

Zoning Board of Adjustment

June 4, 2013

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

Excused members: Annemarie Inman-alternate

Others present: Tony Fiore, Mike Pelletier, Ron Peverly, David Collins, Ellie and Dan Calef, Sheila Johannesen, Sheri Kaminsky, Robert Griffin, Karl Dubay

The meeting began at 7:30pm.

1. Minutes

The minutes of May 14th, 2013 were reviewed. After discussion, Joe made and Roger seconded a **motion to accept the minutes of May 14, 2013 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 briefly described the meeting process and the five criteria to be met in order to have a variance granted. He explained the Board will need more details for this new application, but not the details relevant to a subdivision plan.

a. Introduction

Karl Dubay introduced himself as the designer working with Tony Fiore of Danville Action Games. He explained the proposal as a hybrid of a golf course and a park and that the issue at hand is the commercial use of the property in a residential zone. He supplied a more detailed plan of the facility and photographs of the different proposed features.

b. Zip Line & Paintball

The zip line was described as a tour through the canopy of the trees. Differences in elevation are necessary for the line to go from platform to platform. Certified operators will be stationed at the platforms to assist and guide the participants. The trees will remain, thus there will be little impact to the property. The zip line will be interspersed with various sky bridges, offering a diverse way of navigating the woods. The network will blend into the natural fabric of the property. No motorized parts will be used and placement of the platforms can be discussed in depth with the Planning Board.

The paintball games were noted on the plans. The speedball fields will be nestled together in the center of the property. These will be competition style with movable inflatable obstacles. Each field will be bounded by its own fence.

There will be a woods ball area to the west of the speedball. This will have six different themed areas within one fence enclosure. The fence and referees serve to keep the participants from going elsewhere on the property. The referees also ensure the participants are geared properly before entering. The applicant does not expect to use all six areas at the same time.

c. Zoning and Site Maps

Mr. Dubay displayed a town map with the different zones highlighted. He explained that using GIS imaging and photogrammetry each lot in the highway, commercial, light industrial zone is unsuitable for this proposal. He explained that each lot has its own issues making the lots unusable. These limitations include already being developed and poor access to the property. The shape of the lot either by itself or when the wetland buffers are accounted for do not allow this park to be reasonably sited.

He displayed a picture of the lot showing 10' contours with the steep slopes, powerline corridor, and wetland buffer zones. He explained there has not been a survey of the property, but they have used high scale GIS overlays to create an image of the usable land. The layout of the property was decided based on where things will work best. The powerlines, wetlands, and topography as well as distances from abutters were worked into the plan.

d. Overall Plan

Mr. Dubay pointed out on the plan the dark green areas around the border and throughout the lot. He explained this represents the majority of the trees will remain except for those in the center of the lot, in a flat area, that will be cleared for the speedball field. The drive into the lot will be curvilinear, allowing for passersby on the road to look into the drive and see only woods. The driveway onto Long Pond Road has excellent site distance in both directions. They do not propose using the right-of-way off of Meadowlark Lane. Meadowlark residents will have an additional wooded buffer to the west of the powerline, making the closest ball field about 700' from the nearest home. This field is about 750' from the property line to the west.

The applicant has spoken with the Fire Chief and the parking lot has been designed with a turnaround area. A graveled access road will be made around the perimeter of the property and bisecting the property in the center. This will be for maintenance and emergency access and possibly seasonal hay rides.

A proposed 80'x200' building is planned to be built in the center of the lot. This will have a snack bar, restrooms, and locker rooms, and will be flanked by picnic areas. There will also be an orientation center for a nature trail. The welcome center will be 400' from the nearest home. Many of the paths they will use are there already. They plan to stay away from the right-of-way and work with the topography, leaving the bulk of the lot undisturbed. Mr. Dubay stated the width of the buffers and placement of features can be discussed further. He said a good park

design is interactive with the people, leading them through key features to get from one area to another.

Mr. Dubay briefly mentioned the home at the entrance will be the caretaker's residence. This constitutes a mixed use component and the site of the home depends on the wetlands and other setbacks. An area to the north is marked as possible future development. This also depends on the wetlands and the survey. It's understood the applicant would need to come back to the town for another hearing if this were to be developed in the future.

