



## PLANNING AND NEIGHBORHOOD SERVICES DEPARTMENT

### Board Adjustment Minutes

February 23, 2012

7:00 PM

The following members of the governing body were present:

Patricia Laws-Chair, John Eigenbrode, Chris Chopelas, alternate members Sidney Sandy and Roger Fish

Staff members:

Rox Burhans

Keith Sorensen

Helen Boich, Secretary

Keith Merritt, BOA Attorney

**Call to Order:** Chair Patricia Laws called the meeting to order.

**Roll Call:** Danny Takah was absent.

**Approval of Minutes:** December 15, 2011 **Approved**

**Public Hearings:**

All those speaking to items were sworn in.

**SUP2012-001 Gray Fox Children's Care:** Request to expand the existing employee daycare service to provide childcare for clients' with special needs children. Location: Industrial Ventures, 2814 Gray Fox Road; Applicant: Toinette Laguerre.

Senior Planner Rox Burhans presented the request. Mr. Burhans stated the existing employee-only day care operation is in conjunction with Pediatric Boulevard, which provides therapeutic medical services for children. The proposal before the members is to expand the day care use to begin to accept outside children. Doing this establishes a principal day care use. Being in a Light Industrial zone it requires a Special Use Permit. The proposal is to accommodate approximately 10 children. There are approximately 2 to 3 children at the facility now with 2 caregivers. The proposed expansion may require one additional caregiver depending on the specific age and number of the children.

Mr. Burhans stated the facility is in a Light Industrial zoned district within the Industrial Ventures II business park. The building was built in 2011, 6700 sq feet with the daycare unit occupying approximately 570 sq feet. There are no plans to physically expand the business at this time or do any type of interior reconfigurations. Mr. Burhans stated the uses adjacent to the facility are those common to an Industrial Park. The facility is a standalone site, not tying into any adjacent sites. The facility has a fenced in outdoor playground on the side of the building.

Mr. Burhans stated there are use specific requirements established in the UDO for Day Care Uses in LI Business Parks. In regards to parking design the day care traffic and walkway areas are separate from any industrial traffic, thus in compliance with the UDO standard. Location requirements require the use not be adjacent to an industrial user with noxious impacts (noise, odor, traffic, etc). This use complies with UDO standards. The use is not located within a multitenant building thus being adjacent with an industrial user by one wall. The UDO caps the ancillary use to be no more than 20% of existing park space. The use complies with this standard. The proposed 570 sq foot day care is well below the floor area limitation.

Mr. Burhans stated that the Town requires a real estate appraisal report to be submitted as part of the SUP submittal (UDO Section 360.010). The purpose is to determine whether or not there will be a substantial negative impact on neighboring property values as a result of the proposed use. The applicant has submitted such a report prepared by William R. Morgan Company. The findings in the report state the operation of the expanded day care center is not deemed to have any detrimental effect nor diminution in value to the surrounding area.

Mr. Burhans stated with all Special Use Permits the Indian Trail Comprehensive Plan is consulted. The Plan identifies this property within the 74 Business Corridor, with significant retail type development. It is an area of multiple goods and services. Staff proposes the use is consistent with:

**Goal 1.3.2** – Land Use: The proposed use helps strengthen the Industrial Ventures Business Park by further diversifying the complementary mix of land uses within the park.

If the Board is of the opinion that the above required findings can be made to approve the project, Staff recommends the site be subject to the following conditions, along with the Board's approval of the special use permit:

1. Any substantive expansions or increases to the capacity of the day care use will require additional parking as required by the UDO; and
2. If the proposed day care operates as a separate organizational entity from Pediatric Boulevard, a Town of Indian Trail Privilege license shall be obtained.

Mr. Burhans stated the Board of Adjustment, when considering whether to approve an application for a special use permit, shall review and evaluate the following:

1. Whether the application is complete.  
Staff is of the opinion that the application for SUP2012-001 is complete.
2. The Board will consider whether the application complies with all of the applicable requirements of this ordinance.

As per the stated conditions of this special use permit, staff is of the opinion that SUP 2012-001 is in compliance with the requirements set forth by the Unified Development Ordinance (UDO).

3. If the Board of Adjustment concludes that all such requirements are met, it will issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in UDO Section 360.030. Such a motion will propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Mr. Burhans stated the Board of Adjustment must make these required considerations of public health, safety, and welfare based upon the information submitted at the hearing, that the proposed development will:

1. Not materially endanger the public health or safety; and
2. Not substantially injure the value of adjoining or abutting property; and
3. Be in harmony with the area in which it is to be located; and
4. Be in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.

