

Town of Washington Planning Board  
January 2, 2018

The monthly meeting and public hearing of the Town of Washington Planning Board was held on January 2, 2018 at 7:30 P.M., the Town Hall, 10 Reservoir Drive, Millbrook, New York.

Members Present: Chairman, Paul Schwartz, Buffy Arbogast, James Cornell, Donald Hanson, Robert Kulpa, also, Al De Bonis, councilman/planning board liaison, Building Inspector/Zoning Administrator, Tom Fiore, Town Clerk, Mary Alex (standing in for secretary Caul)

Chairman Schwartz opened the meeting at 7:30 P.M., announced the first agenda item. **A motion to reopen the Guardian Angels Day Care Center Public Hearing was made by board member Hanson, seconded by board member Kulpa. 4 ayes, 1 absent.**

The application request of Guardian Angels Day Care Center (Michele Eddington) 6 Route 343 is for the expansion of the existing daycare at that location onto a contiguous vacant parcel. Dutchess County Tax Map Grid No. 6764-01-226731.

Attorney Josh Mackey Mackey, Butts & Wise LLP, Joel Chase, P.E., Connolly Engineering, Keith Scofield, R.A., Liscum McCormack, VanVoorhis and Michele Eddington appeared before the board.

Attorney Mackey addressed the Board, referred to the Dutchess Department of Planning and Development Response dated January 2, 2018. Said, the Department is looking for the “gradiation” plan, landscaping details, Joel Chase is going to handle this tomorrow.

Attorney Mackey referred to their last appearance before the Board, said there were questions about the architectural drawings. Keith Scofield presented the revised color elevations, the metal roof color is brown, presented color chips of the paint color. Chairman Schwartz questioned if there is anything Neil Wilson delineated, needed to have done on the Site Plan? Attorney Mackey said not on Keith’s drawings, Joel Chase has resubmitted a Site Plan to secretary Caul with Neil Wilson’s request for a landscaping plan and additional lighting standards compliance that was stated on his memorandum.

Chairman Schwartz questioned if anyone from the public other than Howard Schuman,

CAC representative, has interest in commenting on the Guardian Angels Day Care Center application? Noone from the public came forward. Next questioned Board members if they have questions or comments. There were no questions, comments, by the Board.

Howard Schuman addressed the Board, said he has concerns about that area. In three of the Master Plans the one acre residential zone is listed, he is interested in it staying that way, He is concerned with what is going to happen in that area. The new proposed day care structure is a large building, doesn't look like a house in that residential zone, the properties are all residential. The homes in that area are close together. He called, talked, with the NYS Office of Children & Financial Services, there may be some problems, the owner has to live in that building and cannot bring the license over from another building to the new building. Questioned what the Board is approving, needs to clarify, what happens if they approve the project and they don't have a license? He is opposed to having a commercial building in that area, is also concerned about the other RH 1 zone areas.

Chairman Schwartz said he forwarded Howard a letter submitted by atty. Josh Mackey, questioned if he received it? Howard responded negatively. Chairman Schwartz said Josh Mackey forwarded him a letter in which he addressed two issues, one was the residence issue, in which he cited case law that there has to be a residence not occupied by the principal owner running the facility, the other addressed the case law addressing the issue of license being carried over from a different location. He called Joe Romano today, sent him Josh's letter. The Board cannot make an assessment on the legality of the licensing process. He is the licensing individual, if he has an issue then he will be directed to Josh Mackey to resolve that issue. From Howard's prospective of his asking the Board to make a determination as to whether this is a legal licensing, the Board can't.

Attorney Mackey spoke to the issue of whether this is harmonious with the character of the neighborhood, the area is quite commercial, a school was across the street, Bennett College and Cardinal Hayes existed there at one time. A bed and breakfast is on the other side of Old Route 82, a home office is on the corner of Route 82, a school bus depot, the

Dyson Foundation on Halcyon Road. The neighborhood is more of a hybrid. The Planning Board has the discretion of having each application decided on its merit. Although a legitimate concern about the character of the neighborhood doesn't think this concern is actually present in this situation. Chairman Schwartz said that the State has dictated that the Board has no ability on any level, any authorization, other than fire, safety and traffic.

Attorney Mackey said he is not criticizing anyone, understands, it is great that we all do our homework but asks for caution, discretion, in reaching out to licensing agencies about going beyond the discretion of the Planning Board. Does not want to cause any unnecessary trouble with Ms. Eddington, her existing license, in any way. Agrees that this is beyond the scope of what the Planning Board is able to do, but has the discretion of what to do in any application to provide approval subject to compliance with State Regulations, subject to the license that the Board was provided with a copy.

