



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

Minutes of September 12, 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 –Brian Major; James Belanger and Rick MacMillan, Alternate Members –Susan Durham and Drew Mason.

Tsao explained the policies and procedures.

Tsao appointed all regular members to vote on Case 2016-009.

DELIBERATION AND DECISION

Case 2016-009

This application was tabled at the June 24, 2016 ZBA meeting-The application of Hollis Montessori School for an Appeal of the Administrative determination per RSA 676:5, II (b), made by the Hollis Building Inspector/Code Enforcement Officer for operating the Hollis Montessori School outside of the conditions imposed by the Zoning Board of Adjustment and the Planning Board. Property located at 9 South Merrimack Rd., (Map 036, Lot 032) in the Residential Agricultural Zone.

At the August 26, 2016 ZBA meeting, the public hearing was held on the case. (see August 26, 2016 ZBA minutes for details) Due to the late hour, deliberation on the case was tabled until September 12, 2016.

Moore stated he had drafted a document “Draft Findings and Conditions” for the Zoning Board of Adjustment (ZBA) to review. He asked if the document could be handed out. Tsao agreed.

Moore stated he appreciated all of the parents who spoke glowingly at the last meeting, telling the ZBA how well the school delivers in its educational component. However, the role of the ZBA is to interpret the zoning ordinance and apply the ordinance to a specific application. He has reviewed the minutes from the past Planning Board (PB) and ZBA meetings extensively. In 2010, the first application submitted to the ZBA had no mention of the use of a bunkhouse. We were told a new building would be constructed in the hopes of doubling their current enrollment of 50 and at some point increase enrollment to 150. The current request is for 200 students. In 2010 the ZBA was told there would be no after school activities. The current request is for a myriad of after school activities, evenings, nights, over nights and weekends. The number of employees requested during the 2010 ZBA meeting was 5 according to applicant, with the possibility of increasing to 10 employees. The current application is asking for 25 employees. The approval of the first special exception (case 2010-04) was granted based on the testimony of the applicant.

Moore stated the abutters testified they did not attend the 2010 meeting because they were comfortable with the application submitted and accepted the application based on what they were told. The statements by the abutters which were particularly poignant were; “when do I get to enjoy the quality of life in the home I purchased”, “picture 120 kids in your backyard yelling and screaming”, “the school keeps pushing the limits”, “they chose to build in a residential zone and they need to be respectful of us and they have not been.”

In terms of reviewing the PB minutes regarding what the PB was told in respects to what the ZBA was told there are a lot of discrepancies. Originally, the PB was not told they intended to use additional buildings or extend the operating hours beyond 8:00am – 3:00pm Monday-Friday. There was no discussion on evening, nights or weekend hours. Frankly, I don’t know how was the bunkhouse was approved by the PB for any “use” without returning to the ZBA. Tsao agreed. The original building was supposed to be 6,000 square feet single story. The building ended up being over 9, 000 square feet and 1 ½ stories, an increase in size of over 50%. After reviewing the traffic count information received there were no traffic counts for peak evening, the only counts received were for drop off and pick up times.

Moore stated in the determination of a decision with regard to a special exception, the ZBA shall consider that:

1. The use shall not be detrimental to the character, environment, scenic value or general welfare of the Town; and
2. The use shall not materially affect traffic or the physical condition of the Town roads.

Although he credits the traffic report that the proposal does not affect the physical condition of the town roads. The increase in traffic does affect the character, environment, scenic value and the general welfare of the town particularly the abutters. He stated that the increased traffic would affect the quality of life of those that live near the site.

Moore handed out the document for the ZBA to review (see file for unedited copy). Setaro handed Atty. Westgate a copy of the document for his review.

The ZBA reviewed the document from 7:20pm – 7:30pm.

Moore stated a number of definitions within the document such as,” regular school day activities”, “ enrichment and extracurricular actives and functions”,” activities and events” were taken directly from the document “Proposed Findings and Determinations” dated August 25, 2016 applicant’s counsel created and submitted at the last ZBA meeting. The definitions were somewhat modified but they were very helpful in creating his document.

