

## **EXETER ZONING BOARD OF ADJUSTMENT NOVEMBER 18, 2014 MEETING MINUTES**

### **PRESENT:**

Regular Members: Vice Chair John Hauschildt, Rick Thielbar, Kevin Baum and Laura Davies  
Alternate Members: Hank Ouimet and Marc Carbonneau  
Building Inspector/Code Enforcement Officer: Doug Eastman  
Deputy Code Enforcement Officer: Barbara McEvoy

The meeting was convened at 7:00 PM at the Exeter Public Library at 4 Chestnut Street, Exeter. Vice Chairman Hauschildt announced that he would be chairing the meeting this evening in Chair Prior's absence. He introduced the Board members and explained the protocol for the meeting.

### **AGENDA:**

1. Case #1480: Seacoast Family Promise - 27 Hampton Road
2. Case# 1487: Tuck Realty Corp. – Highland Street

Vice Chairman Hauschildt announced that the Planning Office had received correspondence from Mr. Michael Garrepy, of Tuck Realty Corp. requesting a continuance of their application (Case #1487) until the Board's December meeting. He indicated that the Board would address this item prior to commencing with the Seacoast Family Promise application.

### **NEW BUSINESS:**

#### **1. Case #1487: Tuck Realty Corp.**

*The application for variances from Article 4, Section 4.3 Schedule II for relief from lot area, lot width, lot depth, front, side and rear setbacks to permit six (6) single family residential lots in the R-2 zoning district. The subject properties are located on Highland Street and Portsmouth Avenue, and are within the R-2, Single Family Residential and C-2, Highway Commercial zoning districts. Tax Map 65, Lots 138, 139 & 142.*

Attorney Sharon Somers was present on behalf of the Applicant. She explained that although the required public notice of the application had been made, an error on the abutters' list which was submitted with the application had been discovered. Therefore, the Applicant was requesting a continuance until the December meeting to allow for adequate time to correctly notify the one abutter.

### *DELIBERATIONS*

**MOTION:** *Mr. Thielbar moved to grant the request to continue the application of Tuck Realty Corp. until the Board's December meeting.  
Motion was seconded by Ms. Davies.  
VOTE: *The motion passed unanimously. Mr. Ouimet abstained.**

Chairman Hauschildt indicated that the Board's next meeting was scheduled for Tuesday, December 9<sup>th</sup>, 2014 at 7:00 PM in the Nowak Room of the Exeter Town Office. He represented that this announcement would serve as notification to abutters, with the exception of the one corrected certified mailing.

## **2. Case #1480: Seacoast Family Promise**

*Continuation of the application 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.*

Acting Chairman Hauschildt recalled that the Board was in the “rebuttal” phase of the hearing when the September 16<sup>th</sup> meeting was adjourned due to technical (audio and filming) difficulties. He noted that in Mr. Prior’s absence, it would be necessary to have another member seated for the meeting this evening. He explained that Messrs. Thielbar and Baum were not present at the September meeting; however, were both prepared to discuss and deliberate on the application this evening. It was decided that Mr. Thielbar would remain seated; Mr. Baum excused himself and departed.

Attorney Sharon Somers addressed the Board on behalf of the Applicant. She provided a brief recap of the September 16<sup>th</sup> proceedings. She indicated that her submission, dated November 3<sup>rd</sup>, was organized to address the questions and concerns raised by the Board at that meeting. She reviewed each of those points as outlined in her submission and concluded by stating that the Applicant was amenable to having conditions of approval imposed should the Board approve the special exception application. She provided a “Proposed List of Conditions” labeled as Exhibit G of her submission.

Acting Chairman Hauschildt asked if Attorney Somers could indicate when she is finished with each point so that board members may ask questions.

Mr. Ouimet asked to clarify that there is a two-tiered approach for the drug testing and the criminal records check; an instant check followed by a more thorough check that takes some time. What happens in that interim period? The potential guest is admitted to the program?

Attorney Somers indicated that the potential guest is not admitted into the program until the instant drug test done. If the drug test comes back showing drug usage that person is not admitted and is referred elsewhere. The criminal check is the same thing. The results come back within 24 hours. They don’t admit anyone right away, so by the time they are ready to make the decision to admit the person they will have those results. If something comes up that was not shown in the first checks, then the person will be asked to leave.

Attorney Somers continued to review information submitted as Exhibit G, Proposed List of Conditions.