Attorney Mackey said he worked on this once before for the Eddington's when they came forward, when Tom Beaumont was Board chairman, told them the Board had no authority, Eddington decided not to go forward with their application at the time for different reasons. He has provided the Board with Case Law on the whole day care issue. Home day care is not defined, there is no definition, The courts through common law define it, they determine, there is a strong public policy for having day care in general, they define it as such that the licensee has a right to occupy the residence. The Board has everything they need, thinks is ready to make a decision, he would like the Board to do that because they want to break ground on this facility,

Howard stated that the buses go back fifty years. As far as the day care goes, that they are trying to improve upon the neighborhood, doesn't accept that argument. Howard referred to the Comprehensive Plan, specifically recommended "that the Town maintain existing land use types, preserve and enhance the contrasts between the Town and the Village, and not rezone existing areas for new uses. Future planning should focus on maintaining and improving those appropriate land uses in each of the Town's existing zoning, areas that work toward supporting contrasts between a rural town and a more urbanized village, and should focus on removing those uses from future consideration which do not." The person to whom he talked at the NYS Office of Children & Financial Services said exactly the opposite of what is said. Said it was a new building that required a new license. The person who has the new license has to live, reside, in the building. There is a difference in the issues involved.

Chairman Schwartz questioned Michele Eddington if she is acknowledging that is the case? No, she doesn't know who Howard spoke to, Howard said Joe Romano. Michele said that Joe Romano is the fire and safety inspector. Michele said she deals with Linda Bresler and Nancy Mafia. The only thing that would stop that building from getting a license is a fire and safety issue or something that NYS says, that the windows are not high enough, these different types of issues. That would be the only reason she wouldn't be able to get a license, it has nothing to do with anyone living there.

Chairman Schwartz questioned if Michele is saying she is going to get a new license from the State? Michele said she has to. Chairman Schwartz said he understands she has to,

this is not the question asked, is asking, “are you going to get a new license from the State to operate this facility?” Michele said she will get a new license from the State. Chairman Schwartz asked if there are any questions on that, it is pretty clear that she will not be using her present license for group family day care for the new building, that it is going to be a new license for a child day care center.

Howard referred to Josh’s legal opinion that basically “group family day care” is allowed NYS exemption from local zoning under the State law. In talking to the NYS Office of Children & Financial Services said day care centers do not have the same protection, now falls back to the Town Code. They do not have the exemption now for a “family day care center.”

Attorney Mackey stated that we are getting into New York State licensing technicalities and terminology that can be argued, if the Board wants to make their approval on New York State approvals, wants to speak to the supervisors that Michele mentioned. Thinks we are now starting to debate what the criteria for a license is, whether she is going to get approval or not. Michele brought up the issue of fire and safety, the height of the windows, that is New York State jurisdiction.

Josh spoke to in home day care having one license, there is group family home license, something called a day care center, another level of day care center. Chairman Schwartz said attorney Mackey researches this but the question is the delineation that is now being discussed, however he qualifies it, does that also get the State’s attention, or does this have to be looked at based upon the local code?

Attorney Mackey said if its for a day care center like a Bright Horizons it is his understanding that it needs local approval but if it’s a “group family day care” which is what Michele is going forward with it is not subject to local approval. Chairman Schwartz remarked because the Board does not have a legal sense, this is something that the Board should bounce off attorney Jeff Battistoni.

Chairman Schwartz expressed his thought is to look to attorney Battistoni for interpretation, questioned if any Board members have any comments, questions? Chairman Schwartz said he is looking for a postponement until next month, called for a motion to keep the Guardian Angels Day Care Center Public Hearing open,

Mary Alex spoke in favor of the application for Guardian Angels Day Care Center. Her daughter attended Guardian Angels Day Care and it was well managed, a favorable and a loving environment. Said, there continues to be a need in our community for flexible day care centers and knows that Mrs. Eddington can provide this service. She supports Guardian Angels Day Care Center.

**A motion to adjourn the Guardian Angels Day Care Center Public Hearing to next month was made by Board member Arbogast, seconded by board member Kulpa. 5 ayes, 1 absent.**

Chairman Schwartz stated that the Board will hold this open until next month, try to get this resolved.

Tom Taylor, Kevin Taylor, and Jamie Lynard appeared before the Board. A Dutchess County Aerial Map was presented that provides proof that George M. Taylor & Son, Inc. was in business prior to 1987, when the Town of Washington adopted a Comprehensive Plan that deemed 23 Taylor Lane RH1 High Density Residential. Said what they have is a trucking business that brings in heating oil, they don't manufacture it, they distribute it. Their grandfather, in the 50's brought in dirt, soil. The thinking was to bring in some men here, since Amenia Sand and Gravel went out of business four or five years ago.

Jamie Lynard who has one truck approached them about bringing in sand and stone from Harlem Valley Materials, load this onto a cement truck, mix it together, that makes concrete while on the road. He didn't think there was a problem with this. Unfortunately there is a problem from what he understands. He is here tonight to talk about what they can do to proceed and work together.

