

EXETER ZONING BOARD OF ADJUSTMENT
March 17, 2015 MEETING MINUTES

PRESENT:

Regular Members: Chair Bob Prior, Vice Chair John Hauschildt, Clerk Rick Thielbar, Kevin Baum
Alternate Members: Dave Mirsky, and Martha Pennell
Deputy Code Enforcement Officer: Barbara McEvoy

The meeting was convened at 7:00 PM. Chair Prior introduced the Board members and explained the protocol for the meeting. It was decided that Ms. Pennell would not be voting on anything tonight, so as to keep it a 5 member vote.

AGENDA:

1. Case #1480: Seacoast Family Promise –Special Exception – 27 Hampton Road

NEW BUSINESS:

1. Case #1480: Seacoast Family Promise

A re-hearing on the application of Seacoast Family Promise for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses to permit the existing structure located at 27 Hampton Road to be utilized as a community building. The subject property is situated in the R-2, Single Family Residential zoning district. Tax Map Parcel #87-36. Case #1480.

Sharon Somers, from Donahue, Tucker & Ciandella PLLC and attorney from the applicant, spoke first. She went through a list of people who would be speaking. She mentioned that the Board already has a lot of testimony on this case. She introduced the first speaker.

Karey Kelly, Board President of Seacoast Family Promise, talked about how they are looking to expand. SFP focused their search to Rockingham County residential areas. She gave a PowerPoint presentation to support her proposal. SFP is a non-profit organization. This application is for a day center at 27 Hampton Road. The hours of operation will be Monday-Friday from 8a-5p. SFP uses 900 volunteers within the community, most of which not being physically present at the day center. She went on to confirm that there will be no traffic issues. Families who wish to come to SFP must pass background checks and drug tests to be considered. The company used to do the background checks is Verity Screening Solutions. Random drug tests are given. SFP is not supported by state or federal funds. SFP does not accept guests on an “emergency” basis and is a “dry” shelter. They only accept families with children. Most of the guests are mother/children. SFP is currently in Stratham an operating in a basement of a church with 1000 square feet. She went on to talk about a typical day at the center. She talked about multiple projects that are going on for the guests. She said the next step for SFP is to expand. They chose 27 Hampton Road for its new facility because of the residential neighborhood and the house itself. SFP has been conducting a Capital Campaign that will fund the purchase of the home. 97% of the families that come to SFP have their own cars to go back and forth to work. She explained how they would utilize

the property, putting a playground in the back yard for the kids. They would need to bring the entire wiring, heating, and plumbing up to code. Overall, she assured that SFP will be a good neighbor.

Patty Elwell, former President of the Exeter Garden Club and volunteer at SFP, spoke about her efforts at the center. The guests help her with their "Garden of Eatin'", which provides the center with fresh, pesticide-free garden veggies. She is trying to get the kids at SFP more involved.

Pam Fraser, Exeter resident and SPF volunteer, said this place is important and there are people who really need it.

Leslie Haslam, an Exeter resident and Director of Exeter Adult Education, said she has visited the center and says it is just like any home. She requested that the Special Exception being sought is granted.

Tonya, an Exeter resident and former SFP guest, talked about her situation and how she and her children ended up at SFP. She talked about how SFP helped her get back on her feet after she found herself with nowhere to go. She said it is an incredible program and there are wonderful people associated with it.

Attorney Somers said they would forgo the rest of the supporters, as there were many in the audience.

Mr. Mirsky asked if there was anybody in the nearby neighborhood who supports this application. Pam Fraser, 21 Pine Meadows, said she lives nearby and granting this application will not be detrimental to anybody's property.

Attorney Somers next started a discussion on the criteria for a special exception. The first thing she addressed what the definition of a "community building". She explained why this is a community building, saying there is nothing in the ordinance that compares to YMCA and such, which are commonly thought to be the definition of a community building. In the Town of Exeter's definition of a community building, both social AND recreational services need to be met. Attorney Somers said this is a non-profit organization that provides both social services for its clients and volunteers. It also provides recreational services, as the facility offers such activities like gardening and yoga. The additional space in the Hampton Road location will provide space for adults to enjoy some relaxation as well. In the current location, there is no space for this.

Next, Attorney Somers referred to Case Law for comparisons in regards to what a community building is. In this specific case, it refers to helping the community at large, not just those confined within the municipal boundaries.

She continued going through criteria, explaining how the public's health, welfare and safety will be met. She said there will be no convicted felons, no drug addicts, and no streams of pedestrians at SFP. She said there is going to be program in place to make sure EVERYONE is safe.

The next criteria regard compatibility with the district. SFP will keep the residential look to the house. There was previously a doctor's office and a daycare at the Hampton Road house. All the while, the house has looked physically the same and will continue to. The activity scale will be compatible. There won't be more people at the location than would if a single family lived there.

