

ACTON PLANNING BOARD MEETING
March 4, 2010

- A. ROLL CALL – 7:10
Members present were:
Thomas Cashin – Vice Chairman
Keith Davis
Jessica Donnell – 1st Alternate
David Jones- 2nd Alternate

Members absent were: Chip Venell- Chairman, Yoli Gallagher, Arthur Kelley
Also present were: Kenneth Paul, Code Enforcement Officer; Michelle Rumney, Secretary,
Stacy Howes, Jeff Howes, Kyle Howes, Julie Smith, Cheryan Smith, Sandy Maltese, Eric
Anderson, Randy Lavangie, Tracy Lavangie, Bob Laurendeau, Sandra Knapp, Debi Rix, Mark
Rix

B. Public Hearing- Stacy Howes for Conditional Use Permit for Day Care in home
Applicant- Stacy Howes explains: that she is in the process of becoming licensed with the
State of Maine. The Fire marshals have been out to inspect the home, she is just waiting on The
Town's approval before the State will come out for a final inspection. Mrs.Howes explains the
need for another daycare in Acton. She explains that she gets calls everyday for requests. The
proposed day care would take UP to 12 children, based on the State guidelines. She would have
one helper, Sandra Knapp. She would plan on having 6 children during the day and then a few
more after school as well. The home is 1.4 miles in on East Shore Drive on the section of road
that is a private road and the lot is 2.2 acres.

The road is maintained by Harold Smith and she has spoken with him so that if there is any
additional maintenance need on the road, she is willing to pick up the fees. There is a large
driveway with plenty of space to turn around. Mrs. Howes states that she has spoken to her
immediate neighbors and they have no issues with the day care.

Debi Rix explains that she lives on this section of road and has some issues with
this daycare. The deeds/covenants of the original subdivision state that no business of any kind
shall be conducted. She explains that she doesn't see how the Planning Board can even consider
this until those restrictions are changed. She also believes that speed is a big factor, people she
knows to be dropping children off at the Howe's house are not observing the speed limit.
Mrs. Howes explains that also in the deed and covenants were restrictions on vinyl siding Yet
there are about 8 houses in the Subdivision with vinyl siding. The owners of the Subdivision had
to come up with some deed/covenants when they were going for Approval. She submits a letter
from the Subdivision owner at the time that she had to Submit to the bank to allow the vinyl
siding.

Mrs. Rix exclaims that vinyl siding and a business are two different things. The town Planning
Board had to approve this subdivision and they must have had to approve
thoserestrictions. Changing the rules after the fact seems unfair. Once you allow one business
how can you say no to the next person.

The speed issue also should be addressed. Mrs.Rix feels that this is a continuing Problem and
has asked the road association to post the road, but they have not Because the consensus was that
it was pointless if it can't be enforced. With the Approval of this daycare, traffic will increase

and so will the cost of maintenance. She explains that her dues share of the road association have doubled over the past couple years.

Jeffrey Howes introduces himself as the road commissioner for the private road. He explains that they have asked property owners to bring their concerns to the directors, but they have yet to hear any. He also explains that the maintenance fees have stayed the same since 2006.

Randy Lavangie introduces himself as the president of the road association. He explains That he lives on the straightest and widest part of the road, also known as the drag strip. He acknowledges that there are habitual speeders on the road but he knows them not to be visitors to the Howes' residence. They are younger kids and 4 wheelers. Sandra Knapp comments that on this stretch of road it is very difficult to speed. She Would guess that the maximum you could drive on it is 25-30mph without going off into the ditch. However, she or Stacy could certainly notify parents to keep their speed under control if they knew who was speeding.

Mrs. Rix states that the two worst offenders of speeding are the Howes' themselves. She also notes that speed issues have been brought up before, that they are in the minutes of last years meeting. Speed is a factor and more traffic will increase that factor. She also questions as to how Mr. Howes can say that fees have not gone up. Mrs. Howes replies that her husband stated that the maintenance fees have not gone up, the dues of the combined fees have. She also notes that the speed issue is only Mrs.

Rix's opinion and she is known for complaining about anything and everything. At this time, the Board asks that personal attacks be left outside this meeting from all parties involved.

Mrs. Rix suggests that Mr. Lavangie is not home all day. She is out walking in the Morning when these parents are speeding through dropping their kids off in the Morning and picking them up in the afternoon. She asks the board how the Howes' Can break rules that were created with the subdivision.

Tom Cashin, acting Chair, asks if either party has a copy of the original subdivision plan. That would help clear up the issue of the deed restrictions and covenants.