Moore and Setaro handed out several copies of the document to the audience for their review.

MacMillan stated the document is well written. The findings of fact and conditions meet the criteria for the special exception and is fair to the applicant and abutters. Major stated during the 2010 case the ZBA had concerns regarding noise. The final outcome of the school was not what was expected in his opinion. He expected the school to be a small alternative school, small in scale, quiet and tucked into a former apple orchard. He does agree that the PB should have done more to restrict the operation but the ZBA should have done more perhaps. However, the applicant does not appear to have been straight forward with their intentions. If conditions are imposed, the conditions should be reasonable, based on the evidence presented and not arbitrarily done. To the credit of the applicant, it seems like when he asked questions concerning the noise level the abutters raised a few issues but the majority of them were concerned about the landscaping. The larger picture is that the school has not received a lot of complaints that we are aware of. The school seems to function in harmony with the neighborhood to some extent. However, he thinks a 9.4 acre site can’t support 200 students.

MacMillan stated the difference between this application and the last is solely due to the increased size. One of the abutters did say when they purchased the home they did not expect 100 kids to be running around. The school is in a residential neighborhood and the school needs to have restrictions to protect the residential neighborhood. Moore stated Mr. & Mrs. Papineau testified that they were unable to keep their windows open due to the noise level. They testified that the noise was during recess and after school. Major agreed.

Moore stated he attempted to convey the justification of the conditions in findings #2 “There is a direct relationship between the size of the student and staff population and the hours and manner of operation of the School that adversely affects the character of the site, adversely affects the abutters’ previously enjoyed visual and auditory enjoyment of their respective properties in this R&A zone, and the scenic value of the Town”. Major agreed. Moore stated no one is trying to close the school, he objects to the increased size. In terms, of the 9 acre lot the building was constructed close to the road instead of towards the back of the site where perhaps screening could have reduced the noise and the visual impact to the neighborhood. Major stated the way the building was built in regards to the road, it would be like having a school of that size on a four acre lot.

Moore stated condition #1 “...with an enrollment of up to 150 students and up to 20 staff ...” is justified basically because that was what the number of students needed to keep the school viable at the 2010 ZBA meeting. He sees why the abutters are upset. The PB should not have approved the bunkhouse without at least another PB public hearing. The landscaping has not been up to standards. None of the proposed restrictions are punitive, it is clear from the record the school has not been the best of neighbors. The suggested findings and conditions do not impact the school from operating. They create a balance so that the interests of the abutters are preserved.

Tsao stated condition #7 “*Functions, Activities and Events (defined below), in addition to Enrichment and Extracurricular Activities, may also occur during Regular School Hours and outside of Regular School Hours up to 9:00 p.m., Monday through Friday.*”, in her opinion seems excessive. MacMillan stated all of the activities will be

conducted inside.

Durham noted condition #3 *“The dropping off and picking up of students shall occur immediately prior to and after Regular School Hours. In order to minimize the effect of arriving and departing traffic, starting and ending class times shall be staggered so that half of the student body will arrive and depart one half hour prior to and after the other half of the student body.”*, might have an impact on parents that may have children in different grades with different start times. Belanger stated the problem condition #3 is solving is a daily traffic problem, that needs to be addressed. Durham noted condition #17 “appreciable noise” the soccer field is not on the south side of the building so if the condition is approved the soccer field would have to be moved. Belanger stated the noise complaints were from the north side of the building and condition #3 is based on “appreciable noise” any sound exceeding 60db. A normal conversation voice is roughly 40db. The condition does not eliminate the soccer field on the north side it does however, limit the amount of noise.