Next, Attorney Somers explained how the landscaping will be kept up and there is plenty of parking at the location.

The last criteria regard impact on surrounding property values. Steven Berg, a real estate appraiser from Sargent Consulting in Portsmouth, explained his professional analysis regarding these criteria. He quoted a note from an abutter saying new buyers would imagine SFP as a homeless shelter and that would discourage new buyers in the area. Mr. Berg disagrees. He said all new buyers become informed of the neighborhood they are buying in. His full report is submitted in the packet.

Next, Attorney Somers said she would answer any questions from the Board.

Mr. Hauschildt asked how many partnerships, where the guests sleep at night, there are in Exeter. Ms. Kelly said there is Christ Church and St. Michaels, which are both in residential neighborhoods and host families overnight. Mr. Hauschildt asked if there have been any issues with those neighborhoods. Ms. Kelly said they have a clean reputation and there have been no issues. Mr. Hauschildt asked about signage at the Hampton Road location. Ms. Kelly said there needs to be some sort of sign somewhere. Mr. Hauschildt next asked what kind of educational programs are offered at SFP. Ms. Kelly said experts come in and talk about financial planning and different skills, resume and interview preparation, and nutrition. For kids, they are taught reading skills, there are puppeteers and volunteers available to help with homework. Mr. Hauschildt asked what SFP provides for fun. Ms. Kelly said there is a play structure for the kids, games, toys, movies, a dress-up box, and a computer.

Mr. Thielbar asked if the facility is open from 8a-5p, what happens between 5p-8a? Attorney Somers said SFP is closed. After 5pm when guests leave, the house will be locked and closed up and there is no evening usage, besides an occasional meeting for employees.

Chair Prior asked if more people will be at the house on the weekends. Ms. Kelly said weekend use will only be as needed. There is an average of 2-4 people there at all times. The maximum capacity is 5 families, but she said she can't remember a time there were 5 families there.

Mr. Baum asked if there will be a staff person there on the weekends. Ms. Kelly said yes, saying there will never be a guest there without a staff person.

Mr. Mirsky asked if there are any other non-profits like SFP. Ms. Kelly said not really, and the closest SFP is in Derry, NH.

Mr. Baum asked how long SFP has been at its current location in Stratham. Ms. Kelly said they have been there for 9 years, incorporated for 11, and they have been a great

neighbor. Attorney Somers said the best thing they could say to the new potential neighbors on Hampton Road is that in the 11 years they have been in Stratham, there have been no incidents with any neighbors.

Mr. Thielbar said Mr. Berg had not addressed the next door neighbor in his report. Mr. Berg said this building has been a doctor's office and a daycare facility for 30 years. Any next door neighbors would never not live there simply because it is SFP. Chair Prior said this is irrelevant and they should be working on criteria H. Mr. Berg urged to look at the big picture. Chair Prior asked if SFP use offers a diminishing of property values over previous uses of that property. Mr. Berg answered no. Mr. Mirsky asked what the closest type of facility like SFP is in that area. Chair Prior said that is not Mr. Berg expertise.

Mr. Thielbar talked about the wording in the definition of "community building" and said he reads it differently than what Attorney Somers suggested. Attorney Somers said the Board approved this type of social service in 2007. She added that the definition is not intended to be limited to YMCA type facilities.

Mr. Pennell asked her to expand more on the definition of community building. Attorney Somers said the ordinance referenced a community which does not limit to Exeter. NH Case Law supports the idea that activities are regional. She said this Board can't simply look at service provided by just Exeter residents who are homeless. The services provided are not simply for Exeter, it's also for the community at large.

At this time, Chair Prior called for a 10 minute break, then said he would be opening up for Public Comment.

Chair Prior opened up Public Comment at 9:05pm. He went through the rules of procedure and said they would first hear from the public in favor of the application, then those in opposition.

Janet Tucker, Exeter resident for 48 years, said she was very much in favor of the application. She gave the history of the Hampton Road property, as she was a previous owner of the house. She said she went to SFP a few months ago and she explained what she saw. There was a sleeping baby, a mother at a computer, and a sick woman, all in very small quarters. She said there is simply not enough room at the Stratham location. She knows the building proposed well. There is plenty of storage. She said anyone can be hit with a disaster and find themselves in a situation of homelessness, saying those who aren't are just a lot luckier than SFP's guests. She does not think SFP will have a negative impact.

Eileen Flockhart, Exeter resident, said she strongly supports this effort. She would feel proud for the town to provide this space for SFP.

Donna Schlachman, an Exeter resident, is a volunteer at SFP. She has spent many overnights with these families. She said it is safe.

Attorney Somers said a number of people in support of this application left at the 10-minute break, due to the time.

