

1 Dr. Girmscheid stated there was room for off-street parking in the driveway by the three-
2 car garage. Her husband would normally be at work. There would be no problem with
3 space to park cars. She stated that she is a physician; however, she is no longer
4 practicing medicine.

5
6 Prior to submitting this application for a home business conditional use permit, she read
7 the covenants and talked to Steven Parkhurst concerning the Cross Hill Development
8 Covenants. He did not think they precluded a home business. (A member of the
9 audience injected that he thought they did.)

10
11 The board discussed whether they should obtain a copy of the Cross Hill Covenants.
12 Chairman Gulino stated there was nothing in ordinance 19-5-5 that required the board
13 to review private rights and that the board would wait to see if it was an issue with any
14 parties present.

15
16 When questioned about patient flow by Mr. Chatmas, Dr. Girmscheid replied that
17 appointments were usually one-half hour, one hour, or one and one-half hours long.
18 She schedules one-half hour in between appointments because she needs the break
19 between patients. Typically there would be two patients in the morning and two patients
20 in the afternoon.

21
22 When questioned, by Mr. Chatmas, about hours, the potential to exceed the maximum
23 number of ten car trips per day and the safety issues around on-street parking, Dr.
24 Girmscheid replied there would be no on-street parking or overlap of clients. The wide
25 time frame of hours was for patient flexibility - so that they could be seen early morning
26 or after work or around children's school requirements. Evening hours were for patients
27 that needed them.

28
29 Mr. Chatmas asked where the client base would come from; would she advertise?
30 Clients would come from direct referrals from doctors or dentists. Dr. Girmscheid stated
31 she was in the local Needham telephone book and did not advertise there. She plans to
32 look into advertising here but has not planned to do any at this point; word of mouth and
33 direct referrals had been best in the past.

34
35 Dr. Barry Blumenfeld, husband of the applicant, stated he worked at Maine Medical
36 Center and would help get the word out about his wife's business through other doctors
37 that he works with. He also added the long driveway widens out at the top, by the
38 garage, so there was plenty of room for cars in the driveway.

39
40 Chairman Gulino recapped the above discussion as follows:

41
42 Applicant is comfortable with five clients a day – that would equal the limit of 10
43 trips per day.

44 Also comfortable about the prohibition of signage – except for the use of the flag
45 she showed the board.

46 Also comfortable about no on-street parking – there would be only off-street
47 parking.

48 Also comfortable that the hours would be limited to those described in the
49 application.

1 Dr. Girmscheid replied in the affirmative to each of the above.
2
3 There were three pieces of correspondence that were submitted to the Code
4 Enforcement Officer, Bruce Smith. The applicant and her husband were given copies.
5
6 There was no one present to speak in favor of the business.
7
8 There were three Cross Hill residents presents to speak in opposition. First,
9
10 Fred Sprague of 33 Cross Hill Road, stated that there were only five or six houses in the
11 neighborhood when they moved in. They chose that neighborhood because the
12 covenants state it was for residence only. Mr. Sprague stated he wasn't notified about
13 this discussion and that he feels the neighborhood needs to be notified when something
14 of this nature of change occurs. He received a phone call from a neighbor.
15
16 Mr. Sprague stated he was against any business in the neighborhood due to the
17 increase in traffic. Mr. Sprague had a copy of the bylaws that he gave to the Chairman.
18
19 Mr. Chatmas pointed out that Cross Hill was a Residence B District, in which home
20 occupation and home business are permitted by town ordinance. The Covenants of
21 Cross Hill may be valid; however, they are not pertinent to the decision before the board
22 tonight. The covenants would have to be pursued by a different avenue.
23
24 Chairman Gulino explained that the town had sent out notification to those in the
25 immediate vicinity. There was discussion concerning this. Mr. Sprague was shown one
26 of the notices that the town sent out.
27
28 John O'Sullivan, who lives at 22 Cross Hill Road, with his wife and six young children,
29 spoke next. He stated that he did receive the town notification letter but not Leslie
30 Girmscheid's letter. Safety of the neighborhood is his biggest concern. His children are
31 always playing outside and children gather on the green there. He is also apprehensive
32 that if this is approved that it would open the way for other business such as doctors,
33 dentists, or barbers in the neighborhood.
34
35 Mr. O'Sullivan asked what exactly the definition of a home based business was.
36 Mr. Walsh read the definition of a home based business from the Zoning Ordinance.
37 Mr. O'Sullivan was told that he could obtain a copy from the Zoning Office.
38
39 Chairman Gulino acknowledged that this business was different from a dentist or a
40 barber, in that there are no other employees - only the home based person, clients
41 would be seen one at a time and the traffic condition is relatively low or of limited
42 impact. Although signage is allowed under this ordinance, the board has been
43 conservative and limits sign usage with the consent of the applicant.
44
45 Daniel Flaherty of 31 Cross Hill Road, stated he received a copy of the letter from a
46 neighbor. He has similar concerns as the two previous speakers. He has three small
47 children who play outside, frequently on the green, where you always see children
48 playing, and is close to the residence. He inquired who in the town monitors the ten

