

Milford Board of Adjustment Minutes
May 4, 2006
Discussion of a request for a rehearing, Case #06-06
Marsha Mackey and Adam Brew

Present: L. Harten
 B. Levenson
 F. Seagroves
 K. Bauer

Secretary: Kathryn Parenti

**Case #06-06: Marsha Mackey and Adam Brew – Discussion of request for a rehearing
by abutters Kristina Grasso and Robin Vaccaro.**

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

L. Harten read Kristina Grasso's letter into the record. He then stated that the board should discuss each point brought up in the letter.

L. Harten read from the letter: "First, other residents of Foxmoor Circle do not want a family daycare home in the neighborhood." He stated that all concerned abutters attended the hearing.

L. Harten read from the letter: "Kevin and Michelle Crowe of 5 Foxmoor Circle did not receive a letter regarding the meeting." He stated that they are not abutters and did not need to be notified.

B. Levenson stated that if they wanted to, they could have attended the hearing.

L. Harten read from the letter: "It is also my understanding that Marion Costanza, also a homeowner on Foxmoor Circle, called Town Hall and expressed her opposition although she and her husband were unable to attend the meeting." He stated that he did not recall any information along those lines.

B. Levenson stated that there were no records of phone calls from that particular caller.

L. Harten read from the letter: "Thus, out of five homeowners that live on Foxmoor Circle, at least three do not want a family day care home in the neighborhood. That constitutes a majority of the homeowners on Foxmoor Circle whose wishes are not being respected."

K. Bauer stated that although abutters have an opinion, that's not a condition.

L. Harten said that it's not a condition that's looked at when making their decision.

B. Levenson said they are not abutters.

L. Harten read: "Second, there is no need for a family day care home in the Badger Hill Estates development as a majority of the women who live in the development are stay at home mothers and do not require such a service." He stated that is not something the board decides on.

L. Harten read: "Third, Badger Hill Estates is zoned as a residential area, not as a mixed use or commercial area." He stated that a home occupation is allowed in this district.

B. Levenson replied that a family day care home is specifically allowed.

K. Bauer stated that it doesn't matter if you are unaware of what is allowed in a district; it doesn't affect the board's decision.

L. Harten read: "It is also our feeling that allowing the variance will reduce our property values as prospective buyer would not be inclined to purchase a home that is next door to a family day care home." He responded that it was speculation on K. Grasso's part. It is allowed by special exception.

K. Bauer stated that it is a moot point.

L. Harten read: "Fourth, there is the issue of increased traffic and safety of the existing neighborhood children to be considered."

B. Levenson stated that there are a lot of family day cares, due to the fact that Milford doesn't have kindergarten.

L. Harten said that the parents don't all arrive and leave at the same time.

L. Harten read: "Current residents of the neighborhood are already aware of the playing habits of the children in the neighborhood and know to slow down once they turn on Foxmoor Circle. Strangers in a hurry to pick up their children from day care may not be as cautious." He stated that was speculation on K. Grasso's part.

K. Bauer said they did discuss this.

L. Harten read: "In addition, under the Special Exception the family day care home would be permitted to have 5 children. That results in 5 extra cars being parked on the street in front of

11 Foxmoor Circle and potentially blocking our driveway at times when we are leaving for and returning from work. This will also be a big problem in the wintertime when the Town of Milford attempts to plow Foxmoor Circle and is unable to do so properly due to cars being parked on the street.” He stated that is not an issue; cars will be coming and going and not parked for the day. If their driveway is blocked, they can call the proper authorities.

L. Harten read: “Furthermore, the Declaration of Covenants, Reservations, Restrictions and Easements for Badger Hill specifically indicates that no home occupation is permitted that will require additional parking for vehicles other than those of occupants of the residence.”

B. Levenson read from the Badger Hill Estates Declaration of Covenants, Reservations, Restriction and Easements. “15. *Business use. No Lot or building which may be erected thereon shall be used for any trade, business, profession, commercial activity or other occupation whether for profit or not, except for home occupations permitted under the Milford Zoning Ordinance and in such case, only those home occupations which can be carried on within the residence and without the requirement of additional parking for vehicles other than those of occupants of the residence.*”

B. Levenson stated K. Grasso presumes there will be all day parking.

K. Bauer said the Declaration states that home occupations are allowed.

B. Levenson stated that it doesn’t appear to be extra parking to him.

K. Bauer stated she liked the fact that the Covenant allows home occupation.

L. Harten read from the letter: “Fifth, there is a matter of potential trespass onto our property. Although state licensing requirements mandate that a fence be constructed completely enclosing the backyard area, there is still concern that one of the minors may get out of the enclosed area and trespass onto our property.” He stated they should call the police; it’s not a concern for the board.

L. Harten said that the board had discussed all the points in the letter and was anyone in favor of granting a rehearing.

K. Bauer read from the New Hampshire Planning and Land Use Regulations into the record: “*V-a. The care of up to 6 full-time preschool children and 3 part-time school age children in the home of a childcare provider makes a vital and significant contribution to the state’s economy and the well being of New Hampshire families. The care provided through home-based day care closely parallels the activities of any home with young children. Family based care, traditionally relied upon by New Hampshire families, should not be discouraged or eliminated by use of municipal planning and zoning powers or the unreasonable interpretation of such powers.*” (Page 267)

L. Harten stated that there was no new evidence and asked for a motion.

K. Bauer moved that the board not rehear the case based on prior discussion and that the board deny the request for rehearing of case #06-06.

F. Seagroves seconded the motion.

All were in favor.

The request for a rehearing of Case #06-06 was denied.