Frank Hefferon, volunteer at SFP, said people at the facility are in a very small space. He said it is a great program that is beautifully run. He said the guests will not at all be a threat to the neighborhood.

At this time, the conversation switched to those in opposition of the application.

Derek Durbin, Land Use Attorney in Portsmouth and attorney for Exeter Farms Home Owners Association, spoke next. He started by saying that he is not against what SFP is all about. He said his clients bought into an area hoping the zoning ordinances would apply. He said this has nothing to do with the people at SFP, it is simply grounded on zoning. He went on to the special exception criteria. He said that the definition of a community building has not been met by the applicant. He said there is nothing he can see in the application that provides recreational services. He said the ordinance doesn't define the word "community", but it is meant to be interpreted as less broad than what SFP is saying. He said it is debatable where you draw the line for "community" and the applicant cannot say they fit in the definition of a "community building". The use is not permitted by special exception and the use is not compatible with the surrounding area neighborhood. He talked about what is allowed in an R2 zoning district, by law. He said the Board cannot consider any prior grandfathered in uses for the property. He went on to say that the subject property is located far from the downtown district. There are no sidewalks or any infrastructure for pedestrians in the area. The residents in the area are concerned with pedestrian's safety. In the matter of surrounding property values diminishing, he said there is no way to tell, but they will likely be diminished. His clients think they will be diminished. He said Mr. Berg's report lacks data. Mr. Mirsky asked what Mr. Berg's biggest error in his report is. Mr. Durbin said it simply lacks data. Mr. Hauschildt asked Mr. Durbin if he has any expert testimony to the contrary. Mr. Durbin said no, but that they looked around to get their own testimony but there was not enough time. He said in his legal opinion, Mr. Berg's report is filled with holes. Chair Prior said there was a variance granted here in the 1980's, which would mean anything "grandfathered" would not apply. Mr. Hauschildt said the daycare prior was granted by special exception. Mr. Baum talked about distinguishing the daycare from the current application, and said the current application can benefit local residents as volunteers. Mr. Durbin said he does not see nearby residents using this as a benefit. Mr. Hauschildt said Mr. Durbin said there are no recreational services. He asked what Mr. Durbin considers to be recreational services. Mr. Durbin compared recreational services to the YMCA, saying such things like swimming and basketball would be recreational services. Chair Prior read the definition of recreation. Mr. Mirsky asked if the only community building they can approve is the YMCA. Mr. Durbin said no. Mr. Mirsky asked for an example of another one, and Mr. Durbin could not answer.

Bob Beal, of 23 Exeter Farms Road, said he does endorse the mission of SFP, but said he is in opposition of the application. He explained why he has moved to Exeter from Maryland, saying he liked the safe, rural neighborhood. He showed a PowerPoint, showing that the Hampton Road property is completely in an R2 zone. He showed the surrounding single family neighborhood. He showed 2.2.20, which is the community building definition. He said if the Board approves this application, it will violate the code as there is no recreational value. He said the neighborhood will be significantly altered and it will pave the way for more centers of the sort.

Mr. Phillips said the recreational piece is not there. He said only 3% of the community will be utilizing this center. He thinks it should be located in a commercial area and he is concerned this will set precedent.

Laura _____, an abutter of the Hampton Road property, said she loves her neighborhood. She said she admires and respects SFP, but she just doesn't agree with it being so close to the neighborhood. She said her family strategically chose her neighborhood for its strict zoning.

Matt Carbone, Exeter Farms resident, talked about what he envisioned recreational buildings to be. He has submitted contrary evidence to Mr. Berg's report. He bought in Exeter with expectations. He thinks the Board should enforce the current zoning laws. He fears that if this is approved it will set a precedent. Chair Prior said the Board knows this is not a commercial zone.

Jason Landon, abutter, said the screening process for SFP guests is constantly changing. He said the screening is done at their own say, that it cannot be legally enforced. He is worried in the future SFP will be more lenient on screening. On the matter of devaluation of surrounding properties, he said he would not buy if he knew he would be an abutter to this type of center. He is worried about safety and gave some examples of how his safety would be taken away.

Boyd Allen, abutter, said the property and setting do not fit in the zoning.

Sue Stagnone, Exeter Farms Road resident, read the ordinance for a business office. She talked about recreational services and what she thought them to be. She does not believe the application complies with the land use of a commercial building. She said the word "and" in the definition makes it so the application does not meet the community building guidelines. She said she does care for what SFP does, but she does not think their exception should be granted just because they do good things. She said the organization has a great mission, but they do not have to meet with daycare regulations like the previous tenant. She read some questions from other abutter who couldn't be at the meeting. She said there is only one community building in Exeter that has a special exception. She read a handout that she had provided to the Board and said she has done research about SFP that says they are a "homeless shelter". She said SFP has expanded to overnight facilities in other locations in the nation and she is worried what the future brings with this SFP. This application is not what she expected for a community building. She talked about a situation where safety would be a factor.

