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STAFF REPORT

71 CENTER RD., ESSEX VT

FEBRUARY 6, 2020

PROPOSAL: Revert use back to a daycare facility. The applicants will be a licensed center based program that will serve students 6 months to 5 years.

BACKGROUND:

The Assessor's records indicate that a single-family house existed on the premises in the late 1970s. A permit was not located in the files.

On March 23, 1994, Zoning Board approval was granted to remove the existing structure and build a commercial building for various uses, including business and professional offices, personal services establishments, and a 35-child daycare facility.

On April 14, 1994, Site Plan approval was granted for the construction of a 4,968 sq. ft. building, with 25 parking spaces on a .52-acre lot.

On May 13, 1996, Zoning Board approval was granted to enlarge the day care facility from 35 children to 69 children, and 5 employees.

On August 25, 1997, the Zoning Board denied an application to permit any outside children's activities in the parking lot.

In 1999, Dinosaur Real Estate, LLC purchased the property. The daycare continued with an approval allowing a maximum of 69 children and 6 employees.

In 2010, Lyon & Blunt Properties, LLC purchased the property.

In 2010, Zoning Permit #28-2010 was issued for the fit to accommodate an exercise/fitness space.

On May 26, 2011, the landowners were approved to install a creemie window. The applicants never went forward with the installation. This approval has expired.

On October 5, 2015, the Recreation Department received Selectboard approval allowing management to sign an 18-month lease agreement.

42 On December 15, 2015, the landowner received Planning Commission approval for a
43 fitness/educational center. The Town Parks & Recreation Department ran programs from
44 this location until August 2019, and the unit remains vacant.

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46 **FINDINGS:**

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- 48 1. The landowner is Lyon & Blunt Properties, LLC, c/o Chris & Kristen Lyon.
- 49
- 50 2. The applicants are Dawn Irwin and Holly Beckert, d/b/a Growing With Wonder,
51 L3C.
- 52
- 53 3. The property is located at 71 Center Road in the Residential-Business (RB) Zoning
54 District. Tax Map 57, Parcel 52. The parcel has one building on the premises,
55 which includes 2 residential units and a 2,000 sq. ft. commercial unit.
- 56
- 57 4. This application is being reviewed pursuant to the Zoning Regulations, Section
58 4.5(B) – ‘Day Care Facility’ and Section 5.7 – ‘Conditional Use’. It is noted that
59 the State now refers to a Daycare license as ‘Center Based License’.
- 60
- 61 5. The applicant submitted a hand-drawn plan, date-stamped received by the
62 Community Development Department on Dec. 07, 2019. In addition, staff provided
63 a copy of an 11x17 site plan from the zoning files that was submitted to the Dept. of
64 Environmental Conservation, as drawn by Michal Dugan, dated 1-22-73, revised
65 1-24-74.
- 66
- 67 6. The proposal is to resume operations of a daycare facility in the commercial unit.
68 Growing With Wonder’s philosophy is centered around a play and relationship-
69 based, child-centered, multi-age, arts-enriched emergent curriculum approach, and
70 would include the following:
 - 71
 - 72 • The occupancy includes 20 children between 6 months and 5 years; and 4-5
 - 73 employees.
 - 74 • The facility would be open year-round, and the facility would follow the
 - 75 Essex School District’s calendar between the months of September and
 - 76 June.
 - 77 • Operating hours would be from 7:45 a.m. until 5:30 p.m. Teachers would
 - 78 arrive at 7:30 a.m. and leave at approximately 6:00 p.m.
 - 79 • Drop-off times are proposed to be between 7:45 a.m. and 11:00 a.m., and
 - 80 pick-up times will be between 3:00 p.m. and 5:30 p.m.
 - 81
- 82 7. The site was approved with 25 parking spaces. Previous approvals granted 10
83 spaces dedicated to the daycare, which included drop-off and pick-up, and the
84 remaining spaces were dedicated to the commercial units. The remaining
85 commercial units were converted to two 1-2 bedroom, multi-family residential
86 units. Section 3.9, Table 3.3 ‘Off-Street Parking Space Requirements’ require 1.67

87 parking spaces per unit. Therefore, 4 of the 25 spaces are dedicated to the
88 residential units, with the remaining parking spaces dedicated to the commercial
89 space. There is adequate parking on the premises.
90

- 91 8. On August 25, 1997, the Zoning Board denied an application to permit any outside
92 children's activities in the parking lot. Research shows this was due to the safety of
93 the children, and concerns from the abutting neighbors regarding character of the
94 area.
95
- 96 9. On 1/9/20, State Fire Marshall inspected the premises and granted occupancy, with
97 minor improvements.
98
- 99 10. In an email dated 1/15/20, Public Works said,
100

