

Milford Board of Adjustment
March 16, 2006
Case #06-06
Marsha Mackey

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Present: Len Harten
 Bob Levenson
 Fletcher Seagroves
 Katherine Bauer
 Kevin Taylor

Alternates: David Michel
 Ron Pieper, Jr.

Secretary: Kathryn Parenti

Case #06-06 – Marsha Mackey, with approval from the owner of 11 Foxmoor Circle, Adam Brew, Map 51, Lot 26-106, Residential “R” district, is requesting a special exception from Article V, Section 5.042.E to allow the operation of a family day care home.

Approved by: _____

Seconded by: _____

Signed: _____

Date: _____

47 L. Harten opened the meeting by stating that the hearings are held in accordance with the
48 Town of Milford Zoning Ordinances and the applicable NH Statues. He continued by
49 informing all of the procedures of the Board. He then introduced the Board.
50 L. Harten read the notice of hearing into the record. He then read the abutters list into the
51 record. Marsha Mackey and Adam Brew, applicants, were present. Kristina Grasso,
52 abutter, was present.
53 L. Harten invited the applicants forward to present their proposal.
54 Adam Brew stated that they are proposing a family day care home for 6 children, to
55 operate between the hours of 7:00 am and 5:30 pm, Monday through Friday. He stated
56 they have one child and are allowed to take in another 5 children.
57 L. Harten asked where they were in the licensing process.
58 M. Mackey replied that this was the first step. If approved, they would then have an
59 inspection done by the health inspector. They also have a building permit to make some
60 interior renovations.
61 L. Harten then stated that if the board approves this, they then need to go the state for
62 licensing and have Kevin Lynch, health inspector, come inspect their home.
63 L. Harten asked about the sketch of the basement, exhibit A.
64 Adam Brew explained the basement layout for the board; it's a family room that will be
65 used for the day care area. The children would also be outside, in the backyard, in a
66 fenced in area.
67 L. Harten asked if there was access to the outside through the bulkhead.
68 Brew replied yes, that was the egress point.
69 K. Taylor asked if there was a bathroom in the proposed daycare area.
70 Brew replied yes, there was.
71 K. Bauer asked about the partial fence on their property. She noticed there was a steep
72 drop in the yard and wondered if that would be fenced off.
73 M. Mackey said that they wanted to get approval from the board before they purchased
74 and installed additional fencing. The fence would keep the children away from the drop.
75 K. Bauer noted that they had one child and could have another 5 children in the day care.
76 K. Bauer asked if they were familiar with the definition of a family day care home. It
77 states that they are allowed before and after school children.
78 Brew replied that he was aware of the definition.
79 M. Mackey replied that they would only take in children under 6 years of age; there
80 would be no before or after school kids.
81 B. Levenson stated that he didn't understand why this wasn't a home occupation.
82 K. Bauer replied that the way the ordinance is worded, the day care section is broken out
83 by itself. It is not listed under the home occupation but under family day care in another
84 part of the ordinance.
85 L. Harten said that it was Section 5.024.E.
86 D. Michel said that under the rule of statutory interpretation, if there is a more specific
87 provision that speaks directly to the issue, that specific provision would apply; it
88 supercedes the more general provision.
89 K. Taylor asked if an additional 5 cars would affect the traffic pattern of the
90 neighborhood and if there were a lot of children in the neighborhood.
91 Brew stated that there are a lot of kids in the neighborhood, no posted speed limit, but
92 cars seem to travel at 10 mph. Not all 5 cars will be there at one time; they'd be there at

93 different times of the day. There is great visibility at the location; no obstructions that a
94 child can dart out from behind.

95 K. Bauer stated that they live on a cul de sac.

96 L. Harten said there was a good line of sight there.

97 L. Harten asked if the board had any more questions for the applicants.

98 L. Harten then asked the applicants to reply to the questions on the application.

99

100 **1. The proposed use shall be similar to those permitted in the district:** A. Brew
101 replied that it is similar to any residence with children present. There is an
102 unlicensed day care program with 3 children in addition to their own in the house
103 right behind them. M. Mackey stated it was license exempt. A. Brew said it would
104 be very unnoticeable in the neighborhood.

