

Planning Board Minutes

Minutes

Eden Planning Board

January 30, 2007

FINAL

MEMBERS PRESENT:

Mark Agle

Dennis Brawdy

Kevin O’Gorman

Anthony Weiss

Bill Zittel

Andrew Romanowski, Alternate

GUESTS:

Dana @ Wendel Duscherer, Engineer

Eric & Heather Ohmit, neighbors of Eden Kinder Care

Tammy Winter & Mark Hartman, Eden Kinder Care, SUP

Ed Krycia, Town Board Member

Mr. & Mrs. Gorecki, Dog Boarding/Grooming SUP

Chairman, Mark Agle called the January 30, 2006 Planning Board meeting to order at 7:10 p.m. A moment of silence was requested for Jerry Schwab who recently passed away. (Moment of silence observed.) Mark –Thank you.

NEW & UNFINISHED BUSINESS:

Mark – The first order of business is filling the vacancy. Andrew would you like to be a permanent regular member? Andrew – I would have preferred that the circumstances were a little different, but yes. So we need to make a recommendation to the Town Board to appoint Andy. A motion was made by Dennis Brawdy to recommend appointment of Andrew Romanowski as permanent Planning Board member replacing Gerard Schwab. Seconded by Kevin O’Gorman. All “ayes” motion carried.

The first item on the agenda is the regarding public hearings that were held on two pending Special Use Permits (SUP). The public hearings were held by the Town Board and in each case, they received some feedback from the public at the hearings and they referred it back to us for review of this input and an opportunity to revise our recommendations if we saw fit. In any event, they will be looking for us to either reaffirm our previous recommendations or make revised recommendations in time for the next Town Board meeting.

KENNEL/BOARDING - The first issue is the dog boarding/grooming kennel proposed on East Eden Road. If you will recall at our earlier December, we had gone over that extensively and made a recommendation to the Town Board. Subsequent to that proposal the use was going to be about 1,300 feet back from the road, which is well beyond the actual zone setback requirement for a dog kennel. The use does require a SUP in that zone, as do other businesses. A couple of the issues that came up at the public hearing were that of noise, the other was whether there would be any breeding of animals. The applicant stated at the public hearing meeting that there would not be any breeding. Lastly, there was a question raised as to adding a business in that area. The code does provide for businesses in that area pursuant to the issuance of a SUP. So given that as background, is their any discussion? A recommendation?

Dennis – I don't see that what we proposed is substantially different. Our previous recommendation certainly takes into account the comments that were made. There was a question about breeding. The applicant has stated numerous times that there will be no breeding. The issue about the business, well the code provides for it so that is not an issue. Lastly, we already have it shown on the sketches provided by the applicant as being set approximately 1,100 to 1,300 feet back so I think that is sufficient and certainly more than reasonable for any other business in that area.

Mark – I think our previous recommendation suggested that any SUP should be conditioned upon the applicant having to submit a site plan for review and approval. So that is still part of the recommendation.

Andrew – As far as the location are there buffers relative to the east and west?

Mark – According to the aerial photo previously reviewed, they are so far back that there are no nearby structures. The only neighboring structures are near the highway. There is nothing that far back. (Review of aerial photo and brief discussion). The proposed structure is approximately 1,000 or more feet back from the closest structure, residential or otherwise. Further, it is a permitted use within the zone with a SUP. They (the applicant) have to meet the requirements of the zone and any conditions of the SUP. We raised those matters at the meeting and they assured us that they understand. In fact our recommendation suggested that the Town Board include a condition of any SUP, that the site plan be substantially in compliance with the sketches submitted by the applicant.

Kevin – I don't see what dog breeding has to do with anything here.

Dennis – Well, nothing and it doesn't matter and they said they are not doing it anyway.

Mark – Right, from our standpoint I don't think it matters. I think if the Town Board wants to impose that restriction then that is entirely up to them.

Dennis – As far as tonight goes, what exactly does the Town Board want from us in lieu of not having a site plan?

Mark – Just our recommendation. So, does our prior recommendation stand?

Dennis – So our original recommendation should stand. Is that going to be a motion?

Mark- No, it is just our recommendation.