Moore stated the activities listed in conditions #6 and #7 as you read them, were drafted by the applicant’s counsel and amended by him and those activities that do not happen on a regular basis, as stated in the previous testimony by the applicant. The feeling he has since the ZBA approved the school in 2010 is that the school thought they could do anything they wanted. This list limits the activities which the school can have. Major stated the list of items should be less objectionable than having children outside from the abutters’ perspective. Belanger noted a proposed amendment to condition #18 because the applicant has submitted a new site plan to the PB. The condition should read the current site plan as of today. Belanger asked Setaro when the new site plan was submitted. Setaro replied Friday, September 9, 2016. However, the PB has not reviewed the plan as of yet. Moore suggested changing the original draft language to read *“All provisions shown on any site plan approved by the PB in 2016 with regard to plantings and landscaping shall be implemented (and maintained utilizing best maintenance practices) to the satisfaction of the PB as a condition precedent to the increase in the current number of the School students (120, as stated to the PB at the April 19, 2016 meeting).”* Moore noted that the condition regarding the landscaping is a condition precedent to granting the Special Exception, meaning the landscaping needs to be completed first prior to the increase of students/staff.

Tsao read the document received and prepared by Moore.

Findings of Fact;

1. The property at 9 South Merrimack Road (the “Site”), the location of Hollis Montessori School (the "School") is adjacent to an arterial street.
2. There is a direct relationship between the size of the student and staff population and the hours and manner of operation of the School that adversely affects the character of the Site, adversely affects the abutters’ previously enjoyed visual and auditory enjoyment of their respective properties in this R&A zone, and the scenic value of the Town.
3. Nevertheless, if developed and operated in strict compliance with the conditions imposed herein and any previously imposed conditions of the Hollis Planning Board (the “PB”) regarding landscaping, screening and/or plantings, the operation of the School on the Site is not detrimental to the character and environment or scenic value of the Town, nor does it materially affect traffic or the physical condition of the Town roads.

Mason suggested amending #3; remove previously imposed.

The ZBA agreed.

In connection with the granting of the Application, the ZBA imposes the following conditions:

1. The property at 9 South Merrimack Road (Map 36, Lot 32) may be used as a "private school" as permitted under Section X, Paragraph G(2)(e) of the Zoning Ordinance, with an enrollment of up to 150 students and up to 20 staff. Any and all Regular School Day Activities (defined in the following paragraph) for grades pre-kindergarten through ninth grade, may be undertaken at the property during Regular School Hours. "Regular School Hours" means 7:30 a.m. to 3:30 p.m. Monday through Friday.

Mason questioned if “20 staff” is clear enough meaning 20 people as opposed to, 20 full time equivalents.

Belanger suggested added “FTE” after 20.

The ZBA agreed.

2. Regular School Day Activities (defined in the next sentence) shall only occur during Regular School Hours. "Regular School Day Activities" means and includes teaching activities, student/guidance counselor meetings, group guidance meetings, guest instructors, multi-classroom or multi-grade assemblies and recess. In this context, teaching activities involve formal, in-class subject matter teaching to a group of students, including standard subjects customarily taught at particular grade levels.

No changes to condition #2.

3. The dropping off and picking up of students shall occur immediately prior to and after Regular School Hours. In order to minimize the effect of arriving and departing traffic, starting and ending class times shall be staggered so that half of the student body will arrive and depart one half hour prior to and after the other half of the student body.

Mason noted the applicant had proposed using the new gravel loop driveway to provide more onsite flow of traffic. Should the ZBA make the use of the gravel road a condition of approval. Belanger noted the applicant also suggested a staggered start and end time. Major asked was their testimony at the last ZBA meeting stating the "Dismissal Queue Graphic" was submitted to the PB. Setaro replied yes. Durham felt the condition for staggered times would not be doable because of car pooling and siblings in different grades.

No changes to condition #3.

4. The School's administrative and teaching staff are not restricted to working only during Regular School Hours, but may work outside of the Regular School Hours, as may the custodial and cleaning staff. Administrative and teaching staff activities, outside of Regular School Hours, may also include teacher professional development days, teacher workshops, as well as normal teaching preparation and grading.

Moore noted on the applicant's submission, dated 8-16-2016 "Proposed Findings and Determinations" item #4 after the word "*grading*," the words "and related activities." "Related activities" was too broad a statement and was removed. The ZBA agreed.

No changes to condition #4.

