

Zoning Board of Adjustment

May 14, 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, James Lavelle, Ron Peverly, Chris Giordano, David Collins, Ellie and Dan Calef, Sheila Johannesen

The meeting began at 7:30pm.

1. Minutes

The minutes of Nov. 27, 2012 were reviewed. A few amendments were made. It was noted that case #2012-3 was not appealed, as suggested may happen at the end of the meeting. Curt made and Joe seconded a **motion to accept the minutes of November 27, 2012 as amended**. The motion **passed** unanimously.

2. Election of Officers

Curt made and Joe seconded a **motion to nominate Chris as chairman of the Danville Zoning Board of Adjustment**. Chris accepted the nomination. The motion **passed** unanimously.

Curt made and Roger seconded a **motion to nominate Tara as vice-chairman of the Danville Zoning Board of Adjustment**. Tara accepted the nomination. The motion **passed** unanimously.

3. Case #2013-1: 59 Holly Street Property Management, LLC are requesting a variance from Zoning Ordinance article IV.1.a-d to have a commercial use and mixed use in the residential/agricultural zone. 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.

a. Introduction

Jim Lavelle introduced himself as the surveyor working for Tony Fiore and Mike Pelletier who are hoping to build a gaming facility called Danville Action Games. Mr. Lavelle said he will expound on the criteria listed in the application and Mr. Fiore will add his own comments. Chris said Mr. Fiore's comments will be an addendum to the application.

Mr. Lavelle explained he was approached by Bob Griffin, owner of the property, and asked if he knew of a potential buyer. Mr. Fiore was contacted and the result is the proposal for using the area for paintball, a zip line, and other outdoor activities.

The lot is 68 acres and the applicants propose using a portion to the west and south of the powerlines, in the center of the parcel. If the variance is granted, the buffer will be discussed in more detail with the Planning Board.

The property will have a home/office off of Long Pond Road. They do not plan to use the right-of-way off of Meadowlark Lane. The home will be occupied by Mr. Fiore, adding a layer of security to the site. A dirt road will begin at Long Pond Road and end at a 200 space parking lot near a larger building in the center of the lot. This lot will accommodate the capacity expected for larger gatherings such as charity events. Different types of paintball games were described.

b. Variance Criteria

Mr. Lavelle and Mr. Fiore presented their data outlining the five reasons to grant a variance. This included having a 100'-150' no cut zone buffer along the property perimeter. There is no defined buffer at this time; they are waiting to discuss this with the Planning Board in more detail.

The wetland and setbacks have been studied for locating the home on the site near Long Pond Road. Mr. Lavelle said there is enough room there for a well and septic.

The rural character of the neighborhood will not change. The appearance of the lot will not appear to be different to someone passing along Long Pond Road, except for a sign at the entrance. Mr. Fiore stated the facility will add value and diversity to Danville.

Mr. Lavelle said substantial justice will be done since most of the property will remain in its natural state. The applicants have looked at other properties in town and none are suitable for this type of use. The parcels in the Highway Commercial Light Industrial zone are either too small, too wet, are already used for commercial ventures, or have been clear-cut. Mr. Fiore explained they may cut 8-10 acres. A standard speedball field is 120' wide by 150' long, less than a half acre. They plan to have four of these fields, close together, with the woods around. They will use wood bunkers consisting of fallen trees stacked together and/or empty barrels as part of the playing field. Signs and tape at the edge of the buffer will warn the players to stay within the wooded playing field.

Mr. Pelletier said each participant takes a small class before starting. They are educated about the safety gear, boundaries, rules, etc. The players are expelled from the game by referees if they stray out of bounds. The referees also ensure everyone is wearing their protective gear at all times or they are ejected. Signs can be put at the perimeter, stating it is an active paintball field, warning those outside the area to stay away.

The hours of operation will mostly be on weekends from 8am to 6pm. There will be no need for lights except for the late fall. There is a potential for night games, but they would prefer to have

a structure for this, making outdoor lighting unnecessary. A structure would also alleviate the need for canceling games due to adverse weather. The first phase of their business plan will be games on weekends only or by appointment. Once a building is in place, the hours of operation can expand. The indoor field will be a multi-use field with Astroturf on a cement pad. The turf can be rolled up to accommodate different activities.

Mr. Fiore said they are hoping to have a high ropes course, zip line, an obstacle course, and running games. They don't have the capital to construct everything at once, thus their need to develop this in phases.

c. Board Discussion

There was a discussion that the applicant should have a plan outlining each phase they hope to develop. The different options will need to be explained and the Board may place restrictions on the commercial venture depending on what is planned for the property. If the ZBA were to grant a variance for this, but the business does not do well, it is unclear what precedent would be set. The applicant was advised that, without a well-outlined plan, this Board may apply a lot of restrictions on the request.

Mike Pelletier explained that while they've been looking for property they've been studying how to put together this type of business. He explained a little more detail about the placement of the buildings, parking lot, road and movable structures. They have beginning capital and an idea of proposed phases for their business.

Chris said the Board does not need a detailed plan but does need the fundamental concepts. Mr. Fiore said every business owner has an idea of where they'd like to be ultimately; their idea and the phasing will depend on how quickly their business grows. Joe said that this board can approve an application, and then the same applicant can return to the ZBA later if they find their business developed differently than what was previously expected and approved.

