



**BOARD of ADJUSTMENT**  
**Town of Hollis**  
Seven Monument Square  
Hollis, New Hampshire 03049  
Tel. 465-2209 FAX 465-3701

**Minutes of May 26, 2016**

Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Cindy Robbins-Tsao at 7:00pm.

**MEMBERS OF ZONING BOARD OF ADJUSTMENT:** Cindy Robbins-Tsao, Chairman; Gerald Moore, Vice Chairman; Regular Members – Jim Belanger, Brian Major, and Rick MacMillan; Alternate Members – Susan Durham, Drew Mason, Kat McGhee and Bill Moseley.

Tsao explained the policies and procedures.

**Case 2016-008**

The application of Autumn Gue, for a Variance to Section X, Zoning Districts, Paragraph C1, Permitted Uses in the Industrial Zone of the Zoning Ordinance to permit the operation of an Infant and Toddler Child Care Business, property owned by Island Time Realty, LLC located at 258 Proctor Hill Road (Map 011, Lot025) in the Industrial Zone.

Autumn Gue stated that she has worked for Hollis Academy for 19 years and has been the owner for 9 years. Gue read the submitted application into the record.

1. ***The Variance will not be contrary to the public interest;*** because it won't threaten public safety, health or welfare, or injure public rights because the nature of childcare is to promote safety, health, well-being, and individual rights. The need for Hollis/Brookline families searching for Infant and Toddler Care has grown significantly over the past few years. Current families enrolled at Hollis Academy for Children and multiple families from Hollis and Brookline have expressed an interest.
2. ***Please describe how the spirit of the ordinance is observed;*** because there will be no alteration (expansion) to the existing square footage to the structure. The land will remain as is, with the addition of fencing approved by the New Hampshire Childcare Licensing Bureau. Childcare establishments must operate in an environment which promotes safety, health, and rights for all staff, families, and children within the building and community.
3. ***Please describe how substantial justice is done;*** because due to the increased demand for childcare in the area this new school will alleviate the hardships incurred when working families cannot find quality licensed care within a close proximity for commuting from home or work.
4. ***Please describe how the values of surrounding properties are not diminished.*** The structure and dynamics of the property are going to be maintained. Quality Licensed Childcare Centers encourage an influx in new families, and potential customers to neighboring businesses, traveling to a given area (Hollis). There are no other licensed infant programs in Hollis. The closest to 258 Proctor Hill Road is outwards of five miles.
5. ***Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship: Please describe the special conditions of the property that distinguish it from other properties in the area.*** The proximity of this lot in regards to the center of Hollis and neighboring town (Brookline) is ideal for families who travel north and south for work. The building is located at a reasonable distance from RTE 130 making it safe for a childcare to operate. The acreage of the land and the flat grassy space makes the grounds useful and adaptable for children to play in a fenced area. The arbor coverage provides enough shade and sunlight to make the yard desirable.
  - i. ***Owing to the special conditions identified above, please indicate how no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property.*** At this current time the general public purposes of the ordinance does not include childcare; for which, a variance is being requested due to the desire to maximize the use of the land, and to offer quality licensed childcare to the residents of Hollis and neighboring towns.
  - ii. ***Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one.*** The proposed use of the land includes maintenance of the current structure, and maintenance of the features found on the land. Currently, childcare is not listed on the permitted

use of the industrial zone. Because childcare businesses promote safety and encourage community building, and the preservation of the land dynamics, a variance is being requested.

Autumn Gue explained the proposed use of this lot is to operate a NH licensed infant and toddler program, *Hollis Academy for Infants and Toddlers*, offering childcare to families with children aged 6 weeks to 35 months. The business will operate Monday through Friday 7am – 5:30pm, year round with the exception of major holidays and one week during the summer months. Families will have the ability to register for full time (7am-5:30pm) or part time (five hours or less)

The intent of opening a Infant and Toddler program in Hollis, is to provide local and quality childcare to the residents of the town and neighboring towns. This program will offer flexible scheduling to meet the varied needs of families. The program will offer exceptional care, education and a safe environment. The children who attend their program will be privy to many skills which will scaffold the success in independence, future learning and life experience.

The program will be licensed for 7 infants (6 weeks to 12 months) and 13 toddlers (13 months to 35 months) *Hollis Academy for Infants and Toddlers* will employ up to 5 employees including full and part time. The 5 staff members will park in the lot located behind the building, across from the driveway and adjacent to the family parking. Families will be arriving between 7am and 9 am and the expected traffic will average 10 vehicles per hour during drop off. On average a vehicle dropping off a child would stay roughly 10 minutes. Families will be picking up a child anytime from noon to 5:30 pm and the expected traffic will average 4 vehicles an hour. On average a vehicle picking up a child would stay roughly 10 minutes. However, pickup times will vary depending on the program a child is registered for and the actual drop off time. The above mentioned vehicle averages are based on the maximum enrollment of 20 children.

