

MINUTES  
ZONING BOARD OF APPEALS  
JULY 22, 2009 – 7:00 P.M.  
TOWN HALL ANNEX – COMMUNITY ROOM 1

Present: Stebbins, Kravits, Grady, Russotto, Manning, Alternate Mencer  
Staff: Galetta, Cullen

I. PUBLIC HEARINGS

ZBA#09-08 – 187 Laurelwood Road, Niambi Heyward/Owner; Niambi Heyward/Applicant for a variance to Section 7.1-18 (A) for 14 feet in lieu of 50 feet for the side yard and 35.5 feet in lieu of 50 feet for the rear yard for a child day care center. PIN 169805293452, RS-20 zone

Chairman Stebbins opened the public hearing at 7:03 p.m. Manning read the legal ad for the record and stated that the mailings are in order. He read Section 8.3-5 of the zoning regulations explaining that the property abuts a mobile home park where the residents may own their mobile homes but not the property they occupy. Notification of the mobile home owners is not required, only the underlying property owner.

Peter Gardner, 72 Inchcliff Drive, Gales Ferry, a licensed land surveyor, appeared on behalf of Niambi Heyward. He stated that the house currently does not conform to the setbacks in the zone. The lot, which is owned by Niambi Heyward, is located on 187 Laurelwood Road. The house has existed for over 45 years on the property. Ms. Heyward has lived there for several years and operated a family day care home for 6 children. She will increase the number of children to 19 and is required to apply for the variance and a site plan to do so. Gardner stated that she has a parent handbook which outlines the rules of the day care. Ms. Heyward makes sure parents follow it and she enforces it. It clearly states that the speed limit on the road is 25 mph. It also advises parents to park their cars and shut off the engines when escorting children into the house. A fence will be put up in the yard. Gardner stated that this is a legitimate hardship. The house currently exists. It is not in conformance. He also stated that the maximum employees will be three and parking is provided under a site plan that has been submitted. He explained that this will be a three step process. The application still requires wetlands approval from IWA and site plan approval by the Planning Commission. The Board requested clarification of the variance that is being requested. The variance is for the regulation allowing no building within 50 feet of any property lot line for child day care centers. The Board asked for an explanation as to how the property came to be a child day care without previous approval. Gardner stated that the only signoff required for a 6-child day care is approval from the health department. Staff further explained that Ms. Heyward is operating a family day care with only 6 children attending. This level of day care is allowed under all zones and there are no local regulations that apply except for state health codes. It was also noted that there are four distinct levels of day care types in the Town of Groton governed by the number of children they serve. Ms. Heyward is expanding to a child day care center for 12 – 19 children. Mr. Gardner stated that the request before the Board tonight is to vary the requirement regarding buildings being located within 50 feet of a property lot line. Non-conformance becomes an issue because the increased number of children increases the number of requirements for the facility. The Board requested clarification of the hardship. Gardner stated that the building does currently exist and currently exists as a day care. The

Board questioned the applicant regarding her reasons for increasing the number of children in the day care from 6 to 19. Gardner stated that Planning Staff suggested Ms. Heyward apply for the type of child day care that would allow 19 children to attend when the initial application was submitted to the Planning Department. The Board stated that the applicant could double the present day care capacity of her business without needing to come before the Zoning Board of Appeals. Gardner stated that the applicant feels that her business has been successful and she would like to pursue this type of child day care. The Board asked the applicant if she was providing any pictures of the home and property for review with the application, but there were none.

Chairman Stebbins asked for comments in favor of the application and there were none.

Chairman Stebbins asked for comments against the application.

Cynthia Barry, 175 Laurelwood Road read a letter to the Board. Her property borders the applicant's residence and she has lived at this address for 19 years. She stated that her reasons for living on this quiet cul-de-sac will be compromised if a residential home is turned into a commercial business. She noted improvements made to Ms. Heyward's driveway and how they impacted her own property. She stated that she is disturbed by vehicles speeding, cars parked unsafely, and increased noise levels. She also stated that she had originally been supportive of Ms. Heyward's home day care business but she has subsequently learned that Ms. Heyward is not using the residence as her home. She stated that the house is gutted of home furnishings. Exit signs and day care policies are posted instead and Ms. Heyward leaves at night and returns each morning. Ms. Barry does not want to live next door to a commercial business. She feels it will compromise her quality of life and that of her family. She is also concerned that her property value will decrease if the home day care is turned into a day care center. Along with her letter, Ms. Barry submitted a petition signed by 24 residents from the neighborhood who are opposed to the application.

Steven Lechner, 105 Laurelwood Road stated that he was just informed about the application because of the petition being circulated to neighbors. He was not notified because his home is not within the 150-foot buffer. He stated that Laurelwood Road is a dead end street and he has noticed that the traffic has increased on the road. He questioned whether or not the applicant lives at the property address and if it is their only residence.

Dave King, 188 Laurelwood Road received notification as an abutting property owner. He has concerns about signs being put in front of the house. He is also concerned that the state will get involved and make them reconfigure the site plan to meet state regulations. He stated that he is also concerned about the fact that a variance granted to the current owner will stay on the property even though she might sell it in the future.

