

City of Lewiston
PLANNING BOARD MEETING
Minutes of May 13, 1997

I. ROLL CALL

The meeting was called to order at 6:05 PM.

Members Present: H. Skelton, D. Theriault, T. Peters, D. Jacques, M. Paradis

Staff Present: J. Lysen; G. Dycio; D. Ouellette; G. Mynahan, Sanitarian; G. Arsenault, Director of Code Enforcement; G. Campbell, Building Inspector.

II. WORK SHOP - Day Care

J. Lysen informed the Board that the Development Department Staff met earlier in the week with Planning Board members Tom Peter and David Jacques to discuss Day Care issues. After much discussion, consensus was reached on the following recommendations:

1. It was decided not to differentiate between "Home Child Care" and "Group Child Care" since they both are permitted as a matter of right in all districts within the City with the exception of the NCA District where they would be limited to a maximum of six (6) children plus two (2) either before or after school and during vacation periods. This change also makes the City consistent with State regulations that classifies day care for three (3) or more but less than thirteen (13) as a "Family Day Care Home." The limitation on size in the NCA should, in my opinion, address most concerns related to density and commercialization in our typically small lot district.
2. To operate a Family Day Care Home in Lewiston, it was decided that the day care home must be in a "private family residence" (again, consistent with state regulations) and that the operator must be "domiciled" and be a resident in the home and hold the necessary licenses from the City.
3. A new classification is also being recommended, a "Small Facility in a Non-Home Setting" (again consistent with State regulations). These facilities are allowed in all non-residential zoning districts. They would be allowed in the Rural Agricultural District as long as they were not operated within a home, and in other residential zoning districts only in conjunction with municipal buildings or facilities, or religious facilities.
4. There was support, however, to grandfather existing group child care facilities in the NCA and small facilities in the non-home setting that were legally established prior to these changes.
5. Day care centers would be allowed in all non-residential districts and in the R, MDR, and NCB as long as they were not in a home setting, and in the LDR, SR, NCA only in conjunction with municipal buildings and facilities or religious facilities. There was also strong support to allow small facilities and centers in existing multi-family dwelling complexes like Hillview, even if they are in a residential zoning district. Language still needs to be developed.
6. It was also decided to add performance standards in the code concerning day care to address

City of Lewiston
PLANNING BOARD MEETING
Minutes of May 13, 1997

issues such as buffering, parking, access, drop-off, physical home standards, hours of operation, and safety.

7. It was also recommended that licensing regulations be simplified and made consistent with the new performance standards and State regulations whenever possible.
8. A revised matrix was presented which interpreted the new zoning regulations.

The following was also presented to the Board:

PERFORMANCE STANDARDS

Article XII, Section 20 Day Care Facility Standards The following standards shall apply to the establishment and operation of all day care facilities in the City of Lewiston in addition to any Maine Department of Human Services and/or local licensing requirements.

(a) *Statement of Purpose.* The purpose of this section is to ensure that all day care facilities operate in a safe and convenient manner in order to maintain adequate care and protection for those children who attend these facilities while minimizing the potential impact of these facilities upon the value and quiet possession of surrounding properties.

(b) *Standards for Establishing a Day Care Facility.* The Code Enforcement Official shall grant all necessary permits and/or licenses for the establishment of a day care facility provided that the applicant meets all of the licensing requirements and the granting of the permit and/or license would not violate one (1) or more of the following standards:

1) *Buffering:* The Code Enforcement Official may require buffering/ screening when it has been determined that, on a case by case basis, a proposed day care facility will have a significant adverse impact on the value and quiet possession of an abutting property in residential use which can be adequately buffered/screened to mitigate the adverse impacts.

2) *Vehicular and Pedestrian Access:* All proposed day care facilities shall provide safe and convenient access to, into and within the site. Vehicular access to the site shall be on roads that have adequate capacity to accommodate additional traffic generated by the day care facility. Existing driveways shall be adequately enlarged and/or relocated when the Code Enforcement Official determines that the existing driveway does not provide safe and convenient access to the site. Pedestrian walkways and child drop off and pick up areas shall be separated from vehicular access ways whenever possible to minimize potential conflicts.

3) *Off Street Parking:* All proposed day care facilities shall provide adequate off street parking for all full and/or part time employees. Parking spaces may be arranged in a "family style" manner where one vehicle is parked behind the other as long as the maneuvering on site is safe and convenient. The required front, side and rear yards for the zoning district in which the facility is located must be maintained, unless modified pursuant

City of Lewiston
PLANNING BOARD MEETING
Minutes of May 13, 1997

to Article IX. If the facility will operate with more than one shift, the number of parking stalls shall reflect the greatest number of employees in any one shift.

