3C.

3. The property is located at 71 Center Road in the Residential-Business (RB) Zoning District. Tax Map 57, Parcel 52. The parcel has one building on the premises, which includes 2 residential units and a 2,000 sq. ft. commercial unit.

4. This application is being reviewed pursuant to the Zoning Regulations, Section 4.5(B) – ‘Day Care Facility’ and Section 5.7 – ‘Conditional Use’. It is noted that the State now refers to a Daycare license as ‘Center Based License’.

5. The applicant submitted a hand-drawn plan, date-stamped received by the Community Development Department on Dec. 07, 2019. In addition, staff provided a copy of an 11x17 site plan from the zoning files that was submitted to the Dept. of Environmental Conservation, as drawn by Michal Dugan, dated 1-22-73, revised 1-24-74.

6. The proposal is to resume operations of a daycare facility in the commercial unit. Growing With Wonder’s philosophy is centered around a play and relationship-based, child-centered, multi-age, arts-enriched emergent curriculum approach, and would include the following:

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The occupancy includes 30 children between 6 months and 5 years; and 4-5 employees at any one time.

The facility would be open year-round, and the facility would follow the Essex School District’s calendar between the months of September and June.

Operating hours would be from 7:45 a.m. until 5:30 p.m. Teachers would arrive at 7:30 a.m. and leave at approximately 6:00 p.m.

Drop-off times are proposed to be between 7:45 a.m. and 11:00 a.m., and pick-up times will be between 3:00 p.m. and 5:30 p.m.

7. Based on the current state regulations, the existing space may house as many as 57 children.

8. The site was approved with 25 parking spaces. Previous approvals granted 10 spaces dedicated to the daycare, which included drop-off and pick-up, and the remaining spaces were dedicated to the commercial units. The remaining commercial units were converted to two 1-2 bedroom, multi-family residential units. Section 3.9, Table 3.3 ‘Off-Street Parking Space Requirements’ require 1.67 parking spaces per unit. Therefore, 4 of the 25 spaces are dedicated to the residential units, with the remaining parking spaces dedicated to the commercial space. There is adequate parking on the premises.

9. On August 25, 1997, the Zoning Board denied an application to permit any outside children’s activities in the parking lot. Research shows this was due to the safety of the children, and concerns from the abutting neighbors regarding character of the area.


11. In an email dated 1/15/20, Public Works said,

   The most recent use for the 2,000 SF space has been for a Parks and Recreation activity space. Prior to this, the space did house a daycare facility. The current application is for a 24 child daycare with 6 staff members. The documentation for the proposed change of use for the existing commercial space at 71 Center Road has been reviewed by the Public Works office, and comments have been provided below.

   Traffic

   Public Works is of the opinion that there will be no significant impacts to the existing transportation infrastructure due to the traffic from the proposed change of use. This space was previously approved for more students than being requested for with this application. No further comment necessary.

   As with previous approvals for this location, Public Works is of the opinion that any approval should be conditioned to restrict all over-flow / on street parking along Sunset Drive from the proposed daycare.

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### Water and Sewer

The building known as 71 Center Road has two, 2 Bedroom apartments and an approximately 1,850 square foot commercial space. The Town has reviewed the file for 71 Center Road and has found the building to have 7.35 EU’s or 1,470 GPD of purchased water and sewer allocation. Based on both the Town and State wastewater allocation design numbers, there is sufficient capacity to accommodate the existing residential users and the daycare.

12. In an email dated 1/9/2020, the Police Chief said, “No feedback from the Police.”

13. In an email dated 1/28/2020, both the Recreation Director and the Fire Chief reported that they had “No comments.”

14. The abutting property owners were notified by certified mail by the Community Development Office, and statutory notice requirements were met.

15. Dawn Irwin spoke on behalf of this application. There were no public comments provided on this application.

16. **FINDINGS OF FACT ANALYSIS (SECTION 5.7-CONDITIONAL USE REVIEW)**

In reviewing applications for conditional use approval, the Board of Adjustment shall consider and may impose conditions and safeguards only with respect to criteria specified below. The applicant’s response to this criteria is as follows:

1) **CAPACITY OF EXISTING OR PLANNED COMMUNITY FACILITIES:**

   The Board shall consider the demand for community services and facilities resulting from the proposed development in relation to the available capacity of affected services and facilities, the Town’s adopted capital improvement plan, official map and any impact fee ordinance in effect. Conditions, including project phasing or improvements necessary to accommodate the proposed development, may be imposed as necessary to ensure that the demand for facilities or services does not exceed existing or planned capacity.

   **APPLICANT’S RESPONSE:** Increasing the town’s child care capacity allowing more families access to high quality early childhood education opportunities for their children.

2) **CHARACTER OF THE AREA AFFECTED:** The Board shall consider the location, scale, type, density and intensity of the proposed development in relation to the character of the area likely to be affected, as defined by the purpose(s) of the zoning district(s) within which the project is located, and specifically stated polices and standards of the municipal plan.
APPLICANT’S RESPONSE: Ensuring the character of the area is not negatively affected due to the school’s location. The property was approved to house a childcare program with a maximum of 69 enrolled students in the 1990’s. With a third of the students enrolled in our program, our students would have a minimal impact. There are no anticipated structural changes needed to be made to the building because it is already fitted to the specifications needed for a day care facility with a fence around an outside play area and the required amount of exits needed for a child care program already installed at the site.

3) TRAFFIC ON ROADS AND HIGHWAYS IN THE VICINITY: The Board shall consider the projected impact of traffic resulting from the proposed development on the existing and planned capacity, safety, efficiency and use(s) of affected roads, bridges and intersections. A traffic impact study may be required. The Board will rely on generally accepted transportation standards and the Town’s adopted road and public works standards in evaluating traffic impacts, and shall not approve a project that will result in the creation of unsafe conditions for motorist, pedestrians, or cyclists, or unacceptable levels of service for local streets, highways and intersections. The Board may impose conditions as necessary to avoid or mitigate undue adverse effects resulting from the proposed development, including improvements to the street network and/or traffic management strategies and control devices.