The Planning Board recommendation is that after considering the input from the public hearing convened by the Town Board on this matter, our prior recommendation made at our November meeting is to stand.

EDEN KINDER CARE – Mark – Ok, the other SUP that was up for consideration is Eden Kinder Care. As you will recall, the background is that it was approved back in the late 1980s. And subsequently been upgraded from the original 50 to its current 70 and they are coming forward to increase to 85. So, the public hearing was held by the Town Board based upon our prior recommendation. There was some discussion here at our last meeting wherein the adjoining neighbor had some questions concerning proximity of the playground equipment which is not something that falls within our review for a site plan anyway. Not everything that someone can do with their property needs to be the subject of our review. Placement of playground equipment is not part of the review.

Dennis - However, the Town Board if they desire, could make a condition in the SUP that the playground equipment would have to be “X” feet from the property line or whatever.

Mark – (Directed to adjoining owner, Mr. Ohmit) I think at the last meeting that was your primary concern, the proximity of the playground equipment to you property.

Mr. Ohmit – Not just the proximity, but also the fact that it has all been added within the last three years. Subsequent to the original SUP and its been moved from its original location, closer to our house... farther from the church.

Mark – I believe, Councilman, Ed Krycia, at the last meeting, made a statement, something to the affect that really, this is a neighbor issue that needs to be worked out between the parties. Is there anyone that can speak on behalf of the church as to the placement of the playground equipment?

Mr. Hartman – Yes the equipment is relatively new.

Mark – Is it something that can be moved?

Ed Krycia – Can I interject something here to try to cut this to the quick. If we had a map of the existing facility or property, could you all agree on an acceptable location of the playground equipment? Or are we just going to waste time by going back and forth here without any resolution? Is there a place where you would like to see the playground equipment located?

Mr. Ohmit – There are a couple of other things that I would like to bring up. Other concerns that I would like to talk about.

Mark – (Directed to the church representative) Do you have a site plan or survey?

Mr. Hartman – We can't find the survey. The attorney hasn't been able to locate it either.

Mark – Okay, a survey doesn't really help us that much with this issue anyway because it's not really a site plan. There is a distinction between a site plan and survey. The survey would only show the building with respect to the property boundaries. In this case, you are not adding to the building. Everything is contained within the existing building your not changing anything on the exterior. The only real question is one of a neighbor issue. While there might be some other issues, what's on the table is the issue of the swing set/playground equipment and the proximately of that equipment.

Mr. Ohmit - I would disagree with your assessment that everything is contained within the building because it is not.

Mark – Well, from our standpoint, what I'm say is that from this Board's perspective, there may be other issues but they are for the Town Board to consider as part of their deliberation concerning the SUP application. We are only a recommending body from the perspective of "planning" as to this use in this area.

Mr. Ohmit – But when you consider a SUP aren't you supposed to consider equipment, landscaping, lights and everything around the building as well as location of any fencing and I considered the playground equipment, swings and other things to be part of a site plan and part of this Board's responsibility to look at and consider. I don't want to tell you how to do you job but that would seem to be the case.

Mark – That is why we are talking about the playground equipment issue here tonight, We understand there is a certain issue there, from your perspective to be sure, but whether it falls under our purview as a Planning Board is our concern. Depending on how substantial the nature of the equipment would be might be the threshold of what makes it something more of a fixture in a yard versus something less in nature.

Mr. Ohmit – I think it's a considerable fixture.

Mark – But that is in the eye of the beholder. I understand, playground equipment has come a long way from the little metal swing set in the yard.

Mr. Ohmit – Anyway, there are several other things that need to be brought up for a SUP. Specifically, from our point of view we are talking about going from 70 to 85. Given we have lived next door for 4-5 years, we have seen increased traffic issues. Just by looking at the facility and watching the facility we believe it is a very busy location from a car point of view. On the issue of safety there are more cars on a daily basis. Cars pulling in and sitting with their headlights shining in our house every morning and now they are talking about increasing from 70 to 85 cars every morning. Consider other business, for example. Like the Four-Corners which is an appropriately zoned location and it doesn't have nearly as much traffic going in and out of it every morning. Welfare,

we have an issue of teenagers using the equipment as a hangout and the playground has become a destination for families when the day care center is closed. The issues of the lights, our comfort, safety, the level of noise, especially in the summertime when there are many kids outside playing. Being in the area we are, we feel as though we are in a fishbowl in view of the playground equipment, which is why we put up the fence to separate the two properties. From a convenience standpoint, we don't have the use of our backyard. We don't have any privacy. We would like to have some privacy in our own backyard without having to worry about being in the constant stream of view.