5. Enrichment and Extracurricular Activities (defined below) may occur during Regular School Hours and outside of Regular School Hours up to 9:00 p.m., Monday through Friday.

No changes to condition #5.

6. "Enrichment and Extracurricular Activities" means and includes activities for students that are currently or typically offered by private schools including, band and music (group practices and performances, all to be conducted within the buildings), book clubs, computer clubs and activities, clubs focused on mathematics, technology, robotics, art and/or science, including preparation for competitions (e.g. Destination Imagination or FIRST), drama and theater clubs, including rehearsals, plays and performances, game clubs, garden and environmental clubs and activities, dances, athletic activities (including team practices, games, meets or other competitions, and open gymnasium, all to be conducted within the buildings), chorus rehearsals and performances and remedial tutoring.

Mason suggested that both "*conducted within the building*" references be removed and a sentence "all above activities listed are to be conducted within the building" be added to the end of the condition. Major asked if it was the vision of the ZBA not to allow any "enrichment and extracurricular activities" outside. Moore stated yes the testimony from the 2010 ZBA meeting was "*no outside activities or after school activities*" Tsao and Mason thought Monday-Friday up to 9:00pm was excessive for these activities and should there be a limit set.

The ZBA members decided not to change the condition.

7. Functions, Activities and Events (defined below), in addition to Enrichment and Extracurricular Activities, may also occur during Regular School Hours and outside of Regular School Hours up to 9:00 p.m., Monday through Friday.

No changes to condition #7.

8. “Functions, Activities and Events” means and includes functions and activities open to the entire school community and on occasion for the community at large (e.g. open houses or fundraisers for the School), including theater performances, band or chorus concerts, science fairs, student dances, book fairs, art shows, talent shows, field days and back to-school or end-of-year picnics. Functions, Activities and Events also includes alumni events, meetings for parents of current students (such as parent/teacher conferences, curriculum night, anti-bullying presentations and mandatory meeting(s) prior to a class trip), parent/teacher organizations, boards and committee meetings, presentations and open houses for parents for prospective and incoming students, pizza nights, ice cream socials, lectures, graduation ceremonies, and fundraising activities for the School.

Moore noted on the applicant’s submission, dated 8-17-2016 “Proposed Findings and Determinations,” item #8 included fundraising activities “*(either for the school or for other charitable causes)*” this statement was removed. The ZBA agreed.

9. Notwithstanding the days (Monday through Friday) and time limitation of 9:00 p.m. in paragraphs 5 and 7 above, during each school year, upon prior written notice to the Town Enforcement Officer, up to six (6) Enrichment and Extracurricular Activities or Functions, Activities and Events, may occur during Regular School Hours and outside of Regular School Hours on Saturdays or Sunday until 10:00 p.m.

Mason asked how much prior notice does the applicant need to give to the Town Enforcement Officer. Setaro stated prior notice should be given during regular business hours. (Monday-Friday 8:00am – 3:00pm)
The ZBA agreed.

10. Activities involving overnight stays are not permitted.

No changes to condition #10.

11. Day-care activities are not permitted.

No changes to condition #11.

12. Summer school activities are not permitted.

No changes to condition #12.

13. The applicant shall submit an application to the Hollis Highway Safety Committee requesting their support for a “No Left Turn” traffic sign on NH Route 122 southbound at the intersection with South Merrimack Road. Should the Hollis Highway Safety Committee support this application the applicant shall pursue the placement of this traffic sign by application to the Hollis Board of Selectmen and the appropriate State Highway agency.

Mason asked if someone is driving south on 122 how would they get to the school since they do not want them using Wheat Lane either. Belanger stated go past South Merrimack Road and make a u-turn somewhere down the road. A left turn is very dangerous and there have been accidents at the location. The school has been asked not to use Wheat Lane but we do not have the ability to stop anyone from using Wheat Lane, it is a public road.

No changes to condition #13.

14. Outside speakers for music or announcements are not permitted.

No changes to condition #14.

15. With the exception of timed parking lot lighting for safety purposes, exterior lighting is not permitted.

No changes to condition #15.

