

## ZBA MEETING

May 13, 1998

Chairman Howard opened the meeting at 7:03. Also present were Cook, Gustafson, Humphries, Tap and Odell. Approved minutes of March 31, 1998 with a motion by Odell, second by Tap. Motion carried.

Carousel Child Care Howard outlined the format of the meeting, explaining that the applicant will explain the plans for the Center first; followed by those who are in support; then those against.

Barbara Roth said the center would have: a 50 child license at 1st, up to 100 maximum; After school program in cooperation w/LAS and additional summer program; 80 x 84 ft. bldg., full service kitchen to prepare own meals from scratch; Tornado shelter combination classroom. She explained that she chose the Lally site because the family owned the land, it is not a high traffic street & safety of the children is an issue, and added that the building is over 200 ft. from residences.

Public comment was as follows:

Jerry Milan, 11611 Lally - Did not want the center there. Noted that 4 years ago a Bed & Breakfast operation was denied on Lally.

Jim Nickodemski, 11505 Lally - had performed an informal citizen query - couldn't find anyone who was for it in the area. Concerned about pesticides sprayed in area. He also thinks that Lally may not be able to handle that amount of traffic, and the sewer may not be able to either. Doesn't think it's a good area. Thinks Alden Nash Road would be a better area. Gave a copy of signatures for the record.

Gustafson questioned sewer arrangement. Roth explained that the sewer is in the middle of the road.

Mary Meyers, 11395 Lally - spoke concerning the sewer. She has had sewer back-ups that she attributes to root penetration & frost heaval. She had contacted Grattan officials about it that day. The officials there were not aware that the lines back up.

Mrs. Anible, 11457 Lally - has been stung by bees that have been introduced in the orchard across the street. She was concerned about children being around the bees, and also about chemicals from the orchard.

Terry Conley, 11499 - sees the need for child care, but thinks the number one problem is the sewer - he is the Vergennes/Grattan sanitary sewer representative, and stated that the sewer has problems as is. Also traffic on Lally during day is not bad but at rush hour it can be congested.

Cynthia Sweetman, 11263 Lally - concerned a/b construction impact on environment. Also, she feels the after school program buses will impact on the road quality. - questioned the validity of the location - has seen many ads for day care openings in our area.

Ed Anible - opposed because of noise.

Jerry Hall - Question on bees & comment on liability issues with children in area.

Roger Kropf gave a response to the above comments - he is concerned about the sewage system possibly not being maintained properly, but feels the system is sufficiently large enough to handle the proposed use. Thinks the problems that are creating the overflows need to be corrected. In short, his responses concerning:

Traffic - during the week, it would be less than what is there on weekends.  
Spraying issue - has been addressed by the orchard operation, and is at a minimum.  
Bees - they're in the orchard for bloom time - approx. one week, then removed.  
Spoke about the negative attitude as being a normal attitude toward change.  
Thinks it will benefit the community.

Closed the public portion of the meeting at 7:35.

ZBA deliberation - Gustafson brought up a legal point of consideration. Licensed Care Facilities are not a Permitted or Special Exception Use in RA . The ordinance does not permit or authorize this kind of use. Legally, the ZBA may not grant a use that is not authorized, and may not use it's variance authority to re-zone. He commented that in his view, the applicant's only course of action would be to change the ordinance or request the Planning Commission to re-zone. He doesn't think the ZBA has the authority to grant a variance in this situation. He suggested that we table the request and refer the issue back to the P.C. for further consideration.

Humphries agreed, as did Odell, who commented that he thinks it would be spot zoning. He called the proposed facility a quasi-commercial use.

Howard commented that the study group looking at the master plan has talked about the whether or not there is a need for Commercial Zoning in the Northern area of the township.

Roth asked how the Franciscan Center was able to have its preschool. They were in operation before the ordinance. Their present building did go through the SEU procedure.

Rick Gillett was asked to comment - He thinks the PC could look at the issue again, and agreed that an ordinance change would be needed for the proposed facility to be allowed. He would like to see the ZBA give an interpretation of the ordinance as it stands. He said that it is conceivable that the zoning ordinance could be amended, especially since in R-3 licensed day care facilities are presently listed as Special Exception Uses.

Humphries - had looked into whether or not it is an essential service, but did not find ground for this.

Cook noted that it is obvious that the applicant has planned a well thought out facility, and appreciated the full mile the applicant has gone to.

3.

Gustafson made a motion (that was later amended) as follows:

This matter, having been referred to the ZBA by the Planning Commission, and the ZBA having determined that it is not authorized to issue a variance under S.201.503B of the ordinance, because to do so would be to accomplish what would in effect be re-zoning, the ZBA renders the following interpretation to the Planning Commission:

1. That licensed day care facilities are currently Special Exception Uses in the R3 district

2. That licensed day care facilities are not Permitted or Special Exception Uses in the current provisions of the RA district
3. Therefore consideration of the applicants request to put a licensed day care facility in RA district would require addition of that as a Special Exception Use by category & the applicant would be subject to the requirements of the Special Exception Use process before the Planning Commission.

Further, in light of the situation presented, the ZBA tables ruling on this application pending such further proceedings as the applicant wishes to take, and recommends the waiver of additional fees required to pursue the application.

Finally, a record of this hearing and its recommendation shall be transferred to the Planning Commission with this resolution. Tap seconded.

Discussion followed and resulted in a motion by Gustafson to amend the first motion to strike the reference to a waiver of fees, and read as follows: The ZBA authorizes a refund of the fee paid because this matter came to the ZBA because it was referred by the Planning Commission. Kerry Tap seconded, and the amendment carried.

Vote on main motion as amended. Motion carried.

Cook asked what the next step would be for the applicant. Gustafson suggested that they go back to the PC with this clarification & urge the PC to amend the ordinance. There would be two Public Hearings for them to get through; 1 - the ordinance change; 2 - Special Exception Use Permit for their proposed facility if the ordinance is changed. The timing works out for a July PH at the PC on the proposed change to the ordinance at the soonest.

Roth said she will return to the PC in June, and urge them to start the process. It was suggested they petition the TB next Monday to refer the issue to PC for study.

Jordan Meadows - Ray Zandstra presented the issue to the ZBA. The site plan for their proposal has been changed since the variance that was granted by the ZBA on March 31<sup>st</sup> concerning road width. The Township Board has granted preliminary approval to a revised version using the PUD ordinance because of the discovery of designated wetland status on the property. The private road will still serve 6 home sites, but will be shorter. The ZBA agreed that nothing else has changed, including the width requirement.

Odell motioned to reaffirm the variance granted on March 31<sup>st</sup>. Cook seconded, and the motion carried.

Dates for H.B.B. variance requests - for people who might need a variance from the Home Based Business ordinance. Fees have been waived for one year. The following dates were agreed to:

July 21, 1998  
Oct 13, 1998  
Jan 19, 1999  
Apr 13, 1999

ZBA procedures - Brief discussion was held. Tap motioned to table until the next meeting. Humphries seconded, and the motion carried.

Next date of meeting - June 10 for Stephens hearing.

Meeting adjourned at 8:45.