Those are our issues and concerns and there is another thing in question, I think there is the question of harmony with the rest of the neighborhood. I think the operation has intensified over the passed several years. I think those are things that should be considered. Again, we disagree with the increase in that it is not in harmony with what is happening in the neighborhood.

Mark – Okay, first of all, most of those items that you mentioned really are all part of the Town Board's review. The issue of health, safety, welfare, comfort, traffic or capacity increases, etc., are all for the Town Board to consider as part of their consideration of this application. Therefore those things are at the discretion of the Town Board. Whether they feel that those issues are of a magnitude that needs special concern, is the Town Board's decision. The only one you mentioned that does potentially fall back to us is if the Town Board requires them to address any screening or a buffer separating your yard from the uses of the day care. Once again, that comes back to the playground equipment and its placement, the hours of operation and things like that.

Mr. Ohmit – Don't get me wrong, I don't object to the day care facility being there but what has become apparent since we purchased that house 4 or 5 years ago is an increase in intensity and they are looking to increase from 70 to 85 and we just don't think this is acceptable.

Mark – I understand and I am not disagreeing with your characterization but that is an issue for the Town Board to decide. If they feel that they need to impose any restrictions, then they can do that if the so choose. But as far as the church goes, with the placement of the playground equipment, that is the only thing that is outside and of course the kids pay outside from time to time. The hours of operation are what?

Mrs. Tammy Winter (on behalf of the church) – 6:15 am to 6:15 pm.

Kevin – Can I just back up and reiterate what you said. We are a Planning Board. We are not a supervisor of disputes. There is a SUP issue and I don't think that we should be a way for the Town Board to get out of the problem. The Town authorized this use. The SUP was issued back in what 1989-1990 and has been renewed every year or so by the Town Board. This is really none of our affair. This is a Town Board affair not our affair. It is the Town Board's decision to make. If they want to change from 70 to 85 children then it should be decided and changed by the Town Board. This stuff is not within our realm. I would like to make a motion that we have no comment. This is a matter for the Town Board.

Mark – If they so choose, the Town Board can impose a condition on the SUP and request that the applicant prepare a site plan to us for review as to buffering the playground equipment. The other issues you raised are not in our realm.

Kevin – I make a motion that we have “NO COMMENT.”

Mark – We just need to make a recommendation. Any discussion?

Dennis – As a result of the public hearing if there are screening issues, buffering issues and such, then we can review that if we do it in the context of a site plan review, which we don't have in front of us tonight.

Mark – Correct, but the Town Board can require Site Plan from Eden Kinder Care if they want us to review one. The Town Board has the prerogative to put any conditions they so chose on the SUP. If the Town Board was to address that issue they can certainly direct them to do it and then it would come back to us for review again. But that's it. They are not doing anything to the building, no new construction or additions for the building or paving. Those are the planning issues that we deal with. If the Town Board wishes to look into the playground equipment issue and consider it to warrant further review, then they can request a site plan. Not everything falls under the realm of building permits or planning board approval. Residents can put playground equipment in their yards and they don't need a building permit for it. That's not to say that because of the type of use

that the equipment is going to undertake if it impacts on the neighbors that they feel it may require screening or something like that, the Town Board could refer it to us for review on that issue alone but would have nothing to do with the intensity of the use or number of kids or anything like that. That is not what we would do.

Dennis - If the Town Board decides to request specific placement of the playground equipment they may require a site plan.

Mark - The Health Department made its evaluation and approved the Center for 85. That doesn't mean that is what the Town Board or we has to do. They don't have to approve 85. The building inspector has to do his inspection. The Town Board can approve for 75 or 80 if they so choose to do so. The Town itself may have building use concerns as well but that would be for the building inspector to decide. None of which we have any control over.

Ed Krycia – If there was a survey showing placement of the playground equipment, would that help?