Mr. Pelletier said they will withdraw this application and resubmit a new application. It was agreed the Board can meet June 4th. The applicants were told they do not need a detailed plan but need to show more detail than the current application. The application fee will be waived. It was agreed to continue the discussion of the five criteria; the Board will deliberate about a decision when the new application is discussed.

d. Five Criteria Explanation Continued

Mr. Lavelle explained how the proposal will do substantial justice. The applicants examined the lots in the Highway Commercial Industrial zone and found that once the buffers, wetlands, and other restrictions are deducted from the acreage, there were no lots large enough. A lot for this type of endeavor has to be large, dry, accessible to paved roads, and preferably away from intersections.

This property is uniquely suited to this proposal as nothing in the HCLI zone works. The lot allows the gaming area to be well buffered from the residents. This lot will also be difficult to

develop as a residential subdivision. The powerline corridor, while devaluing potential residential lots, is an asset to this type of proposal as it offers a unique area for gaming. The use is reasonable because it requires little impact to the natural state of the 68 acres. Mr. Fiore also said they looked in the Historic District, but there are no lots suitable in that zone.

Chris Giordano offered his opinion that a cluster development may yield 20 homes, depending on other factors. Chris Stafford said it would be good to know how many houses could be put in a typical subdivision on this lot. Joe said the applicant needs to convince this Board that a denial presents an unnecessary hardship. He cautioned that what may be a hardship to the applicant may not be an unnecessary hardship to the property.

Mr. Fiore asked what an acceptable hardship would be and was given the example of the entire site being a granite knob which couldn't be developed without substantial cost. It was explained that the Zoning Ordinance already has stated the intended use of the property is residential. Mr. Fiore said they are proposing a mixed use with a combination office/residence, similar to what is already in town at the storage facility and found in the Village District.

e. Public Discussion

The discussion was opened to the public for comments.

Mr. Giordano stated he agreed the hardship is that nothing in the commercial district is suitable for this. He stated the largest available lot in that zone has been clear-cut.

Ellen Calef said the proposed idea is not the highest or best use of the land. She said noise carries across the powerline corridor to her house and this proposal will increase that noise. She said the land should be subdivided or used for elderly housing in order to bring in more taxes. She asked who will pay for the road repairs along Long Pond Road. She also mentioned the possibility of paintballs hitting her house and wondered who would be responsible for cleaning the mess. Mr. Giordano said that as a Planning Board member, he'll ask how far the paintball travels and that will determine the buffer width. Mr. Fiore said it depends on the equipment, but the farthest a paintball will travel is about 200 feet.

Sheila Johannesen said this will increase traffic along the road which is in need of repairs now. Joe said it would be good to address the traffic impact.

Dan Calef asked what will happen to all those who hike, ride horses, and otherwise use the property for recreation. It was pointed out that PSNH still has a right-of-way but the land is privately owned, so those on the property are trespassing. How the property is used is up to the land owners.

David Collins asked if walking along the land will still be restricted. Mr. Fiore said the majority of the activity will be on weekends with some games during the week by appointment. He does not think there will be a problem with people still walking the property. Chris said this can be addressed at the hearing for the next application.

Mrs. Calef said people tear down signs and tape and participants will still come too close to her property. It was noted the powerline corridor is 350' wide and is clear cut every few years.

Mrs. Calef asked about the environment and the effects the paint will have on the trees and well water. She mentioned the proposal will make it difficult for her to sell her home. Mr. Fiore explained the paintballs are made of non-toxic food grade coloring and gelatin. He said a person can eat one and not be effected. The color washes off the trees in the rain. Chris said these are good points to make so it's clear to everyone. Curt said the applicant has to demonstrate the proposal will not diminish surrounding property values.

Mr. Lavelle explained the property owner is LER Realty and a letter from LER Realty is in the file, authorizing Mr. Fiore and Mr. Pelletier to act as agents for the application. If the variance is granted, they will purchase the land. It was explained their proposal will have less impact to the town than a subdivision. Mr. Lavelle said a subdivision puts a wet blanket on the town. Joe said that is up to another board to decide as the town voted to make this area residential.

There was a discussion that the ZBA can only look at the five criteria for granting a variance. Mr. Giordano stated we can look at the pros and cons for granting this variance, including preserving open space, being consistent with the Master Plan, creating jobs for residents, and perking up the commercial base in town. He also stated every subdivision costs each taxpayer more money in school taxes. Chris said this speaks more to the purpose of the proposal not being adverse.

Mr. Fiore explained the expected traffic pattern will be like that of a school or church rather than a retail store. Players usually carpool in order to participate together, arriving in the morning and leaving some time in the afternoon. He expects about 100 people to attend on a typical day yielding perhaps 50 cars or less. They want to have a large enough parking lot in order to have no street parking. Mr. Fiore said a subdivision will also increase traffic and noise. Chris said this is good information for a new application.

Roger suggested they provide case studies showing what other arenas have and how they work and benefit other communities. He said it would be good to have an understanding of the flow of expected traffic.

Mrs. Calef asked what will happen if the business does not work and what will be on the property after that. It was explained the restrictions go with the deed and the new landowner has to comply with the scope of the variance whether that is building size or the buffer.

f. Site Walk & Next Meeting Date

The Board discussed having a site walk. It was decided to hear the new application first and schedule the site walk afterward, allowing enough time for abutters and other interested parties to be notified. The Board agreed they can meet on June 4th to discuss a new application. This allows the Mr. Fiore and Mr. Pelletier to submit an application with proper notification to abutters.

Another date will be determined in June for a possible continuance and site walk.

At 9:25pm Curt made and Joe seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted,

Janet S. Denison-clerk