Dawn Stanford, 113 Laurelwood Road stated that she works in a day care center. Because of her employment, she is aware of traffic issues that occur when parents are rushing to drop off or pick up children. She told the Board that she personally had a situation occur where a car passed her on the wrong side of the road. Although she did not tell Ms. Heyward or anyone on her staff, she did speak to the driver about the safety of the other children on the road. She stated

that she is concerned that state regulations are not being adhered to if Ms. Heyward is not living at the property address. She stated that if she is not living in the property then she is already running a day care center illegally.

Richard Lozier, 160 Laurelwood Road stated that he is concerned about a day care center being run on a residential road. He talked about two incidents where he backed up out of his driveway and narrowly missed being hit by a car from the day care. He said it is very difficult to make turns out of the street now because of the Dunkin' Donuts and he is concerned the day care will produce more traffic.

The Planning Commission had no comment. Staff stated that the major definitions and categories were already explained at the start of the hearing. Within the definitions it states what level of day care must be a private residence as well as a day care. Sign regulations would apply for this type of use in a residential zone. The Board asked what the distinction is with this application. Staff stated that a family day care home is situated in a private family home. A group day care home is a facility with 7 - 12 children and is regulated under Section 7.1-32. A child day care center is a facility with more than 12 children and is regulated under Section 7.1-18. The Board questioned whether a family day care home needs to be owner occupied. Staff explained that within each tier there are differing requirements.

Gardner stated that many of the items brought up by the neighbors currently exist as the property is being run as a day care. He also stated that neighbors have not been in the home to observe how it currently appears. He said there has been a lot of talk about traffic from the neighbors but that he did not hear anyone actually speak against the variance. The Board asked whether or not the applicant lives in the home. Gardner stated that Ms. Heyward does live at the property address. The Board asked why the applicant wants to increase the number of children at the day care. Gardner stated that the applicant has been successful in the day care business and has a long waiting list. The Board also asked how long the applicant has been living in the house and how long the day care has existed in the house. Gardner answered that the applicant has owned the house and operated the day care for 2½ years. The Board wondered if the applicant purchased the house with the idea of having a day care facility there.

Manning stated that the Board is charged with finding a hardship. He asked the applicant to clarify the hardship per Section 8.5-8B of the zoning regulations. Manning read the section verbatim.

George Eleazer, 5 Wicklow Turn, Ledyard, is the fiancé of Niambi Heyward. He spoke on behalf of Ms. Heyward regarding the traffic concerns of the neighbors. Because the road is a dead end, there are always cars entering the road mistakenly and turning around to leave again. Regarding the car passing on the wrong side, Mr. Eleazer stated that the neighbor should have made Ms. Heyward aware of the issue and they would have dealt with the parent. He also stated that there have been no accidents nor was any car hit on their property. He stated that parents drop their children off at varying times and it is not as chaotic as it was made to sound. He said that the number of children has not grown since the beginning just the staff has grown by two persons.

Josephine Bright, 140 Laurelwood Road stated that she is a senior citizen who is retired. She spends a lot of time outside working in her yard. While she cannot speak to increased traffic she did say that there has been an increase in activity from the day care. She was not aware that a day care was being operated at that location until recently when it became evident to her due to the increased activity. She was involved with the Planning Department when a previous application came before the Planning Commission that she did not favor. She questioned the process and how residents are notified about current applications. She would not like to see an increased number of children in the day care center because she does not want to see an increase in the number of children who currently play on the street.

Steven Lechner, 105 Laurelwood Road spoke again and stated that he would speak against the variance. He sees no evidence of a hardship in the variance. He stated that the hardship would be on the residents of Laurelwood Road. He is opposed to any variance being granted.

The Board asked the applicant to clarify the lot size and the age of the home. The property is .48 acres and the house was built in 1965.

Steven Lechner asked if the date of the licensing for the day care is available. Staff stated that the Department of Health has a website where this information can be researched.

Gardner stated that his client would like to withdraw her application. Secretary Manning was given a written notice dated 7/22/09 stating that Niambi Heyward wished to withdraw her application for a variance. The Board stated that it would accept the withdrawal.

The public hearing ended at 8:08 p.m. because of the withdrawal of the application.

## II. MEETING FOLLOWING PUBLIC HEARINGS

- 1) Correspondence – None
- 2) Minutes

MOTION: To approve the minutes of June 24, 2009 as written.

Motion made by Russotto, seconded by Grady, MOTION PASSED UNANIMOUSLY

- 3) Old Business – None
- 4) New Business

1. New Applications

Staff stated there are no new applications for the August meeting. The August 12, 2009 meeting will be cancelled.

- 5) Report of Staff – None
- 6) Adjournment

Motion to adjourn at 8:12 p.m. made by Russotto, seconded by Grady, so voted unanimously.

Tom Manning, Secretary  
Zoning Board of Appeals

Prepared by Lynda Galetta,  
Office Assistant II

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