Gue submitted a letter from the property owner in favor of the application. (see file)

McGhee asked was the property owner aware of the fence noted on the submitted application. Gue replied yes. Mason asked Gue to explain how the property was different from those in the surrounding area. Gue replied the lot is grassy, flat and has a complete irrigation system. The lot does not look like any of the industrial lots in the surrounding area. Moseley asked if the applicant looked at any other properties within the zones where daycare centers are allowed. Gue replied yes she has looked and there are no other locations within Hollis that meet the requirements for a daycare. McGhee asked if the applicant is renting the property or purchasing. Gue replied she has entered a 3 year lease and has already obtained a building permit and has started the work that is required to become state licensed. Moseley asked if the applicant had any concerns if an industrial use was to be placed next to or close to her daycare. Gue replied no, there is a rumor that storage units may be placed on the lot next door and there would be plenty of space between the daycare and the storage units. Moore stated the lot has been used in an industrial way in the past and feels that the applicant has not met the hardship criteria required for granting a variance. The property is not unique in Moore's opinion and could be used as an industrial lot in the future.

Belanger stated the piece of property is conducive for proposed use. However, the applicant has not proven that the lot can't be used as an industrial lot. If the ZBA was to allow non-conforming uses within the industrial zone it would, in fact, be eliminating a future industrial use.

Major stated that proposed lot has a single family home towards the back and a small business towards the front which pre-dates the industrial zone. The lot has been used residentially until recently, which could make the property unique. However, Major agreed a hardship does not exist and the ZBA needs to allow for future permitted industrial uses in the area.

#### **Spoke in favor of the application**

Sonya McTeague, 464 Boston Post Road, Amherst NH

McTeague stated she has been an employee with Hollis Academy for 10 years and was involved in locating a space for the daycare. They could not locate any other property in Hollis which would meet the state licensing requirements.

**Spoke against and in favor the application**

Tom Walton, 265 Proctor Hill Road, Hollis

Walton stated he is not for or against the application but wanted to inform the ZBA of his concerns. Walton stated he runs the baseball academy across the street. At one point the proposed building was used residentially; the occupants were told they needed to leave since the structure was not approved for residential use. The building then was used as a truck repair shop and the floor could be contaminated with vehicle fluids. R&M Restoration is roughly 100 yards away, they restore vehicles which include priming and painting vehicles. Walton stated he is a chemical engineer and even small quantities of fumes are very dangerous to young children. Major asked if Walton came before the ZBA for the approval of the baseball academy. Walton replied yes the academy is for 8 to 18 year olds they play ball in the field in the good weather and use the existing structure in the winter months. Major asked if his location was in the industrial zone as well. Walton replied yes.

Gue stated the children will not be outside for long periods of time and the paint fumes are not a concern. In fact, if a property is using chemicals she would hope the chemicals they use are used and stored properly. Gagnon stated that R&M Restoration has had several inspections and are in compliance. The business also has an inside spray booth which is very high tech.

**Letters Received in favor of the application**

Tsao stated, submitted with the application were letters in favor of the application. The letters were submitted by; Melanie Brooks, Tiffany Rhodes, Dawn Phillips, Antoinette Purcell and William & Ina McCoy. The letters in part stated the area is in need of an infant/toddler program where parents can feel their children will be in an environment that is safe, caring and nurturing. The Hollis Academy staff has a proven reputation for running a fantastic program. (see file for full letters) Belanger noted the letters received should stay in the file but cannot be considered as evidence. They are more appropriate for planning board applications and have nothing to do with a ZBA application since they don't address the ordinance and are not from abutting property owners.

**No Further Questions from the Board and none from the floor – hearing portion of the case closed.**

**DELIBERATION AND DECISION**

**Case 2016-008**

Discussion of the application of Autumn Gue, for a Variance to Section X, Zoning Districts, Paragraph C1, Permitted Uses in the Industrial Zone of the Zoning Ordinance to permit the operation of an Infant and Toddler Child Care Business, property owned by Island Time Realty, LLC located at 258 Proctor Hill Road (Map 011, Lot025) in the Industrial Zone.

MacMillan stated his heart is with the applicant. However, it would be irresponsible for the ZBA to grant the variance. The application does not meet the requirements for granting the variance. McGhee stated Hollis is in need of more business and industrial uses. On the other hand there is a baseball academy across the street. Belanger stated the location would be ideal for a daycare but the application does not meet the variance criteria required. If the town does not allow space for industrial use the town could end up in court. Major stated the ZBA may want to consider fundamental fairness because the baseball field is located across the street. The ZBA discussed at length and ultimately came to the conclusion that the variance did not meet the requirements necessary to approve the variance.

**No Further Discussion.**

**Questions - Variance**

- Question 1. The variance will not be contrary to the public interest
- Question 2. The spirit of the ordinance is observed
- Question 3. Substantial justice is done
- Question 4. The values of surrounding properties are not diminished
- Question 5a(1). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property

Question 5a(2). And, the proposed use is a reasonable one.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Total Yes	Total No
Tsao	No	No	No	Yes	No	Yes	2	4
Moore	No	No	No	Yes	No	Yes	2	4
Belanger	No	No	No	Yes	No	Yes	2	4
Major	Yes	No	No	Yes	No	Yes	3	3
MacMillan	No	No	No	Yes	No	Yes	2	4

**THEREFORE THE VARIANCE WAS DENIED.**

**Review of Minutes**

*Belanger moves to approve the minutes of April 28, 2016*

*Seconded by Moore.*

*Motion unanimously approved with Tsao abstaining.*

**Other Business**

**Meeting Adjourned**

The ZBA meeting adjourned at 8:00 pm.

Respectfully submitted, Donna L. Setaro, Building & Land Use Coordinator