The number of employees depends on the phase of construction and overall growth of the business. The first phase proposed is the woods ball area. About five employees can staff a basic playing field. The ropes course requires many staff members who attain a specific level of certification.

Mr. Dubay and Mr. Fiore explained that the equipment and plan are focused on safety. An orientation and gear check ensure that participants have properly maintained gear and understand the rules. There are specific rules to ensure the safety of all participants and observers. Professional designers are hired to lay out the courses. Mr. Fiore said that as a sport, paintball is very safe. He was unable to find any figures online regarding injuries related to this sport but, as a player for many years, he attests that most injuries are due to tripping and falling.

e. Traffic

Mr. Fiore explained that a traffic impact study has not been done yet. In his experience, most participants arrive in groups, about three per vehicle. He said it can reasonably be expected to have 100 people per day on average. The parking lot is oversized to eliminate street parking for everyone who wants to enjoy the park.

Mr. Dubay said the site distance is excellent in both directions along Long Pond Road. It was mentioned a subdivision will also add to traffic.

f. Variance Criteria

Mr. Dubay described the slopes, wetlands, and powerlines, saying this makes the lot difficult to develop as a subdivision. He said a standard subdivision would have to be shown as feasible per the town regulations. Much of the usable land is taken up with the aforementioned restrictions. Curt said this lot is just like others in Danville. Mr. Dubay said that he's planned and discussed subdivisions many times in many towns including Danville. He said running the pro forma numbers in this economy makes the cost prohibitive; the profits would be nil after town zoning and requirements are put into place.

Mr. Dubay continued that a road to get into the usable portion of the lot would have to be at least 1200' to 1300' long; this road would have to be about 750' just to get past the powerline corridor. It's unclear if the property would yield twenty lots even if the right-of-way is used. A lotting plan would be difficult to design around the setbacks and other restrictions.

Chris pointed out the application states no property in the HCLI zone is suitable for this purpose and expressed his opinion that this is irrelevant. He asked for specific reasons why this lot presents a hardship if it is to be developed for its intended purpose. He stated the application is for a use variance, not an area variance.

Joe pointed out that if the property owner can put one house on the lot, it can be used for its intended purpose. Mr. Dubay said the law allows property owners to develop as they wish in a reasonable and feasible manner and case law supports this.

Mr. Dubay said that “recreation” is mentioned 87 times in the Master Plan, showing recreation is very important to the residents in Danville making their proposal in line with the Master Plan. He said there are business ventures all over the state that are in residential areas and said this lot is more suited for this type of recreation than it is for a subdivision.

Mr. Dubay maintained that this plan is better for Danville than a subdivision because a subdivision is tax-negative. He offered the opinion that just because someone can put a house on a 68 acre parcel, doesn’t make that good planning. He said it’s intrinsic in zoning that a particular land form is needed to support a particular use. He stated the lot is uniquely shaped, allowing for maximum buffers to neighboring lots. They would like to keep the property largely in its natural state with the developed area hundreds of feet away from other homes.

Joe asked what creates a hardship for this lot. He said there have been a number of large parcels that have been developed that have wetlands and slopes. Somehow that developer has found space for houses. He said it’s up to the petitioner to prove the five criteria are met.

Joe said this board cannot change zoning. He said he has yet to identify something about the 68 acre parcel that is so different than other and what would, if the variance were denied, result in an unnecessary hardship to the owner.

Mr. Dubay reviewed the five criteria with the following points:

1. The proposal is not contrary to public interest. Danville would be served well to have more recreation and the town is fortunate to have business wanting to locate here.
2. The spirit of the ordinance will be maintained because the rural character of the lot will be maintained. Woods will remain, buffering all abutting properties. Playgrounds are allowed per the town ordinance. Chris stated that much has been done to protect the health and welfare of the surrounding lots.
3. The variance will do substantial justice there will be less impact to the town services than a typical subdivision. Mr. Dubay said if the town put this business in place, it would not need a variance. He said he lives near a town-owned park in Windham which is a magnet for many people and costly to the taxpayers to maintain.
4. Property values will not be diminished because the gaming areas will be quite a distance from existing homes as well as other property lines. It would be difficult to say this proposal will diminish surrounding values when the buffers are this wide.
5. A lengthy discussion of this criterion ensued, described below.