If one of these findings cannot be made, then the Board must move to deny the special use permit request, stating for the record why the Board has decided to do so.

Chair Laws stated the staff report and the appraisers report note a 300 foot difference in the size of the building. Mr. Burhans stated the difference is representative of the second story of the building. The staff report calculations are for the ground floor, only.

Ms Toinette Laguerre, applicant for the request, stated the request for expansion came from the parents of clients. Because of State requirements their permit states they are just licensed for employee's children. Once the parents began to request services it was decided to request the expansion.

Member Fish asked about the certification of the staff. Ms Laguerre replied all therapists are licensed by the State of NC. Day care employees are also licensed by the State for childcare services.

Chair Laws asked if the facility is still going through the state licensure requirements. Ms. Laguerre replied yes.

Member Fish asked what would happen if they did not get the license. Ms Laguerre replied they would not be able to expand to outside children. Member Fish asked if this should be a condition to the SUP. Mr. Burhans stated it can be added but there are checks and balances. Member Fish declined the comment.

Chair Laws asked about the appraiser's report stating the day care is licensed for up to 22 children and asked if this is because of the size of the facility. Ms Laguerre replied yes.

There was no further discussion:

Member Eigenbrode motioned the application was complete.

Member Fish seconded the motion.

All members voted in favor.

Member Fish motioned the application, as conditioned, will comply with the UDO

Member Eigenbrode seconded the motion.

All members voted in favor.

The Findings of Fact.

The expansion of the daycare services:

1. Will not materially endanger the public health or safety. Member Eigenbrode motioned it is only an expansion of an existing day care center. Member Fish seconded the motion All members agreed.
2. Not substantially injure the value of adjoining or abutting property. Member Chopelas motioned it will not as stated in the appraisal report. Member Eigenbrode seconded the motion. All members agreed.
3. Will be in harmony with the area in which it is to be located. Member Fish motioned it is in harmony and meets all the requirements of the UDO for Light Industrial. Member Sandy seconded the motion. All members agreed.
4. Will be in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans. Member Eigenbrode motioned, as conditioned, it conforms to uses in the Industrial Park. Member Fish seconded the motion. All members agreed.

Chair Laws asked the applicant if they agree to the conditions as stated. Ms Laguerre replied yes.

Member Eigenbrode motioned to approve SUP 2012-001.

Member Fish seconded the motion.

All members voted in favor.

All those speaking to the item were sworn in.

**SUP2012-002 Trust Tree Service**: Request to establish a major home occupation for a tree and landscaping service. Location: 6206 Rockwell Drive; Applicant: Isadro Vega.

Planner Keith Sorensen presented the request for a tree service business with two employees, offsite storage of heavy equipment and a total of 140 sq feet of the 1400 sq foot home to be devoted to the home occupation office. UDO Section 780.090 states this type of use requires a Special Use Permit. It is located in the Beacon Hills subdivision on a .3 acre parcel. There is a 6 foot privacy fence on the side property line, with a shed for storage of light equipment. The applicant has stated there will be no outdoor storage. Regarding the impact there will be no clients coming to the home. Employee parking will be at the offsite storage location, 7011 Millgrove Rd. The appraisal report by William R. Morgan Co. stated there will be no detrimental effect or diminution in value to surrounding properties.

Mr. Sorensen stated staff takes into consideration the goals of the Comprehensive Plan and finds the request is in compliance with

- 1.3.2 Land Use, A mix of different types of land uses and the avoidance of potential land use conflicts between neighboring properties and surrounding municipalities:

Mr. Sorensen stated, properly conditioned, the proposed landscape business would be in harmony with the surrounding uses as it would not change the residential character of the home or neighborhood.

Mr. Sorensen stated if the Board is of the opinion that the above required findings can be made to approve the project, staff recommends the site be subject to the following conditions:

1. The home occupation shall comply with all UDO Chapter 780 standards.
2. All heavy landscaping equipment (i.e., oversized vehicles, trailers, mowers, and wood-chipper) shall be kept offsite. Any storage of light equipment (i.e., saws, climbing equipment, etc.) shall be kept indoors.
3. Written permission from the property owner at 7011 Millgrove Rd. be provided.
4. There shall be no outdoor storage of any kind associated with the business permitted on the property. Any existing outdoor storage is to be removed prior to the permit being issued.
5. All employees shall meet offsite. No employee vehicles shall be parked at the subject property.
6. The applicant's residence is to be used as a home office only for the business. No landscaping equipment or other loud machinery is to be operated on the premises in conjunction with the home occupation.
7. Any customer visitations to the subject property shall be by appointment only.
8. Applicant must obtain a privilege license from the Town.