Zoning Administrator/Building Inspector, Tom Fiore addressed the Board, said this is not permitted in this Zoning District. Mr. Taylor took a long time to comply to the Cease and Desist Order given him. The violation started in May. Mr. Taylor never applied for a building permit for the structure he built. Zoning Administrator Fiore said he received complaints from neighbors on Terbar Court on a daily basis. Reviewed the zoning code, did several investigations.

Chairman Schwartz questioned the status of the Cease and Desist Order? There is currently a Cease and Desist Order overseen by Building Inspector Fiore. Chairman Schwartz said as long as there is a Cease and Desist Order there is nothing that the Planning Board can do. There is the issue of a structure that Building Inspector Fiore has made reference to. Tom Taylor said the structure is a trailer with wheels. Moved the shed from the front of the building to the back of the building. Building Inspector Fiore said Mr. Taylor built a well in order to get water to make this concrete. Mr. Taylor said they are not making it. Tom Fiore said he is doing something with the water. Said, Mr. Taylor should have come to the Board earlier. Tom Taylor said they didn't think they needed to come here, it's a mistake on their part, referred to the complaints, were probably prompted by drilling the well for water access.

Chairman Schwartz said he understands as long as there is a Cease and Desist Order which has to be directed to Building Inspector Fiore, not to this Board, even if the Board could, can't do anything. Taylor is talking about preexisting, nonconforming, This board cannot determine whether or not they are preexisting, nonconforming, this is something that the Zoning Board of Appeals has to look into. Mr. Taylor said Mr. Ciferri said to go to the Planning Board.

Chairman Schwartz said when an application comes to this Board, if its outside the purview of this Board, the responsibility of this Board is directed back to the Zoning Board of Appeals. Said he understands they came here trying to get resolution on these matters, but as he understands it this needs to go to the ZBA and a referral forwarded to the ZBA for them to review the zoning application for existing, preexisting, nonconforming whether it complies, in the absence of those two, to grant a variance.

Chairman Schwartz said he understands that the intentions are that the structure is a portable structure, not a fixed structure, and/or that the structure is portable or was someplace else, was existing and moved it. Said, his point is from the prospective of where they are, the Cease and Desist Order has to be directed to Building Inspector Tom Fiore not to this Board, this Board does not have control over it. Mr. Taylor said they moved their operation to Amenia Sand and Gravel, the Cease and Desist Order is over with.

Chairman Schwartz continued that his understanding is that their contention is that this is preexisting, because of the specific reasons delineated in his letter, this is part of a preexisting, nonconforming operation that was grandfathered. Said, he respects the contention. This Board cannot act on that, its got to go to the ZBA for them to make that determination. If the ZBA determines its preexisting, nonconforming, that is potential one, potential two is, that if the ZBA feels it fits within the Zoning, its their purview, third, if they don't feel that one or two is then the third is to ask the ZBA for a variance. This Board doesn't have any ability to act on what they are asking. The job of this Board is to refer them to the ZBA. (A copy of the letter addressed to Tom Fiore, Zoning Enforcement Officer, dated November 7, 2017 under the signature of Thomas Taylor, President, Taylor Oil Heat was presented and is filed with these meeting minutes.)

Discussion followed between Mr. Taylor and Tom Fiore relative to the portable structure, that was moved back to the location pointed out on the map. Mr. Taylor asked Mr. Fiore if he wants him to move it, was thinking to move it over to the location pointed out on the map, questioned what approval is needed?

Chairman Schwartz interjected that this Board will do whatever they can to refer this to the ZBA, unfortunately Neil Wilson is no longer with this Board, he will get this directed to Chairman, John Parisi. He has no problem with this discussion but this isn't the environment for this to happen. Questioned Mr. Taylor if this is acceptable? Mr. Taylor referred to the letter submitted, that everything he has said in the letter is correct, questioned, who interprets this? Chairman Schwartz said, the ZBA. They are a semi judicial entity, they can make decisions based upon facts. This Board cannot make any interpretations or decisions has to enforce things as they stand.

Chairman Schwartz suggested that Mr. Taylor call Chairman, John Parisi, the Planning Board will make the referral, an application will need to be completed for the ZBA, if they follow through with them, that is the next step. Questioned if this is fair? Mr. Taylor responded affirmatively, said they have an application submitted to the ZBA. In December was told to go to the Planning Board. Chairman Schwartz remarked he thinks he can't go, before the ZBA until he got directed from the Planning Board. Mr. Taylor was directed to complete the ZBA application, submit it to secretary Caul and follow through with the ZBA.

There being no further discussion, comments, business, a motion to adjourn the meeting was made by Board member Cornell, seconded by board member Hanson. The meeting was adjourned at 8:20 P.M.

Respectfully submitted,

Nikki Caul, secretary