105 **2. The specific site is an appropriate location for the proposed use because:** A.
106 Brew replied that it would not differ from a normal residential location. The
107 children are confined to a limited area in the home and to the fenced area behind
108 the home. The only addition would be a fenced area.

109 L. Harten asked if the outside activities would be confined to the fenced area.
110 Brew replied yes, by law.

111 **3. The use as developed will not adversely affect the adjacent area because:** A.
112 Brew replied that regulations state the children be inside the residence or in a
113 fenced in yard. This would have no affect on the adjacent area.

114 **4. There would be no nuisance or serious hazard to vehicles or pedestrians:** A.
115 Brew replied that there would be a maximum of an additional 5 cars a day.

116 L. Harten stated that this question had already been addressed.

117 **5. Adequate appropriate facilities will be provided for the proper operation of**
118 **the proposed use because:** A. Brew stated that the facility would meet all state
119 and town regulations.

120 L. Harten said the state and the town health officer would regulate this.

121 L. Harten then asked if the board had any questions or concerns.

122 K. Grasso, abutter, stated she didn't want a privately run day care abutting their home.
123 She was concerned the extra cars would block her driveway. She also stated that children
124 don't always stay inside a fenced area. She didn't want the children trampling on their
125 landscaping. They understood when they bought the home that there would be children
126 in the neighborhood; they didn't want any extra children in the neighborhood. She was
127 also concerned with the resale value of their home; people may not want to buy a home
128 next door to a day care center.

129 L. Harten replied that it was a question for concern; he thought that the day care center
130 would leave with the applicants if they sold their property.

131 B. Levenson stated that this was a special exception and it stays with the land.

132 K. Bauer stated that the new owners would also be able to run a day care.

133 M. Mackey asked if someone bought their property, the day care center could stay.

134 K. Bauer stated that they could operate the same kind of business at the house

135 L. Harten said he was thinking of home occupations, where the business goes away when
136 the homeowner sells the property.

137 Brew stated state regulates the number of children and where they can be confined. As
138 for the resale value of the property, the only adjustments that would be made would be
139 interior, the same as for a family room. They would add a nice picket fence
140 L. Harten asked if it would be a stockade fence.
141 Brew replied that it would be a nice 4-foot picket fence that you can see through.
142 B. Levenson asked about the existing fence and whether they would put the new fence
143 inside the existing fence.
144 B. Levenson asked if it would be a different fence.
145 Brew replied the existing fence is an 8-foot tall fence dividing their yard from the
146 abutters.
147 L. Harten said they would add 2 sides of fence to the existing fence.
148 L. Harten asked if the abutter could see the back yard over the existing fence.
149 Brew replied that they could, from the second floor of the house.
150 L. Harten asked the abutter if her concerns were addressed.
151 K. Grasso asked about home occupation, why isn't it classified as such.
152 L. Harten replied that if the ordinance addresses something directly, that's the portion of
153 the ordinance they use.
154 K. Grasso asked who makes the ordinance.
155 L. Harten replied the planning board designs it, it goes up before a public forum and then
156 gets voted upon at town meeting in March.
157 B. Levenson stated that you could petition for a change too.
158 L. Harten asked if there were any more questions.
159 R. Pieper asked how many cars could fit in their driveway.
160 Brew replied that 6 cars can fit; 2 rows of 3 cars.
161 L. Harten asked if the children would be dropped off in the driveway.
162 Brew replied yes.
163 R. Pieper asked if there would be any signage.
164 A. Brew replied there would be none; they are trying to keep this as low a profile as
165 possible.
166 B. Levenson asked if both applicants will be on the state license.
167 M. Mackey replied yes.
168 K. Bauer told the abutter if she had any complaints to forward them to the Board of
169 Selectmen – if there was any violation to their property or if her driveway is blocked.
170 K. Grasso said her main concern was the parking in the winter; the cul de sac is not well
171 plowed.
172 K. Bauer told her to let the town know about the problems with plowing. There is some
173 recourse if there is a violation.
174 L. Harten stated that there is a remedy if there is a problem.
175 K. Bauer stated that this is allowed by state law because it limited to 6 kids and has no signage. If
176 the applicant decided to choose this as a career, they'd have to go someplace else.
177 M. Mackey said that that wouldn't be in their home.
178 L. Harten stated that if there were no more questions, the board would go into private
179 discussion.
180 B. Levenson stated that if you look at Section 10.023 of the Town Zoning Ordinance,
181 bringing a business into a home, it shouldn't be treated differently. If you bring an