4) *Drop off and Pick up Areas:* All proposed day care facilities shall provide adequate drop off and pick up areas for the anticipated needs of the children attending the facility, as well as those individuals who bring these children to and from the facility. These areas shall be safe and convenient, and shall not conflict with on site pedestrian and vehicular movements. Requiring vehicles to back into a city street shall be discouraged, whenever possible, in all residential zoning districts, and shall be prohibited in all non residential zoning districts. The Code Enforcement Official may require that additional maneuvering room be created on site to eliminate the need to back into a city street, and may also require that drop off and pick up times be staggered so that any unsafe conditions are minimized.

5) *Hours of Operation:* The Code Enforcement Official may limit the hours of operation for any day care facility on a case-by-case basis if it is determined that the operation of the facility during certain hours would cause a significant adverse impact upon the value and quiet possession of an abutting property in residential use.

6) *Number of Children:* The Code Enforcement Official also limit the number of children that may attend a day care facility on a case-by-case basis based on the same determination.

7) *Notice To Abutting Property Owners:* The Code Enforcement Official shall notify all impacted property owners, within three hundred (300) feet of the property under consideration for a day care facility, once the applicant has submitted a complete application. Said notice shall include the address of the property under consideration, the type of day care facility being proposed, a copy of the licensing requirements and performance standards for abutters to review, the time frame allowed for comments to be submitted for consideration, and the name and phone number of the appropriate staff person to contact should the abutters have any questions. The Code Enforcement Official shall consider all comments received from the notification process when making a determination that all of these standards have been met.

(C) *Limitations, Non-Conformance, and Abandonment:* A person may register or license to operate only one (1) type of day care facility within a home setting in the City of Lewiston. However, any existing day care facilities that were legally established prior to the date of the enactment of this amendment are deemed to be legally non-conforming. These facilities may continue to operate in the approved manner so long as the land and/or buildings are maintained in their current ownership as of the date of enactment of this amendment, but in no case shall these legally non conforming day care facilities be regulated under Article V, Section 4 (a-f) of this code. If the land and/or buildings are sold, if the use is discontinued for a period of twelve (12) consecutive months, or the licensee fails to renew the license or allows it to expire, the day care facility must then come into compliance with the current standards, even if it requires that the facility be closed and the use terminated.

DEFINITIONS

City of Lewiston
PLANNING BOARD MEETING
Minutes of May 13, 1997

Day Care means child care for a specific number of children.

Family Day Care Home means a private family residence where a family day care is operated by a person who is domiciled and a resident within that private family residence, and is the holder of all necessary licenses and permits from the State of Maine and/or the City of Lewiston.

Day Care Facility means a house, dwelling unit or other place in which a person, or combination of persons, maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for three (3) or more children under the age of sixteen (16).

Family Day Care means child care for three (3) to twelve (12) children under the age of sixteen (16) years of age (not related by blood or marriage to, or not legal wards of or foster children living in the private family residence serving as the family day care home) who are unattended by parents or guardians for any part of the day, operated by a person in his/her private family residence.

Small Care Facility in a Non Home Setting means child care for three (3) to twelve (12) children which is not operated within a family day care home.

Day Care Center means child care for more than twelve (12) children.

Day Care Facility Not In Conjunction With a Residential Use means a day care facility that is not operated within a private family residence

Day Care Facilities In Conjunction With a Municipal Building and Facility or Religious Facility means a day care facility that is operated jointly within a functioning municipal building and facility or religious facility.

Day Care Facilities Operated In Conjunction With Multi Family Developments and Mobile Home Parks means a day care facility that is operated jointly and as part of a multi family development or mobile home park, but may not be operated within a private family residence.

Day Care Facilities Operated In Conjunction With a Municipal Building and Facility, Religious Facility, Multi Family Development, or Mobile Home Park means a day care facility that is operated jointly within, or as part of, a functioning municipal building and facility; a functioning religious facility; multi family development; or mobile home park.

T. Peters asked if the licensing rules are incorporated into the performance standards. He stated that this would give staff the opportunity to review internally. J. Lysen said that the problems seem to be basically in the NCA District. What this proposal does it to allow day care in all areas of the city for 6 + 2. It also allows 12 + 2 day cares anywhere in the city except NCA District. He further stated that these family day cares could be allowed everywhere with conditional use permits.

