

Zoning Board of Adjustment

June 24, 2013

Members present: Chris Stafford-chairman, Tara Burkhart-vice chairman, Roger Denison, Joe Luna, and Curt Springer

Excused members: Janet Denison-clerk and Annemarie Inman-alternate

Others present: Tony Fiore-applicant, Mike Pelletier-applicant, Karl Dubay-agent, Chris Giordano, Tim and Cheryl Smith, Sister Therese Andre Champagne, Sister Deborah Collier, Grace Ross, Susan Fenn, Jackie Murphy, Shawn Murphy, Carole Trahan, Leo Trahan, Wayne Brown, Wally Fries, Sheila Johannesen

Non-Danville residents present: from Exeter: Maryann Walsh, Ann Martino, Danna Trahan, Denise Kelly, John Kelly, and Carol Anne Standish; from East Kingston: Linda Houde, Carol Branchard, Bruce Olson, and Ellyn Olson; from Hampton Falls: Kathryn Allen; from Lowell, MA: James Linnehan

The meeting began at 7:30pm.

1. Minutes

The minutes of June 4th and June 15th were reviewed. Karl Dubay's name will be added to those present during the June 4th meeting. Joe made and Curt seconded a **motion to approve the June 4th minutes as amended**. The motion **passed** unanimously. Joe made and Tara seconded a **motion to approve the June 15th minutes as written**. The motion **passed** unanimously.

- 2. Case #2013-2:** 59 Holly Street Property Management, LLC are requesting a variance from Zoning Ordinance article IV.1.a-d to have a residential/commercial use and a mixed residential/commercial use in the residential zone. The applicant is proposing to have a facility for paintball of various types, zip line, and running trails, etc. This is for Danville Tax Map and Lot 4-46 along Long Pond Road.

Chris read the June 15th meeting minutes for those who were not in attendance of the site walk. Chris stated this is a continued hearing and asked that the focus be on new information.

Karl Dubay thanked the Board members and those who attended the site walk. He briefly explained the zip line will be a canopy tour through the 68 acre parcel. This will be low impact, fitting into the natural terrain. He explained the shape of the property is unique, being relatively square. This allows the main activities to occur in the center of the property, allowing large buffers between the activities and abutting parcels. He said this is the only parcel in town that will work for this proposal. Lots in the commercial zone are inadequate for different reasons.

The zip line will platforms will be at least 100' from the property lines, the recreational field will be at least 700' from Meadowlark Lane. The existing woods will remain, allowing a substantial

natural buffer. It was pointed out a 50' buffer is required between a commercial area; the proposed buffer is 14 times wider.

Mr. Dubay explained there is a town-owned park in the area which includes a baseball field, gravel parking, and tennis courts. Being maintained by the town costs the taxpayers, whereas this park will be privately owned and bring revenue to the taxpayers. He also showed a picture of the Adventurelore sign, typical of what they will have at their entrance.

Mr. Dubay spoke about the general purposes of the Zoning Ordinance (ZO). If this facility were owned by a church or the town, it would be allowed in the residential/agricultural zone. He mentioned the Master Plan and ZO mention recreational facilities. He said it is inferred in these documents that the natural terrain and buffers should be maintained, which they will be able to achieve with their proposal, therefore the nature of the neighborhood will not be altered. He further stated the entrance will be curvilinear, thus the only visual of the property from the road will be a gravel drive into a wooded area.

Curt asked, referring to criteria RSA 674:33, I(b)1.A.i, if the current zoning makes sense for this property. Mr. Dubay reiterated that there are no general purposes and this proposal would be allowed in this zone if it were town-owned or owned by a church. He said there is a disconnect between what is and is not allowed. This zone allows playgrounds and that is the substantial relationship between the proposal and the purposes of the ZO.

Chris opened the discussion to the public. Wally Fries said the intention of the ZO is that this area of town is not commercial and the ZBA is not allowed to rewrite the ZO. He said Adventurelore predates zoning. He also said if the land is no different than other properties in town, there is no hardship. He asked the audience members if they thought their property values would decrease because of this proposal. Roger asked if there is any evidence that surrounding properties are devalued if they are close to a recreational facility. Mr. Dubay stated he lives in a neighborhood which has higher value because they are close to a recreational facility. Chris said it is difficult to prove land values will either increase or decrease in this case.

Mr. Dubay explained the parking lot will have 200 spaces as a maximum capacity. It will be developed in phases. Typically participants arrive in the same vehicle; they expect a maximum of 100 people per day with arrival and departure times staggered throughout the day. Joe asked about what can be done to support the traffic on town roads. It was mentioned this is more of a Planning Board issue, however, Mr. Dubay stated the ITE manual will use figures based on ten trips per day per home when considering a typical subdivision. A traffic study can be done in conjunction with a Planning Board application.