101 *The most recent use for the 2,000 SF space has been for a Parks and Recreation*
102 *activity space. Prior to this, the space did house a daycare facility. The current*
103 *application is for a 24 child daycare with 6 staff members. The documentation for*
104 *the proposed change of use for the existing commercial space at 71 Center Road*
105 *has been reviewed by the Public Works office, and comments have been provided*
106 *below.*

107 ***Traffic***

108 *Public Works is of the opinion that there will be no significant impacts to the*
109 *existing transportation infrastructure due to the traffic from the proposed change*
110 *of use. This space was previously approved for more students than being*
111 *requested for with this application. No further comment necessary.*
112

113 *As with previous approvals for this location, Public Works is of the opinion that*
114 *any approval should be conditioned to restrict all over-flow / on street parking*
115 *along Sunset Drive from the proposed daycare.*

116 ***Water and Sewer***

117 *The building known as 71 Center Road has two, 2 Bedroom apartments and an*
118 *approximately 1,850 square foot commercial space. The Town has reviewed the*
119 *file for 71 Center Road and has found the building to have 7.35 EU's or 1,470*
120 *GPD of purchased water and sewer allocation. Based on both the Town and State*
121 *wastewater allocation design numbers, there is sufficient capacity to*
122 *accommodate the existing residential users and the daycare.*
123

- 124 11. In an email dated 1/9/2020, the Police Chief said, "No feedback from the Police."
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- 126 12. In an email dated 1/28/2020, both the Recreation Director and the Fire Chief
127 reported that they had "No comments."
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13. The abutting property owners were notified by certified mail by the Community Development Office, and statutory notice requirements were met.
14. _____ and _____ spoke on behalf of this application. There were no public comments OR _____ provided comments on this application.
15. **FINDINGS OF FACT ANALYSIS (SECTION 5.7-CONDITIONAL USE REVIEW)**

In reviewing applications for conditional use approval, the Board of Adjustment shall consider and may impose conditions and safeguards only with respect to criteria specified below. The applicant’s response to this criteria is as follows:

- 1) **CAPACITY OF EXISTING OR PLANNED COMMUNITY FACILITIES:** The Board shall consider the demand for community services and facilities resulting from the proposed development in relation to the available capacity of affected services and facilities, the Town’s adopted capital improvement plan, official map and any impact fee ordinance in effect. Conditions, including project phasing or improvements necessary to accommodate the proposed development, may be imposed as necessary to ensure that the demand for facilities or services does not exceed existing or planned capacity.

APPLICANT’S RESPONSE: Increasing the town’s child care capacity allowing more families access to high quality early childhood education opportunities for their children.

- 2) **CHARACTER OF THE AREA AFFECTED:** The Board shall consider the location, scale, type, density and intensity of the proposed development in relation to the character of the area likely to be affected, as defined by the purpose(s) of the zoning district(s) within which the project is located, and specifically stated polices and standards of the municipal plan.

APPLICANT’S RESPONSE: Ensuring the character of the area is not negatively affected due to the school’s location. The property was approved to house a childcare program with a maximum of 69 enrolled students in the 1990’s. With a third of the students enrolled in our program, our students would have a minimal impact. There are no anticipated structural changes needed to be made to the building

171 **because it is already fitted to the specifications needed for a day care**
172 **facility with a fence around an outside play area and the required**
173 **amount of exits needed for a child care program already installed at**
174 **the site.**

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176 3) **TRAFFIC ON ROADS AND HIGHWAYS IN THE VICINITY:** The
177 Board shall consider the projected impact of traffic resulting from the
178 proposed development on the existing and planned capacity, safety,
179 efficiency and use(s) of affected roads, bridges and intersections. A traffic
180 impact study may be required. The Board will rely on generally accepted
181 transportation standards and the Town's adopted road and public works
182 standards in evaluating traffic impacts, and shall not approve a project that
183 will result in the creation of unsafe conditions for motorist, pedestrians, or
184 cyclists, or unacceptable levels of service for local streets, highways and
185 intersections. The Board may impose conditions as necessary to avoid or
186 mitigate undue adverse effects resulting from the proposed development,
187 including improvements to the street network and/or traffic management
188 strategies and control devices.

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190 **APPLICANT'S RESPONSE: A minimal impact on traffic in the**
191 **area. Route 15 is a main road running through the town that already**
192 **sees a lot of traffic from morning and evening commuters. The**
193 **families that would be using the road to bring their students to school**
194 **will not add a significant amount of traffic during these times of day.**
195 **Additionally, the property is located on the corner of Route 15 and**
196 **Sunset Drive which means they would be pulling into the parking lot**
197 **before having to pass any of the residential houses along the street**
198 **which will keep the impact on those residents to a minimum.**

199
200 **The tenants living in the two residential spaces connected to the**
201 **building will still have more than half of the parking spaces in the lot**
202 **available to them even if all 12 of our parking spots are being used**
203 **simultaneously. And, they will have access to the entire parking lot in**
204 **the evenings and on weekends as our school will be closed.**

- 205
206 4) **BYLAWS AND ORDINANCES IN EFFECT:** The Board shall consider
207 whether the proposed development complies with all municipal bylaws
208 and ordinances in effect at the time of application, including other
209 applicable provisions of these Regulations. No development shall be
210 approved in violation of existing municipal bylaws and ordinances.