Open to the public: T. Peters asked G. Arsenault and G. Mynahan for their comments. G. Arsenault said the Board of Appeals will not have difficulty with conditional use. Regarding performance standards, he

City of Lewiston
PLANNING BOARD MEETING
Minutes of May 13, 1997

found them vague with no direction. He also commented on buffering and off-street parking, hours of operation and number of children. He said he was opposed to notifying abutting property owners. He said he did not think this would be effective, or perhaps only notify the immediate abutters. Regarding non-conformance, he liked the direction and eliminate conditional use and said he was not sure why Rural needed to be conditional use. He further mentioned that the matrix does not cover a day care in centers such as Hillview or mobile home parks. He said there needed to be better definition of operating "in conjunction with." G. Arsenault volunteered his time to work with staff on the performance standards. G. Mynahan said that the simpler the rules were, the better. T. Peters said the rules needed to be all in one packet so that everyone would know where they were written. J. Lysen said that if the Board adopted this, it only targets one area, everything else was allowed.

Jamie Bolduc said she had a concern with the NCA District only allowing 6 + 2. She claims that if she shuts down four of her day care in the Pettingill area that there would need eight to replace them. She asked why NCA had to be kept for conditional use. H. Skelton asked if proliferation was addressed and what impact it had through performance standards.

Mrs. Faucher of 171 Pettengill Street asked if the person operating the center had to live there. H. Skelton answered yes and that this was why it was before the Board. He further stated that existing day cares would be grandfathered unless they were sold or the license lapsed. G. Arsenault added that the complaints his division has received were mostly because of added traffic. He noted that NCA had more of a neighborhood feel, whereas NCB is more commercial. T. Peters said that he has heard residents complain that residential neighborhoods should stay residential, that the residents did not have a problem when the provider lived in the neighborhood, but objected when employees went to the day care to work. Mr. Faucher again said she did not want businesses in the neighborhood.

Richard Michaud of 9 St. Joseph Avenue said he was concerned with the limit of 6 +2 in the NCA and said that Jamie Bolduc was correct in stating that there was a great need for day cares for after school children. T. Peters and H. Skelton said they wanted the issue of notification addressed; performance standards should be worked on with Gil and Planning Staff; 6 out of 14 zones listed in the matrix changed from no to yes under the new proposal, those are mostly office and don't foresee being a problem with a family day care going into that area but asked staff to take a look at that issue again; incorporating the licensing standards into performance so that it is all one and can be reviewed as part of zoning; (add these to the agenda for the next meeting). T. Peters also asked Gil to run the proposal as it presently stands by the Chair of the Board of Appeals to get a feel from them and get their comments, or set up a meeting with them if they would like. H. Skelton asked for language in code form regarding NCA. J. Lysen said he would like to have everything set up for the June 10th Planning Board meeting and then schedule this for a public hearing. H. Skelton asked to see things in final form before it is set up for public hearing and therefore set up a workshop for June 10th at 6 PM and then hold a public hearing on the 21st. T. Peters asked G. Arsenault to invite the Board of Appeals to the workshop.

MOTION: by D. Theriault seconded by T. Peters that Staff provide the Board with proposed code language regarding day care for the June 10th workshop.

VOTE: Passed 5-0.

City of Lewiston
PLANNING BOARD MEETING
Minutes of May 13, 1997

Notification and proposed language will be sent to the following people who signed up at the meeting: Donna Childs, 951 Sabattus Street; Del Levesque. 268 Webster Street; Margaret Cushing, 134 College Street; Richard & Wendy Michaud, 9 St. Joseph Avenue; Jamie Bolduc, 81 Marble Street.

Meeting called to order at 7:00 PM

II. READING OF THE MINUTES OF April 8, 1997, and April 22, 1997.

MOTION: by T. Peters , seconded by D. Theriault to accept the minutes of April 8 and 22, 1997 as written.

VOTE: Passed 5-0.

III. CORRESPONDENCE

1. Memo from City Attorney Robert Hark to Gary Campbell regarding NCA zone development/undeveloped lots on opposing streets
2. Proposed ordinance change from Gary Campbell regarding Article VI -Nonconformance.

MOTION: by T. Peters, seconded by D. Theriault to accept the above correspondence and be read at the appropriate time.

VOTE: Passed 5-0.

IV. OTHER BUSINESS-New Business

1. Discussion of proposed changes to CDBG Program-Consolidated Plan- and scheduling of Public Hearing to review changes and receive public input.

J. Andrews explained that there was a language change proposed for the Consolidated Plan, but that the Planning Board did not have the complete Plan before them. He said this is presented to the Planning Board who recommends the change to the City Council; then set it for public hearing. H. Skelton asked if this was a federal mandate and J. Andrews answered yes; he also said he would have a full consolidate plan for each Planning Board member for the next meeting along with a letter from HUD that says Lewiston has met HUD requirements. He also said he would provide the Board with net objectives and look to see if there was a need to add to that.

2. Review of proposed amendment to the Zoning and Land Use Code and scheduling of Public Hearing.

Theresa Roux, of 39 Goddard Road, submitted a petition for a proposal to amend the Zoning and Land Use Code where the amendment would allow owners of existing, developed, non-conforming lots with limited lot width the ability to construct additions and accessory structures which would be precluded due to the greater space and bulk regulations in most commercial and industrial zoning districts.