16. All exterior lighting shall be extinguished after 10:00 p.m. except for a lighted entry door.

No changes to condition #16.

17. All outside student activity generating appreciable noise shall be conducted to the South side of the main School building. “Appreciable noise” is defined as any sound exceeding 60 db at the property boundaries.

No changes to condition #17.

18. All provisions shown on any site plan approved by the PB in 2016 with regard to plantings and landscaping shall be implemented (and maintained utilizing best maintenance practices) to the satisfaction of the PB as a condition precedent to the increase in the current number of the School students (120, as stated to the PB at the April 19, 2016 meeting).

No changes to condition #18.

19. The School buildings and Site shall not be rented or offered free of charge for any activity other than those associated with the functions or activities of the School.

No changes to condition #19.

20. Modifications to the property, such as additions to buildings, construction of additional buildings, and development of exterior portions of the Site, increases in the number of parking spaces and other improvements to the Site that relate to operations of the School at the Site, require additional approval from the ZBA and may require nonresidential site plan approval to the extent so regulated and required under the Site Plan Regulations of the Town of Hollis.

No changes to condition #20.

MacMillan expressed his appreciation to Moore and Belanger for drafting the document.

MacMillan moves to adopt the draft findings and conditions dated 9/12/2016 as presented by Moore and amended by the ZBA members as the final disposition of Case 2016-014.

Seconded by Belanger.

Motion unanimously approved.

Questions/Special Exception

Question 1 Is the Exception specified in the Ordinance?

Question 2 Are the specified conditions under which the Exception may be granted present?

Question 3 Should the Exception be granted?

Board Member	Question #1	Question #2	Question #3	Total-Yes	Total-No
CindyTsao	Yes	Yes	Yes	3	0
Gerald Moore	Yes	Yes	Yes	3	0
Brian Major	Yes	Yes	Yes	3	0
Jim Belanger	Yes	Yes	Yes	3	0
Rick MacMillan	Yes	Yes	Yes	3	0

THEREFORE THE SPECIAL EXCEPTION WAS APPROVED WITH THE FOLLOWING FINDINGS OF FACT AND CONDITIONS;

Findings of Fact:

1. The property at 9 South Merrimack Road (the “Site”), the location of Hollis Montessori School (the "School") is adjacent to an arterial street.
2. There is a direct relationship between the size of the student and staff population and the hours and manner of operation of the School that adversely affects the character of the Site, adversely affects the

abutters' previously enjoyed visual and auditory enjoyment of their respective properties in this R&A zone, and the scenic value of the Town.

3. Nevertheless, if developed and operated in strict compliance with the conditions imposed herein and any imposed conditions of the Hollis Planning Board (the PB) regarding landscaping, screening and/or plantings, the operation of the School on the Site is not detrimental to the character and environment or scenic value of the Town, nor does it materially affect traffic or the physical condition of the Town roads.

Conditions:

1. The property at 9 South Merrimack Road (Map 36, Lot 32) may be used as a "private school" as permitted under Section X, Paragraph G(2)(e) of the Zoning Ordinance, with an enrollment of up to 150 students and up to 20 (FTE) staff. Any and all Regular School Day Activities (defined in the following paragraph) for grades pre-kindergarten through ninth grade, may be undertaken at the property during Regular School Hours. "Regular School Hours" means 7:30 a.m. to 3:30 p.m. Monday through Friday.
2. Regular School Day Activities (defined in the next sentence) shall only occur during Regular School Hours. "Regular School Day Activities" means and includes teaching activities, student/guidance counselor meetings, group guidance meetings, guest instructors, multi-classroom or multi-grade assemblies and recess. In this context, teaching activities involve formal, in-class subject matter teaching to a group of students, including standard subjects customarily taught at particular grade levels.
3. The dropping off and picking up of students shall occur immediately prior to and after Regular School Hours. In order to minimize the effect of arriving and departing traffic, starting and ending class times shall be staggered so that half of the student body will arrive and depart one half hour prior to and after the other half of the student body.
4. The School's administrative and teaching staff are not restricted to working only during Regular School Hours, but may work outside of the Regular School Hours, as may the custodial and cleaning staff. Administrative and teaching staff activities, outside of Regular School Hours, may also include teacher professional development days, teacher workshops, as well as normal teaching preparation and grading.
5. Enrichment and Extracurricular Activities (defined below) may occur during Regular School Hours and outside of Regular School Hours up to 9:00 p.m., Monday through Friday.
6. "Enrichment and Extracurricular Activities" means and includes activities for students that are currently or typically offered by private schools including, band and music (group practices and performances, all to be conducted within the buildings), book clubs, computer clubs and activities, clubs focused on mathematics, technology, robotics, art and/or science, including preparation for competitions (e.g. Destination Imagination or FIRST), drama and theater clubs, including rehearsals, plays and performances, game clubs, garden and environmental clubs and activities, dances, athletic activities (including team practices, games, meets or other competitions, and open gymnasium, all to be conducted within the buildings), chorus rehearsals and performances and remedial tutoring.
7. Functions, Activities and Events (defined below), in addition to Enrichment and Extracurricular Activities, may also occur during Regular School Hours and outside of Regular School Hours up to 9:00 p.m., Monday through Friday.
8. "Functions, Activities and Events" means and includes functions and activities open to the entire school community and on occasion for the community at large (e.g. open houses or fundraisers for the School), including theater performances, band or chorus concerts, science fairs, student dances, book fairs, art shows, talent shows, field days and back to-school or end-of-year picnics. Functions, Activities and Events also includes alumni events, meetings for parents of current students (such as parent/teacher conferences, curriculum night, anti-bullying presentations and mandatory meeting(s) prior to a class trip), parent/teacher organizations, boards and committee meetings, presentations and

- open houses for parents for prospective and incoming students, pizza nights, ice cream socials, lectures, graduation ceremonies, and fundraising activities for the School.
9. Notwithstanding the days (Monday through Friday) and time limitation of 9:00 p.m. in paragraphs 5 and 7 above, during each school year, upon prior written notice to the Town Enforcement Officer, up to six (6) Enrichment and Extracurricular Activities or Functions, Activities and Events, may occur during Regular School Hours and outside of Regular School Hours on Saturdays or Sunday until 10:00 p.m.
 10. Activities involving overnight stays are not permitted.
 11. Day-care activities are not permitted.
 12. Summer school activities are not permitted.
 13. The applicant shall submit an application to the Hollis Highway Safety Committee requesting their support for a "No Left Turn" traffic sign on NH Route 122 southbound at the intersection with South Merrimack Road. Should the Hollis Highway Safety Committee support this application the applicant shall pursue the placement of this traffic sign by application to the Hollis Board of Selectmen and the appropriate State Highway agency.
 14. Outside speakers for music or announcements are not permitted.
 15. With the exception of timed parking lot lighting for safety purposes, exterior lighting is not permitted.
 16. All exterior lighting shall be extinguished after 10:00 p.m. except for a lighted entry door.
 17. All outside student activity generating appreciable noise shall be conducted to the South side of the main School building. "Appreciable noise" is defined as any sound exceeding 60 db at the property boundaries.
 18. All provisions shown on any site plan approved by the PB in 2016 with regard to plantings and landscaping shall be implemented (and maintained utilizing best maintenance practices) to the satisfaction of the PB as a condition precedent to the increase in the current number of the School students (120, as stated to the PB at the April 19, 2016 meeting).
 19. The School buildings and Site shall not be rented or offered free of charge for any activity other than those associated with the functions or activities of the School.
 20. Modifications to the property, such as additions to buildings, construction of additional buildings, and development of exterior portions of the Site, increases in the number of parking spaces and other improvements to the Site that relate to operations of the School at the Site, require additional approval from the ZBA and may require nonresidential site plan approval to the extent so regulated and required under the Site Plan Regulations of the Town of Hollis.

Review of Minutes

*Moore moves to approve the minutes of August 25, 2016
Seconded by Belanger.
Motion unanimously approved.*

Meeting Adjourned

The ZBA meeting adjourned at 8:30 PM.

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