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APPLICANT’S RESPONSE: Complying with all bylaws and ordinances in effect in the town.

- 5) **UTILIZATION OF RENEWABLE ENERGY RESOURCES:** The Board shall consider whether the proposed development will interfere with the sustainable use of renewable energy resources, including the existing and future availability of and access to such resources, on adjoining properties.

APPLICANT’S RESPONSE: Not adversely affecting the sustainable use of renewable energies available to the property and any adjoining properties. With less than 30 people using the location for approximately 55 hours a week, we will not have a significant impact on the usage of these energies now or in the future.

SPECIFIC STANDARDS:

- 1) **CONFORMANCE WITH THE TOWN PLAN:** Applications for conditional use approval shall conform to specific, applicable policies and objectives of the Town Plan of record.

The site has been used as a daycare in previous years and will continue to meet the objectives of the Town Plan.

- 2) **SITE PLAN REVIEW CRITERIA:** The Board of Adjustment may apply any applicable site plan review criteria under Section 5.6 in its review of conditional use applications that do not require site plan review and approval as it deems necessary to fully evaluate a proposed conditional use under the criteria of this section.

N/A. Unit is key ready.

- 3) **CONFORMANCE WITH COMMUNITY CHARACTER:** The Board of Adjustment may consider whether the development has an undue adverse effect on the character of the community as specifically expressed in the policies and objectives of the Essex Town Plan.

No physical changes to the site proposed. The site has been used as either a daycare or indoor recreation use for several years.

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16. Pursuant to Section 5.7 of the Zoning Regulations, **the Zoning Board finds the following:**

- a. There will be no adverse effect on the capacity of the existing or planned community facilities;
- b. There will be no adverse effect on the character of the area/neighborhood affected;
- c. There will be no adverse effect on traffic on roads and highways in the vicinity;
- d. The proposed use will be in compliance with the bylaws now in effect;
- e. The proposed use will not adversely affect utilization of renewable energy resources;
- f. The proposed use is in conformance with the Town Plan;
- g. The proposed use does not require site plan review; and
- h. The proposed use is in conformance with community character.

17. Section 4.5(B) ‘Day Care Facility’ is subject to review by the Zoning Board of Adjustment and the Planning Commission. Section 4.5(B)(1) & (2) reads as follows:

- (1) *In addition to the conditional use criteria under Section 5.7, no day care facility shall be permitted by the Board of Adjustment that:*
 - (a) *Results in on – street parking.*
 - (b) *Results in objectionable noise or disturbance to adjoining properties.*
 - (c) *Does not comply with all requirements of a state certified day care facility.*
 - (d) *Includes playground equipment and/or play areas within the required front yard setback.*
- (2) *In addition to all of the site plan review requirements of Section 5.6, approval by the Planning Commission shall be contingent upon:*
 - (a) *Provision of off – street parking allowing for one space per employee and adequate space for the pick-up and delivery of children or adults.*
 - (b) *Provision of appropriate screening and fencing around playground equipment and/or play areas.*

The Planning Commission has previously reviewed this parcel for site plan review and for a daycare facility. Although approvals for a daycare facility at this location have expired, the Zoning Administrator will confirm if a PC application for site plan review is necessary.

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It is further noted that there is not an outdoor play area provided at this site.

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CONDITIONS:

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1) The Zoning Administrator shall notify the Planning Commission that a daycare has requested to re-occupy the premises. If needed, the applicant shall submit an application for PC review and approval.

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2) The applicant shall complete a Use Permit and shall schedule a Certificate of Occupancy inspection prior to opening for business.

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3) A copy of the Center Based License shall be submitted to the Zoning Administrator at the time of occupancy.

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4) The applicant shall apply for any/all State permits that may be required of this use.

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5) No on-street parking is permitted.

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6) No designated out-door recreation area is approved for the commercial unit.

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7) Signage shall be approved by the Zoning Administrator.

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8) All conditions from previous approval shall remain in effect except as modified herein.

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9) By acceptance of the conditions of this approval without appeal, the applicants confirm and agree for themselves and all assigns and successors in interest that the conditions of this approval shall run with the land and the land uses herein permitted, and will be binding upon and enforceable against the applicant and all assigns and successors in interest.

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