APPLICANT’S RESPONSE: A minimal impact on traffic in the area. Route 15 is a main road running through the town that already sees a lot of traffic from morning and evening commuters. The families that would be using the road to bring their students to school will not add a significant amount of traffic during these times of day. Additionally, the property is located on the corner of Route 15 and Sunset Drive which means they would be pulling into the parking lot before having to pass any of the residential houses along the street which will keep the impact on those residents to a minimum.

The tenants living in the two residential spaces connected to the building will still have more than half of the parking spaces in the lot available to them even if all 12 of our parking spots are being used simultaneously. And, they will have access to the entire parking lot in the evenings and on weekends as our school will be closed.

4) BYLAWS AND ORDINANCES IN EFFECT: The Board shall consider whether the proposed development complies with all municipal bylaws and ordinances in effect at the time of application, including other applicable provisions of these Regulations. No development shall be approved in violation of existing municipal bylaws and ordinances.

APPLICANT’S RESPONSE: Complying with all bylaws and ordinances in

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effect in the town.

5) UTILIZATION OF RENEWABLE ENERGY RESOURCES: The Board shall consider whether the proposed development will interfere with the sustainable use of renewable energy resources, including the existing and future availability of and access to such resources, on adjoining properties.

APPLICANT’S RESPONSE: Not adversely affecting the sustainable use of renewable energies available to the property and any adjoining properties. With less than 30 people using the location for approximately 55 hours a week, we will not have a significant impact on the usage of these energies now or in the future.

SPECIFIC STANDARDS:

1) CONFORMANCE WITH THE TOWN PLAN: Applications for conditional use approval shall conform to specific, applicable policies and objectives of the Town Plan of record.

The site has been used as a daycare in previous years and will continue to meet the objectives of the Town Plan.

2) SITE PLAN REVIEW CRITERIA: The Board of Adjustment may apply any applicable site plan review criteria under Section 5.6 in its review of conditional use applications that do not require site plan review and approval as it deems necessary to fully evaluate a proposed conditional use under the criteria of this section.

N/A. Unit is key ready.

3) CONFORMANCE WITH COMMUNITY CHARACTER: The Board of Adjustment may consider whether the development has an undue adverse effect on the character of the community as specifically expressed in the policies and objectives of the Essex Town Plan.

No physical changes to the site proposed. The site has been used as either a daycare or indoor recreation use for several years.

16. Pursuant to Section 5.7 of the Zoning Regulations, the Zoning Board finds the following:

a. There will be no adverse effect on the capacity of the existing or planned community facilities;

b. There will be no adverse effect on the character of the area/neighborhood affected;

c. There will be no adverse effect on traffic on roads and highways in the vicinity;

d. The proposed use will be in compliance with the bylaws now in effect;
e. The proposed use will not adversely affect utilization of renewable energy resources;
f. The proposed use is in conformance with the Town Plan;
g. The proposed use does not require site plan review; and
h. The proposed use is in conformance with community character.

17. Section 4.5(B) ‘Day Care Facility’ is subject to review by the Zoning Board of Adjustment and the Planning Commission. Section 4.5(B)(1) & (2) reads as follows:

(1) In addition to the conditional use criteria under Section 5.7, no day care facility shall be permitted by the Board of Adjustment that:

(a) Results in on-street parking.
(b) Results in objectionable noise or disturbance to adjoining properties.
(c) Does not comply with all requirements of a state certified day care facility.
(d) Includes playground equipment and/or play areas within the required front yard setback.

(2) In addition to all of the site plan review requirements of Section 5.6, approval by the Planning Commission shall be contingent upon:

(a) Provision of off-street parking allowing for one space per employee and adequate space for the pick-up and delivery of children or adults.
(b) Provision of appropriate screening and fencing around playground equipment and/or play areas.

The Planning Commission has previously reviewed this parcel for site plan review and for a daycare facility. Although approvals for a daycare facility at this location have expired, the Zoning Administrator will confirm if a PC application for site plan review is necessary.

It is further noted that an outdoor play area is located on the side-yard only.

CONDITIONS:

1) The Zoning Administrator shall notify the Planning Commission that a daycare has requested to re-occupy the premises. If needed, the applicant shall submit an application for PC review and approval.
2) The applicant shall complete a Use Permit and shall schedule a Certificate of Occupancy inspection prior to opening for business.
3) A copy of the Center Based License shall be submitted to the Zoning Administrator at the time of occupancy.
4) The applicant shall apply for any/all State permits that may be required of this use.
5) No on-street parking is permitted.
6) No designated outdoor recreation area in the parking lot is approved for the commercial unit.
7) Signage shall be approved by the Zoning Administrator.

Approved 3/5/2020
AGENDA ITEM 2: MINUTES: JANUARY 2, 2020:

Board Member Delphia MOVED and Board Member Plageman SECONDED a MOTION to approve the 1/2/19 minutes with the following change:

Line 114, Change "ad" to "and."

The MOTION passed 5-0.

AGENDA ITEM 5: ADOPTION OF OPERATING PROCEDURES

Sharon Kelley reminded the Board that they asked for a clean copy to review prior to adoption. A few additional minor changes were made to the document.

Board Member Plageman MOVED and Board Member Norton SECONDED a MOTION to re-approve the ZBA Operating Procedures as amended. The MOTION passed 5-0.

The meeting adjourned at 6:48 p.m.

ZONING BOARD OF ADJUSTMENT

By: _____________________, Chair

Justin St. James