The CEO Secretary obtains the towns copy from the file and the board views it. The signed plan does not have any restrictions, conditions or covenants on it. Keith Davis explains that the Planning Board signed off on the subdivision as it is Represented on the plan. Because there is nothing else on that plan, the planning board does not have authority over those restrictions and covenants. That is a private matter that needs to be dealt with amongst the homeowners of the subdivision.

Sandra questions the process that they would have to go through to get things changed.

She asks if it is a majority vote that is required. Keith expresses that he believes that one "no" vote from a homeowner in the subdivision could hang them up, but suggests that they may want to call in some legal help on how to deal with it.

Tom suggests that we consult SMRPC or MMA on this deed/covenants matter. He expresses concern that if the board approves this they are basically negating the deed restrictions and covenants that are already set in place. David questions whether the board has any jurisdiction over this matter. Jessica suggests that even if the Planning Board approves this application, that a member of the subdivision could still stop her business.

Keith notes that the board is not under the gun to approve this application. If it is a Consensus of the board, we can ask MMA for an opinion if . In the meantime he would Suggest to Stacy to get signatures from ALL the subdivision lot owners. Mrs. Howes said she had no problem going to all the owners; she has spoken to most of them already. She didn't realize that this would halt the process. Mrs. Rix state that she believes that for the Planning Board to act on this application

is Premature. How could they approve something that is illegal by the deed restrictions. She believes that whether those restrictions or covenants are put on the original plan or not, that the Planning Board at the time saw them and took them into consideration when approving the original plan.

David explains that in his experience; that when the rules of an association are not enforced, that it diminishes the integrity of them all, often unable to stand in court. Mrs. Howes asks beyond the speed issue and the deed issue, if there was anything else the board needed to address for her application. Tom replied that all her submissions were complete and there shouldn't be anything further. With no other comments from the public, the public hearing portion of the meeting is closed at 8:05pm

C. UNFINISHED BUSINESS

Review of Howes Conditional Use Application-

Keith states that the board is full in the rights to proceed, he asks Mrs. Howes what her timeline on this was. To which she replied that she could be full in the morning if she could.

Tom reiterated his concern on moving forward on this matter without an opinion from MMA on the deed restrictions.

Motion to proceed with review was made. Davis/Donnell- 3/1

Keith asks Mrs. Howes if she had planned to fence in the area. Mrs. Howes replied That it was not required by the state because of distance from the roadway and water.

Mr. Howes explained that they have 30,000 sq ft of lawn with a 30'+ of wooded buffer to the nearest neighbor.

Mrs. Howes provided photos to show the yard and play area, which is behind the house.

The board proceed to review the standards for conditional use. (check list on file)

Motion was made that the standards for Conditional Use have been met.

Davis/Jones- Unanimous.

Motion was made to approve the Conditional Use Permit with Conditions. Davis/Donnell- Unanimous

Conditions shall be:

- 1) Hours of operation 7am-5:30pm
- 2) License must be obtained from the State and a copy shall be filed with the CEO.
- 3) Maximum capacity of children shall be 12 (not including Stacy's two school aged children)

D. New Business- Eric Anderson (M203 L049) Conditional Use Application
Application is for a two family attached dwelling. Two people will be living in the One bedroom and 3 people in the 2 bedroom.

Ken Paul points out that this is an existing structure, changing the use not the Structure.

Tom questions whether this is allowable by ordinance, where it is a use change. Jessica points out that they are not changing the footprint and refers to page 9 in The zoning that references Changing Use of Nonconforming Structures. The Board reviews the submissions presented and completes the checklist to determine if the application is complete. It is the consensus of the Board that the submissions are complete and will hold a public hearing on March 18th at 7:30pm following the presentation from Linda Schier. Michelle will do the postings and mail abutters letters in the morning.

E. Minutes

February 4, 2010 – A Motion was made and seconded to approve the Minutes of the February 4, 2010 Meeting

with corrections. Davis/Donnell – Unanimous.

It was decided that there are not enough members from the February 18th meeting present to vote on those minutes. They will be added to the agenda for the next meeting.

F. OTHER BUSINESS

Agenda set for 3/18/10: Linda Schier of AWWA will give a presentation at the beginning of the meeting, Public Hearing for Eric Anderson's Conditional Use Application to follow, the approval of 2/18/10 minutes, work on the Sign Ordinance.

G. CODE ENFORCEMENT OFFICE BUSINESS

There was no Code Enforcement Officer business to come before the Board.

H. ADJOURNMENT

The Meeting was adjourned at 9:10 PM.

Respectfully submitted

Michelle Rumney

Recording Secretary