Megan Herring, Hunter Place resident, said she would not have purchased her house if she knew SFP was going to be a neighbor. She is concerned with safety and that this will become an overnight facility. She does not support this location for SFP.

Kara Lamoy, Hunter Place resident, feels zoning is the issue. She is compassionate with the idea of SFP, but as a mother she is concerned with safety. The proposed site is 25 feet from her house. She would like to maintain the value of her property and feels SFP going in would diminish the value.

Jay Lodico, Hunter Place resident, said the matter before the Board is about the regulations of the zoning ordinance. He said SFP does not meet the definition of a community building. He said the proposed use is not compatible with the neighborhood, and doesn't meet the criteria for a special exception.

Arlene Childs, Hunter Place resident, said she is worried about safety and what may come in the future.

Chair Prior asked the applicant for a rebuttal to the comments. Attorney Somers wanted to make it clear that SFP was not a "Crossroads" type of facility. She stated that the SFP organization was looking to create a home-like environment for its guests. The granting of the special exception application would allow this. She assured that background checks and drug tests will always be enforced as they run the risk of their variance being revoked if they don't fulfill their representations. She said the application does meet all the special exception criteria and asked that the Board grant their special exception.

Mr. Hauschildt asked if they would add in a condition that no overnights will ever be allowed. Attorney Somers said that could be done. Mr. Hauschildt also asked for a condition that adequate screening would always be done and signage would be restricted so its minimized. Attorney Somers said the sign would be small.

Mr. Thielbar asked if there will be a time when children will be left with no parent. Attorney Somers said children will always be supervised. If a child is sick from the school, the parent stays home with them. There is never a child at the facility with no parent.

Mr. Mirsky asked what is NOT a community building. Attorney Somers answered a building that would house a law firm because it does not provide social and recreational services. Mr. Mirsky talked about meeting the community building criteria. Attorney Somers said they meet the social and recreational services and that is all the criteria asks for. She said it does not say they must provide them to the community at large.

Chair Prior closed the public comment. He suggested starting deliberations at 11:15pm would be a bad idea. He suggested continuing the meeting at this point, but the Board decided they would move forward to deliberations.

(It was noted that Ms. Pennell excused herself at this time as she was not a voting member.)

Chair Prior talked about the definition of community building. The primary purpose is to provide social services, but they must provide recreational services too. He said there is no problem with defining community more broadly.

Mr. Hauschildt said it doesn't matter how you define "community". The definition doesn't say that you can't provide services to anyone outside the community. Mr. Mirsky said his interpretation is that the ordinance means Exeter.

Mr. Thielbar said 'social' and 'recreational' services need to be together in context. He said it changes the meaning of 'social' when you take 'recreational' away.

Mr. Baum said ‘social’ as in social services. He doesn’t agree with ‘social’ being games and such.

There was more discussion about what ‘social’ and ‘recreational’ services means. Mr. Hauschildt said they should look at the words as they’re written. The word “and” was put in there for a reason. The question is “Does the applicant provide both ‘social’ and ‘recreational’ services? Recreational services pertain to things we do for fun, leisure, and education or self-improvement outside the scope of work. He identified numerous activities that were represented by the Applicant as part of their program and indicated that he considered those as ‘recreational’ uses.

Chair Prior said they need to decide if the applicant meets the criteria. He is concerned that they are looking too closely at what is or is not the definition. Mr. Mirsky said the issue is not that SFP isn’t doing a good thing here; it is where they are proposing to locate. The Board agreed on everything except whether the proposed use provides the component of “social and recreational services” as intended in the definition of “community building”. Chair Prior said this comes down to “Does the applicant provide social AND recreational services and does the proposed use, as presented, meet the special exception criteria A. “That the use is a permitted use as set forth in Article 4.2, Schedule I, thereof.”

MOTION: A Motion was made by Mr. Baum that the application has met the special exception criteria because it meets the definition of a community building.

With no second, Motion fails.

Discussion: Mr. Mirsky said they are all getting too tired, as it was approaching midnight, and they should continue the meeting another day. Mr. Baum withdrew his Motion.

Chair Prior agreed they should continue the meeting at another time.

MOTION: A Motion was made by Chair Prior and seconded by Mr. Mirsky to continue this case until March 31, 2015 at 7pm.

Vote: Motion carries, all in favor.

The meeting was adjourned at 11:55 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, March 31, 2105 at 7:00 P.M. in the Nowak Room at the Exeter Town Offices.

Respectfully submitted,

Nicole Piper
Recording Secretary