1 trips and parking. He also stated there would most likely be more deliveries on the
2 street for the business.

3
4 Before purchasing his home, he reviewed the covenants and decided to buy because it
5 was a residential neighborhood and designed that way, with very narrow family friendly
6 streets. Mr. Flaherty asked what the process would be to change the zoning so that it
7 would not allow home businesses.

8
9 Chairman Gulino mentioned that Zoning Ordinance could be reviewed online, as to
10 specifics of what is allowed. The town planner, Maureen O'Meara, could be consulted.
11 Also, the town Comprehensive Plan is being revised. It is not overly permissive but
12 states what is allowed.

13
14 Mr. Howe added conditions on use can be registered in the registry of deeds.
15 There was some discussion about codes and that citizens could monitor the situation.
16 The Code Enforcement Officer is responsible to ensure any complaints are investigated
17 and action taken, if necessary. Any conditions imposed by the board are applicable.

18
19 Mr. Flaherty proposed limiting the business hours to 8 am – 3 or 4 pm, especially during
20 the school year, to limit extra traffic.

21
22 Mr. Chatmas addressed three points that were of concern to the three residents in
23 opposition and the correspondence that was received:

24
25 Home businesses are permitted in a Residence B District, and have been in the
26 ordinance for a long time.

27 Safety concerns regarding traffic and children: Typically the board does not
28 impose a restriction on hours; any requests would need to be supported by findings of
29 fact.

30 Monitoring of street parking: The town has no facility for this. Neighbors would
31 have to monitor the situation and call the town Code Enforcement Officer if necessary.

32
33 Mr. O'Sullivan asked if the covenants prohibit a business, how does that fit with town
34 zoning.

35
36 Chairman Gulino read an excerpt from the covenants which stated: "...a residence may
37 be used for personal, professional office work, by resident or customary home
38 occupation if the conduct of such profession does not entail a measurable amount of
39 increased flow of vehicular traffic on the property."

40
41 There was discussion about the covenants being a private contract with residents.

42
43 Dr. Girmscheid was offered the opportunity to address concerns mentioned. She stated
44 that she had not reviewed the covenants prior to tonight's meeting; but had done so
45 before purchasing the house. She had also spoken with Steve Parkhurst about
46 developing a business similar to what she had in Needham. Mr. Parkhurst had been
47 cautiously optimistic. She would not have spent the \$150 on the application, had she
48 thought her home business was not permitted. She stated that the only delivery she

1 would need for the business would be a shipment of cream about every three to six
2 months, because it was not available locally. She would do all the laundry.

3
4 There was discussion around her conversation with the developer, Mr. Parkhurst.

5
6 When questioned, by Mr. Chatmas, about controlling stranger safety, she replied that
7 she had done this for seven years. She prescreens patients – most of which are sent
8 from referrals.