Chris asked about what is unique about the property that an unnecessary hardship exists if the property were not made residential. Mr. Dubay stated this criteria (section 5.B) is not necessary as they meet the criteria for section 5.A. He explained that a single house can be placed on the property, thus it is residential. He also stated there are wetlands throughout as well as the powerlines, which run through several properties in town. The property owner has the right to drastically alter the existing terrain, remove the trees, and use the right-of-way off of Meadowlark Lane, extending that road, in order to put in a subdivision.

An audience member identified herself as not being a Danville resident but that she uses a neighboring property for meditation. She asked about the noise level and the policing of the property when it is in use and also closed for holidays or seasonally. She asked if others would be able to access the zip line after the park is closed.

Mr. Dubay said there will be training on a small line before the participants are allowed in the larger line. If someone is going to scream, it will most likely be on the first, smaller training course.

Mr. Fiore said he will live on the property as the manager. He explained the zipline will be difficult to access when not in use and measures will be taken to ensure the security of the equipment, including removing the ladders to make it more difficult to access the platforms. He said people can be resourceful and all property owners are at risk of trespassers, if someone is determined enough to do so.

Sister Therese said that Mr. Cheney had told the members of the convent that the abutting property would never be developed. She explained excessive noise will disturb their patrons. Chris said that a property owner has the right to develop a property as they wish.

Roger asked if there is a way to put a cap on the number of participants. Mr. Fiore said there is and they can have preregistration for events and fields. He explained the proposal is designed to be respectful of the abutting properties. He said the noise factor was addressed during the site walk, including someone yelling in the woods. He associated the noise level with that of an active playground.

A member of the audience identified herself as living outside Danville. She asked if people will be allowed to bring their own equipment. Mr. Fiore explained the nature of paintball fields. He said the games have set boundaries and rules and all are overseen by referees. This is not going to be a group of people running around like crazy. The woods fields will have 4' high orange construction netting encapsulating all the fields, keeping participants within the set bounds. He said he was unable to find data regarding the decibel level of paintball guns, but he said they make as much sound as a nailgun.

Mr. Fries said he thinks the 200 capacity parking lot could actually hold 400+ people if they arrive staggered throughout the day. Roger said the applicant already explained the parking lot is to accommodate special events with no parking on the road. Mr. Fries said this facility will alter the character of the neighborhood. He said Long Pond Road cannot handle the traffic it has today. He said the use of the property as it exists, is a reasonable use.

Curt asked about the size of the building. He was answered it will be 100'x200'.

Carol Anne Standish said she is a frequent visitor to an abutting property. She has also been a nurse at a local emergency room. She said paintball and zip lines cause many injuries. Chris interrupted her saying that is a Planning Board issue and they need to focus on the ZBA criteria.

Shawn Murphy asked about hours of operation. Mr. Fiore said they would like to be open the entire year once the building is in place. The paintball and zipline will operate during daylight hours, during the spring and summer. The building will allow indoor games up to 10pm.

Ann Martino asked why they have used the analogy of a playground. Chris explained a playground is an allowed use in this zone.

Sheila Johannesen asked about the noise and pointed out the trains on the railroad in Kingston can be heard in this town. Chris stated a sound test could have been requested. Since one wasn't, they will deliberate on the information provided by the applicant.

Curt asked the applicant what the public interest is for this proposal. Mr. Dubay stated that recreational uses are scattered throughout the Master Plan, there is no cost to the town to have this recreational use since it will be privately owned and maintained. There will be no impact to the school, it will bring in revenue to the taxpayers, and there is a general disconnect in the general provisions of the Zoning Ordinance.

Chris closed the public portion of the hearing.

1) Granting the variance would not be contrary to public interest -

The board agreed this proposal would not be contrary to the public interest.

The ZBA agreed that the proposed commercial gaming operation and associated noise and traffic in this residential/agricultural zone would alter the character of the neighborhood.

2) The use is not contrary to the spirit of the ordinance -

The Board agreed they heard both sides of the argument. Curt expressed his opinion that the purpose of the ZO is a productive use of a property. He said the Master Plan has the residentially zoned lots uninterrupted by commercial lots. He assumed the surrounding properties will also be developed in line with current zoning.

Chris said the fundamental question is whether or not the buffer is sufficient to not alter the character of the property. Roger pointed out any development will bring a level of noise. Curt said people have probably gotten used to the ATVs on the powerline corridor; for example, ATVs run behind his house but he doesn't hear them anymore. It was stated the proposal will bring guaranteed noise, whereas the ATVs, while making more noise, is not as frequent.