City of Lewiston
PLANNING BOARD MEETING
Minutes of May 13, 1997

The Planning Staff submitted the petition to the City Clerk's Office for verification of the signatures. Upon review of the signatures, the Clerk's Office verified 19 of the 20 signatures. The Planning Staff reviewed the petition and amendment and found that the amendment was in proper form. Staff asked that the Board review the amendment and, if the Board found that the amendment to be in proper form, to schedule a Public Hearing to review the amendment at the next available meeting.

Gary Campbell from Code Enforcement said that any structure constructed on a 50 ft lot could not meet set-back requirements. The lot was too narrow. J. Lysen said this would allow only additional structures and G. Dycio added that it would not allow the building of new homes. T. Peters asked how many lots this new code would affect. G. Campbell guessed in the hundreds.

MOTION: by T. Peters seconded by D. Jacques to schedule the proposed ordinance change of Appendix A, Article VI, Section 4 for public hearing.

VOTE: Passed 5-0.

3. 21-25 Thorne Avenue

Gary Campbell presented his memo along with Attorney Robert Hark's response. He had a draft of a proposed zoning amendment regarding lots with frontage on opposing streets. A constituent cannot sell his lots on Thorne Avenue because of the required frontage for a two-family dwelling on Thorne Avenue. The property in question consists of parcels 127, 126, 125, 89, 88, 87, 86, and 85 on the Fairfield subdivision. Lots 127, 126 and 125 have frontage on Old Greene Road and contain a two-family dwelling; lots 85 through 89 have frontage on Thorne Avenue and contain a small accessory structure on lots 89 and 88. G. Campbell said that under the current regulations for NCA District for lots of twenty thousand square feet or larger, the lot gains require 125 feet of frontage on Thorne Avenue in spite of the fact that the developed parcel front on Old Greene Road. He further said that the objective of the amendment is to allow the developed 75' x 100' parcel with frontage on Old Greene Road to stand on its own as a nonconforming building on a conforming lot and to allow the development of at least one lot on Thorne Avenue. Attorney Hark's memo was discussed. Most of the Board members found the wording complex. G. Campbell explained the key to this situation was frontage on two separate streets. This lot owner has over 20,000 sq ft which requires more frontage. If he had under 20,000 sq ft, then code would require him to have 50 feet frontage. H. Skelton asked if this situation was specifically towards this lot. G. Campbell said it was. H. Skelton asked if the Board needed to amend the code for this and that shouldn't this simply go to the Board of Appeals. He also asked if code could be put in simpler language. G. Campbell said he would draw up something with simpler language and then bring it back to the Board.

4. Portable Garages

G. Campbell spoke to the Board about portable garages. He asked if the Board would allow these to encroach into the set back of a side yard. D. Theriault asked if these needed a permanent structure permit. G. Campbell said yes, they did indeed need permits. After much discussion, it was the consensus of the Board that portable garages need to have the same set backs as any other structure. D. Theriault asked if these structures had any height standards. G. Campbell said he had not addressed any standards at this time. He was basically dealing with set-backs. H. Skelton said that there really wasn't any difference

City of Lewiston
PLANNING BOARD MEETING
Minutes of May 13, 1997

between these portable garages and a garage except that it could be removed. D. Theriault asked how other communities treated portable garages. G. Campbell answered that every community that he knew of treated them as being a structure. It was the consensus of the Board not to change the set back requirements for portable garages; however, the Board did agree with a reduction in setbacks for carports which would need to meet yard requirements.

City of Lewiston
PLANNING BOARD MEETING
Minutes of May 13, 1997

5. Bikepath/Railroad Park Update

J. Lysen reported to the Board the update on the Bikepath/Railroad Park. He showed the Board a map which showed where three 40' high new lights were going up before the Balloon Festival. The park will have two bike systems and a new bridge. It will also have ten lower lights along the bike path. The Railroad company who still owns the park is willing to fund the three tall lights. The committee wants underground utilities to service all lighting. The Balloon fest volunteers have already started cleaning the bikepath.

Old Business

1. Discussion of proposed policy on Application Fees with respect to both City Council and Planning Board Initiating Land Use Code amendments. (3/25/97)

Nothing new to report.

2. Discussion Regarding the Urban Enterprise (UE) District (3/11/97)

Nothing to report at this time.

III. ADJOURNMENT

MOTION: by T. Peters seconded by D. Jacques to adjourn the meeting.

VOTE: 5-0.

Meeting adjourned 8:05 PM

Respectfully submitted,

Denis Theriault
Planning Board Secretary

dlo