Mr. Dubay explained they meet the criteria for both part A and B of section 5. He said the use is reasonable because it's recreation and cannot be sited on any other lot in Danville. He said the Zoning Ordinance will not allow this type of endeavor except if it were proposed on church or town owned property. The general purpose of the ordinance is to ensure protection of air and water, the safety of the residents, and the tax base. This proposal will not make undue costs to the residents, including not diminishing surrounding property values.

Chris stated Mr. Dubay's comments do not address the heading of number 5 and that a hardship is the most difficult for an applicant to prove. Curt said that for discussion purposes, we assume that ii is true. Section i would still need to be proved and this begins in the subheading which references a special, distinguishing condition of the property.

Mr. Dubay said the variance opportunity wouldn't exist if all the ZBA could do is say, "you can put a home here so there's no hardship." He addressed the subheading, reiterating this lot is difficult to subdivide. He said land owners He said no other reasonable use can be made per the ordinance, thus the request for a variance. The property is special because it can accommodate an active recreational establishment. This lot is unique because it is ideally suited for this plan, unlike other lots in town.

g. Public Discussion

Ellie Calef asked how the applicant knew her property would not diminish in value. She stated no one will want to buy her property with a theme park in the backyard. She stated noise travels down the powerline corridor and she'd rather have the right-of-way developed and have this lot subdivided. She said the paintball activity will bring more crime to the neighborhood, more break-ins and thefts, and more problems with the police. Roger said that someone may want to buy her home specifically because there is a park next to it.

Sheila Johannesen said the traffic is already bad at the intersection of Long Pond Road and Main Street. She asked how the hardship comes into play when the property owner is not the one applying for the variance. Joe pointed out the owner of the lot is allowed to apply for any variance he wishes and he may elect others to act as his agents. A letter from Bob Griffin was given to the Board and stating the applicant has permission to represent him for all meetings with town boards and committees.

Dan Calef said no one knows where this business is going and said the noise and lights will not be good. He said they will have to disclose to potential buyers what is in the neighborhood. He said he'd rather see a bank or a church on the property and he'd rather pay higher taxes.

Sheri Kaminsky said she lives directly across the street from the proposed entrance and has no problem with the proposal. She said a housing development will bring in more crime, traffic, and noise.

h. Noise & Lights

Mr. Fiore said paintball is not typically a noisy sport. He said teammates call to each other to communicate position, etc. He stated football is a much more aggressive sport and players leave the field in stretchers and yet everyone is fine with that sport.

Mr. Fiore stated that if they have lights on the property, it will be for the speedball fields which have at least 400' of woods as a buffer. The parking lot will be lit with lights shining down. The zip line will not be used after dark and only as weather permits. The park will close earlier in the day as the season dictates. The main purpose of the larger building is to allow speedball games to continue after dark without needing outdoor lighting.

They proposed opening the park at 8:00am, allowing people time for inspections and orientation before games begin at 9:00am. The outdoor paintball areas will generally close at 6:00pm, closing earlier in the fall.

Mr. Dubay said they can restrict ATV use on the property if they own the land. Mrs. Calef said they couldn't and said she's not bothered by the noise along the powerline corridor.

i. Variance Details

It was explained to those present that the variance will go with the land. If the land is sold, the new owner will have to abide by the variance restrictions or they come back to the ZBA for a different variance. Any other use of the land is also discussed with the Planning Board. Additionally, the variance is written into a deed and recorded at the Registry.

j. Site Walk & Next Meeting Date

Chris suggested that, with the late hour, the Board adjourn for the evening and reconvene at a later date. This will allow the board some time to review important points in zoning and discuss the variance criteria in more detail.

The Board agreed to have a site walk on June 15th at 9am. Mr. Dubay will stake key areas as reference. The applicant will bring some gear in order to demonstrate approximate noise levels. Abutters and other interested parties were invited. Joe made and Roger seconded a **motion to continue the hearing of Case #2013-2 on June 25, 2013 at 7:30pm**. The motion **passed** unanimously.

The meeting concluded at 10:05pm.

Respectfully submitted,

Janet S. Denison-clerk