Curt explained it can be difficult to enforce some rules. Chris said this is as good a plan as you can get that minimizes the impact on the neighborhood. Joe agreed this minimizes the intrusion but a development still impacts the neighborhood. It was agreed that this is designed the best way possible for this lot. Chris asked if the activity is insulated enough that the overall character of the neighborhood is not changed. He said there is enough buffer that stray paintballs or participants won't go to someone else's property, and asked if, with restrictions, will this proposal alter the character of the locality. Roger stated his opinion that a residential development will alter the neighborhood more than this proposal, as it would add more

pavement, the woods could be clear-cut. He said his reservation is how this can be controlled so it doesn't get out of hand. He said a commercial endeavor can have restrictions placed upon it. There is no control over who lives in a residential development or what time they travel to and from their home. He said that Mr. Fiore can buy the property and build this facility for himself; though it would likely not be in continuous use, there would be no telling him what hours he can use it. Chris asked if restrictions can be made that are fair and would still meet the intent of the ZO. He said this is not a factory or retail store which would be more impactful to the neighborhood, but this will still add noise and traffic. There was general agreement that without restrictions, the spirit of the ordinance would not be observed.

The Board reviewed how restrictions can be put on the variance. There were no recommended restrictions made.

Based on the size and scope of this proposed Zip line and Paint ball commercial operation, including the noise level and traffic generated from the games, the ZBA agreed that it would violate the basic zoning objectives of the residential/agricultural zone and would alter the essential character of the locality.

3) Granting the variance would do substantial justice -

Curt explained we need to balance the private interests versus the public's interests. The public includes not just the immediate abutters. He said if this is approved, we're asking people to take on some risk as this may be bad or good for them. He concluded the total detriment to the public would be larger than the detriment to the property owner. It was agreed that bringing in houses raises the tax base of every resident regardless of where they live. However, that is allowed per the zoning as the town has said this property is to be residential/agricultural.

The ZBA agreed that granting the variance would not do substantial justice and thereby determined that due to the noise and traffic impact, the gain to the public by maintaining the existing residential/agricultural use for this property outweighed the loss to the individual.

4) The proposed use would not diminish surrounding property values –

Curt pointed out this point is hard to prove without data. Joe commented about potential high traffic on the road. Tara said that once Back Road was opened to the abutting town, people regularly exceed the speed limit making the road especially unsafe for pedestrians. Chris said he lives on Main Street and would not have bought the property if he felt traffic were an issue. Roger stated his opinion that if this were opened to build homes, the traffic would increase and also impact home values. It was pointed out that no one can restrict when a road is used.

No hard evidence was presented that the project as proposed would diminish or improve surrounding property values. The ZBA agreed that the proposal would not diminish surrounding property values.

5) Unnecessary Hardship –

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship to the owner.

i. No fair and substantial relationship exists between the general purpose of the Zoning Ordinance provision and the specific application of that provision to the property.

The ZBA agreed that there is a fair and substantial relationship between the general purpose of the Zoning Ordinance to restrict use of commercial operations in a residential/agricultural zone and the specific application to this property.

ii. The Proposed Use is a reasonable one.

While recreational use of property in the residential/agricultural zone is reasonable, the ZBA believes the size, scope, and associated traffic and noise of this specific commercial operation would alter the essential character of the neighborhood.

Curt said the purposes of the ordinance do apply here. This is zoned residential which does not support this type of use, a church being an outlier. He said this Board cannot argue whether or not another use would be better. Chris said the question is regarding what is unique about this property that makes it a hardship to enforce the residential use. He said it should be decided as is, then the decision can be made whether to put restrictions on it.

Curt said that section (i) is holding up the ZO without restrictions. There are other uses for the land. Chris said the land can be graveled, clear cut, or farmed, which would all have a bigger impact on the land than what is proposed. Curt said these cannot be considered here. Chris asked if the powerline corridor and terrain make enough of a difference that a different use of the property should be considered. Joe expressed his opinion that, especially since the site walk, there is nothing about this property that distinguishes it from other lots. He thought it would be more conducive to residential use than other parcels because of the size. Chris stated there is nothing special about the property that forces it to be commercial.

Curt: less impactful to land than others that would be allowed. Curt: agree with idea that there's something unique about land. Other lots are not shaped right. If PB puts something to voters, to put it in ZO a use by special exception, the voters would have different criteria. Now we have to use the criteria we have.

It's reasonable for this parcel, but the overall impact to traffic specifically is not reasonable. Under current ordinance and criteria for variance, this must be deemed unreasonable. It's hard to say it doesn't meet the spirit of the ordinance and then say it's reasonable. The public voted for the zoning, so the public may vote and make some changes.

B. An unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the

property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The ZBA agreed that there was no special condition of the property that would result in an unnecessary hardship if the property was used as currently zoned.

It was agreed there are other reasonable uses that can be put in place on this parcel.

Joe made and Curt seconded a **motion to deny the variance based on the discussion**. Roger abstained. The motion **passed**.

Chris said a notice of decision will be made within five days and it will include the reasons so stated.

At 9:50pm Joe made and Tara seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted,

Janet S. Denison-clerk