Mr. Sorensen stated the Board of Adjustment, when considering whether to approve an application for a special use permit, shall review and evaluate the following:

1. Whether the application is complete.  
Staff is of the opinion that the application for SUP2012-002 is complete.
2. The Board will consider whether the application complies with all of the applicable requirements of this ordinance.  
As per the stated conditions of this special use permit, staff is of the opinion that SUP 2012-002 is in compliance with the requirements set forth by the Unified Development Ordinance (UDO).

If the Board of Adjustment concludes that all such requirements are met, it will issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in UDO Section 360.030. Such a motion will propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Mr. Sorensen stated the Board of Adjustment must make these required considerations of public health, safety, and welfare based upon the information submitted at the hearing, that the proposed development will:

1. Not materially endanger the public health or safety; and
2. Not substantially injure the value of adjoining or abutting property; and
3. Be in harmony with the area in which it is to be located; and
4. Be in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.

If one of these findings cannot be made, then the Board must move to deny the special use permit request, stating for the record why the Board has decided to do so.

Chair Laws asked about the Notice of Violation that was noted in the staff report. Mr. Sorensen replied the violation was initiated by Code Enforcement on a routine neighborhood sweep. A commercial vehicle was parked in the driveway.

Member Fish asked if the business will be using chemicals or pesticides. Mr. Sorensen stated this was not indicated in the letter of intent.

Jorvin Davila, business manager for applicant Isidro Vega, stated he has worked with Mr. Vega for three years. Mr. Davila stated they do not do any type of tree treatment, they are not certified for that service. Their business is tree removal and clearing lots. Most is residential. Mr. Vega stated he began his business 15 years ago in New Jersey and has been at this location for 6 years.

Chair Laws asked if there is a Homeowners Association for his neighborhood. Mr. Vega replied no. Chair Laws asked if he has ever been contacted by any of his neighbors complaining about equipment in his backyard. Mr. Vega replied no.

Member Chopelas asked about the storage shed in the backyard and if any equipment will be stored there. Mr. Davila replied chainsaws and Mr. Vega's personal lawn equipment will be stored in the shed. There will be no outside storage other than Mr. Vega's personal equipment. Chair Laws asked about the white tool box in the picture. Mr. Davila stated all of this in the picture has been moved to the offsite storage.

Member Chopelas asked about public noticing. Mr. Sorensen stated property owners on entire block and across the street were sent notices. The property was posted 6 weeks ago. Many calls were received questioning the zoning sign and there were no complaints from the calls.

There were no further questions.

Member Fish motioned the application was complete.  
Member Eigenbrode seconded the motion.  
All members voted in favor.

Member Eigenbrode motioned the application, as conditioned, will comply with all applicable requirements of the UDO.  
Member Fish seconded the motion.  
All members voted in favor.

The Findings of Fact.

The home occupation for Trust Tree Services:

1. Will not materially endanger the public health or safety. Member Fish motioned in does meet the requirement being there is no traffic, chemicals used and no loud machinery being operated at the location. Member Sandy seconded the motion.  
All members agreed.

2. Not substantially injure the value of adjoining or abutting properties. Member Eigenbrode motioned it will not as stated in the appraisal report. Member Fish seconded the motion. All members agreed.
3. Will be in harmony with the area in which it is to be located. Member Sandy motioned it is in harmony with no increase of parking in the area. Member Fish seconded the motion. All members agreed.
4. Will be in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans. Member Chopelas motioned it fits the criteria for a home occupation. Member Fish seconded the motion. All members agreed.

Chair Laws asked the applicant if he agrees to the conditions as stated. Mr. Vega replied yes.

Member Sandy motioned to approve SUP 2012-002 as conditioned.  
Member Chopelas seconded the motion.  
All members voted in favor.

**Other Business: -none**

**Adjournment**

**Town of Indian Trail  
Board of Adjustment**

\_\_\_\_\_Chairman\_\_\_\_\_Date

\_\_\_\_\_Secretary