9
10 Mr. Chatmas cautioned about clients parking on the street. Dr Girmscheid hoped that
11 her neighbors would not assume all vehicles parked on the street were there because of
12 her business. Dr. Girmscheid mentioned that all her clients were sent a packet of
13 information which contained specific information concerning where to park.

14
15 Mr. Walsh asked if she would consider modifying hours. Dr. Girmscheid replied it would
16 be tough to modify hours, especially not having evening hours, and still provide clients
17 some flexibility. There was more general discussion about business hours, narrow
18 streets and traffic.

19
20 Chairman Gulino called a five minute break for the applicant to consider modifying
21 hours.

22
23 Upon applicant's decision, there was additional discussion by about amending business
24 hours, concerns about density of patients, and safety of evening hours.

25
26 The applicant stated that limiting hours was better than having to share office space and
27 hours. She asked that the hours in her application be amended to the following:

28
29 Monday 8 am – 3 pm
30 Tuesday 8 am – 6 pm
31 Wednesday 8 am – 1 pm and 5 pm – 8 pm
32 Thursday 8 am – 6 pm
33 Friday 8 am – 3 pm

34
35 After inquiring and finding there were no further comments from the gallery, Chairman
36 Gulino closed the public portion of the meeting.

37
38 The board discussed issues and concerns. Chairman Gulino summarized the
39 application:

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41 Upon the application of Leslie Girmscheid, M.D., NCTMB, for review of the Zoning
42 Ordinance requirement of Section 19-6-2 in accordance with Section 19-5-5, a hearing
43 was held on February 24, 2009. To approve or disapprove her Conditional Use Permit
44 to operate a Home Business specifically a therapeutic massage business.

45
46 During this hearing the applicant modified her application to restrict the hours of use to:
47 Mondays 8 am – 3 pm, Tuesdays 8 am – 6 pm, Wednesdays 8 am – 1 pm and 5 pm – 8
48 pm, Thursdays 8 am – 6 pm, and Fridays 8 am – 3 pm. She also acknowledged that
49 she would request all her customers use off-street parking, in her driveway; she also

1 acknowledged that she would not have signage on her property other than the flag with
2 the logo on it and no name, (that she showed earlier in the proceeding) and that she will
3 have no more than five patients or customers a day, resulting in no more than ten trips
4 per day to her home.

5
6 And further, that this application is not a determination of the appropriateness of this
7 application under the covenants, restrictions and by-laws of Cross Hill, but it is just an
8 application for allowance of this business under the zoning ordinance of the town of
9 Cape Elizabeth.

10
11 Lastly, we allowed opportunity for comments on the modified hours and there was no
12 further objection received on those modified hours. This is the motion.

13
14 Findings or Conclusions:

15
16 1. The proposed use will not create hazardous traffic conditions when added to existing
17 and foreseeable traffic in its vicinity. All in favor.

18
19 2. The proposed use will not create unsanitary conditions by reason of sewage
20 disposal, emissions to the air, or other aspects of its design or operation. All in favor.

21
22 3. The proposed use will not adversely affect the value of adjacent properties. All in
23 favor.

24
25 4. The proposed site plan and layout are compatible with adjacent property uses and
26 with the Comprehensive Plan. All in favor.

27
28 5. The design and external appearance of any proposed building will constitute an
29 attractive and compatible addition to its neighborhood, although it need not have a
30 similar design, appearance or architecture. All in favor.

31
32 6. This finding is not a determination of the appropriateness or inappropriateness within
33 the covenants of Cross Hill. All in favor.

34
35 Judgment:

36
37 A motion was made by Chairman Gulino and seconded by Mr. Howe to approve the
38 application for a conditional use permit as modified with the limited use hours. All in
39 favor.

40
41 Chairman Gulino thanked the members of the gallery for their comments. Mr. Sprague
42 was returned the copy of the Cross Hill Covenants he provided the board.

43
44 **F. Communications – None.**

45
46 **G. Adjournment – Motion by Mr. Howe to adjourn; seconded by Mr. Walsh. All in favor.**
47 Meeting adjourned at 8:36 pm.