182 occupation into your home, you're doing some sort of business in it; therefore it's a home
183 occupation.
184 K. Bauer stated she didn't disagree and it is a valid argument but due to the current
185 ordinance, it doesn't apply.
186 B. Levenson responded that it wasn't an appropriate way to treat this. Kevin Lynch,
187 zoning official, doesn't agree.
188 L. Harten stated that he would like to see this special exception disappear with the sale of
189 the property.
190 B. Levenson thought he could make that condition.
191 D. Michel asked if there was any citation about this type of exception.
192 L. Harten stated that in his mind, if they sell, would this go to the new owners.
193 B. Levenson stated that are are creating a business in a residential zone.
194 K. Bauer asked if the board could put a restriction on anything. Everything goes with the
195 land, except in the case of a disability...if the disabled person leaves, the special
196 exception goes too.
197 B. Levenson read RSA 674:33, statutory authority, a zoning board of appeals, to attach
198 reasonable conditions to variances granted "so the spirit of the ordinance shall be
199 preserved and substantial justice done". That speaks to variances.
200 R. Pieper read from page 38 of The Board of Adjustment In New Hampshire, A
201 Handbook for Local Officials - RSA 674:33 Powers of Zoning Board of Adjustment, the
202 board has the authority to attach conditions; it doesn't just limit it to variances. It states
203 that board has the authority to attach conditions, just as an official would.
204 K. Bauer asked if they could attach a condition that lapses with the sale of the property,
205 after the current owner is done with it. They are a land use board.
206 D. Michel stated if the board feels the use might affect land values, then they could put
207 the conditions on the approval.
208 K. Bauer stated that what they grant goes with the land and that is a very strong
209 statement. She wanted to know if they could "sunset" a use, meaning it lapses with the
210 sale of the property. She felt it was giving a lot of power to a local governing board.
211 B. Levenson said the issue was if it was reasonable or not.
212 K. Bauer stated it was much bigger than that.
213 B. Levenson stated his interpretation of the ordinance was that this was not a stand-alone
214 special exception, it should have a condition.
215 K. Bauer asked if they have the power to put conditions that do not go with the land but
216 with the owner.
217 D. Michel stated if it was based on conditions in the zoning ordinance then the condition
218 is fine.
219 R. Pieper said that people are looking for answers in the RSA's but they are also
220 answered in the local ordinances. That's where they should look for the answers.
221 L. Harten didn't have a problem with putting a condition on the approval.
222 L. Harten then called for a vote.

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224 **1. Is the exception allowed by law?**

225 K. Bauer – yes K. Taylor – yes F. Seagroves – yes

226 B. Levenson – yes L. Harten – yes

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228 **2. Are the specific conditions present under which the exception may be**
229 **granted?**
230 B. Levenson – yes F. Seagrove – yes K. Bauer – yes
231 K. Taylor – yes L. Harten – yes
232 B. Levenson proposed a condition be added to the approval, that the special exception
233 only goes to the applicants and lapses with the sale of the property.
234 F. Segroves seconded.
235 K. Taylor – yes K. Bauer – no B. Levenson – yes
236 L. Harten – yes F. Seagroves – yes
237
238 The special exception from Article V, Section 5.042.E was granted by unanimous vote,
239 with the condition that the special exception only goes to the applicants and lapses with
240 the sale of the property.
241 L. Harten reminded the applicants that there is a 30-day appeal period.
242 A. Brew and M. Mackey thanked the board.
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244 Meeting was adjourned at 8:15 pm.
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