Mr. Ohmit – If I could say one more thing. At the original hearing, I believe the building inspector was requested to find out how many children were enrolled and that has not happened as of this date, that I am aware of.

Mrs. Tammy Winter – Yes, he did come in and the inspector requested the records and he told me that if you were going to request an increase to 85 for the SUP then its not necessary to supply the attendance records at this point.

Mark – Scott is not here to speak on his behalf and that is just hearsay. We do not know what he said and what was his rationale for saying it. The Town Board has to take that into consideration and talk to him.

The Planning Board recommendation, as far as the Planning Board is concerned, is that we have No Comment as of this juncture and it is up to the Town Board to

consider the SUP on its own merits. There is nothing of a “planning” nature that we have jurisdiction over commenting on at this time. The only thing that is there is at the discretion of the Town Board if they feel compelled to have the church/day care provide a site plan and get it to us for review based on the neighbor’s complaints and then we can take a look at it.

Ed Krycia – So we can pass the SUP without going through you basically.

Mark – Well that is up to you and the other Town Board members. It is totally in your bailiwick to do what you want. You’ve heard the public comment here and at your meeting. You know the applicable codes. The building inspector is, I guess, providing his input.

Mr. Ohmit – But in considering a SUP a Site Plan is to be required.

Mark – Considering a SUP is entirely the job, so to speak, of the Town Board. We are only a recommending body. This is a proposed expansion of a use that has continuously been renewed since 1989. This is not a new SUP, and therefore solely at the discretion of the Town Board.

Mr. Ohmit – Okay, so the horses have already left the barn and everything is already on the property.

Mark – Well the building is there and it has already been approved for the use and has the capacity to house the use for the 85. The Site is certainly large enough. There are no new or additional external uses of the “site” other than the playground equipment. While, I understand that as a neighbor, you have your own concerns and issues relating to that, they are not issues for the Planning Board.

Ed Krycia – I would like to have a meeting right now with Mr. and Mrs. Ohmit and Mrs. Winter and Mr. Hartman. These parties leave and go to another room to further discuss and try to come to some kind of an agreement.

REPORTS –

Mark – We've made the recommendation to the Town Board that they appoint Andrew Romanowski as a regular member and as part of the recommendation that they advertise for another alternate.

Dana – There is a community character workshop the Wendel Dusherer is putting together along with the NY Planning Federation. Its on February 6 at 7:00 p.m. at Clarence High School Auditorium and is scheduled to run till about 8:30. It is a good session and you do get points for ½ the hours as required for planning board members in order to keep up your requirements.

The video may also be available to be circulated among the members who are unable to attend. I've heard good things about this presentation. I believe satisfies 2 hours of the 4 that are required each year. We could also view the video here as a group after a meeting or any other videos that might meet the requirement. This would also be good for the Zoning Board as well. Who tracks and verifies the training. There is a Planning Federation website that keeps track of the Planning Board's through out the State of NY.

NEW BUSINESS:

Kevin to Dana – (and various discussion) There is a major design proposal for a major water line running up Shadagee Road. Which Wendel has no been a party to. I would like some information brought to the Board for the reasons for sunning the water line through the middle of an agricultural area versus running it up Derby or West Church, or somewhere else. Based upon some of my research and that I happen to know someone who runs the water district. Is it the main reason to get water to Towns south of us and to the prison? If it is run down Shadagee, it will than make water available which will then essentially destroy that farming area because people will get greedy and sell the land for development because they have water. Isn't a smaller water line running down derby to church and then down 62? I would like some engineering comments and that is stuff the planning Board is supposed to be doing. Not what we just had to deal with. It seems to me that it is poor planning to run a major water line up through the middle of an area that doesn't need water at this point. Plus that's in our master plan as well. Why isn't anyone looking for a different route to follow? Maybe you could look into it and report back to us. We don't know what other forces are leading this either. As a Planning Board we

need to know what is going on and coming up for the future. We need this information now before things get too set.

Dennis Brawdy - Motion to adjourn. Seconded by Kevin O’Gorman. Meeting adjourned at 7:45.

Next meeting is tentatively scheduled for February 27, 2007 at 7:00 p.m.

Respectfully submitted,

Dawn Palma

2/7/07