Attorney Somers further indicated that upon entering the meeting this evening she was handed a 24 page document which was submitted to the town at the end of business today. She has not been able to review it or to discuss it with her client. She objects to this being considered by the board as it is not timely or fair for the board. If there are further questions from the board she would be happy to answer them at this time.

Ms. Susan Stagnone interjected to raise a point of order. She indicated that she had prepared a written statement which she had distributed to the seated board members prior to the meeting and she wished to address her comments with them. She stated that a considerable amount of information had been presented by the Applicant’s counsel and abutters and/or interested parties should have the opportunity for public comment.

At this time, there were no further questions from the Board for Attorney Somers. Attorney Somers noted that upon arriving this evening, she had been provided with a copy of the 24-page document received by the Town at the close of business today. She expressed her objection to the Board's consideration of this material given the untimely submission and stated that she had not had the opportunity to review the document nor the opportunity to share and have any discussion with her client.

Acting Chairman Hauschildt acknowledged that Ms. Stagnone wished to make comment. She indicated that she was in attendance at the September 16<sup>th</sup> meeting and at the close of the meeting (after announcement of technical difficulties) it had been stated that the Board was still in open session and that board discussion and rebuttal would be continued at the Board's next meeting. She noted that the Applicant had provided a great deal of new information in the November 3<sup>rd</sup> submittal which she considered to be substantial in nature and stated that she believed it would be appropriate to afford all of the abutters the opportunity to speak to the new information being presented.

Board discussion ensued relative to where the Board was procedurally at the time the audio/video technical difficulties occurred at previous meeting (September 16<sup>th</sup>) which resulted in the meeting being adjourned. It was clarified that the Applicant was in the process of providing rebuttal and addressing questions from the Board; deliberations had not begun. General consensus of the Board was that although there was no substantial new information submitted and that the actual request being made by Applicant had not changed. Mr Ouimet commented that given the applicant's proposal is clearly of great interest to the public, he would be inclined to err on the side of caution and suggest that the Board re-open the hearing for public comment specifically on the information presented in the rebuttal submission presented by the Applicant's counsel this evening. Mr. Carbonneau clarified that the application was for a special exception and that request had not changed, however, given the time delay (between meetings), it has afforded the Applicant the opportunity to further address questions and concerns raised during the September meeting.

At this time, the Board proceeded to entertain public comment relative to the rebuttal information presented by Attorney Somers.

Ms. Sue Stagnone, 9 Exeter Farms Road, addressed the Board and identified herself as an abutter and also a member of the Exeter Farms Board of Directors. She stated that she had reviewed the document submitted by the Applicant's counsel (dated November 3, 2014) and reiterated her earlier statement that substantial changes had been presented which would warrant additional public comment. She stated that if there had not been technical difficulties at the September meeting, the Applicant would have completed their rebuttal and the substantial information addressed in the November 3<sup>rd</sup> submittal would not have been considered. She indicated that she would be speaking as an individual property owner this evening and would attempt to summarize her prepared statement (see attached). She stated that the application being considered is for a community building. She noted that the attachments to her written statement (which she had distributed to Board members prior to meeting) were both planning and zoning documents along with other references providing some background relating to how the definition of 'community building' was established. She stated that the proposal being presented did not comply with the town's definition of a community building, and therefore would request that the Board deny the application.

Ms. Stagnone applauded Seacoast Family Promise for their services, however, the considerations being addressed this evening were whether the proposal complies with the zoning regulations and that the details of the letter of the law are applied appropriately. She stated that the application should be denied for multiple reasons;

- The proposed use is not a permitted principal use or permitted accessory uses, or comply with the criteria for special exception as a 'community building' in the R-2 Single Family Residential zoning district. Ms. Stagnone reviewed in detail the discussions relative to the proposed

definition of 'community building', and quoted excerpts from Planning Board minutes during the zoning amendment public hearings;

- The proposed use will negatively impact the abutting property values. No documentation has been provided by the Applicant to ensure that the property values would not be impacted. She indicated the real estate representative speaking on behalf of the Applicant was both the showing listing agent and the selling agent and also not a residential real estate broker.
- When conflicting provisions occur – the more restrictive code should be enforced.
- By approving this application for a homeless shelter, it will expand the definition of a 'community building' without the approval of the Exeter voters, thereby setting precedence for homeless shelters to be permitted anywhere in the residential zoning districts of Exeter. She stated that she did not believe that it was the intent of the Planning Board or the voters to consider the proposed use as a 'community building'.

Ms. Stagnone concluded her comments by stating that they were adamantly opposed to approval of the Applicant's use because it is not explicitly in compliance with the defined "Community Building" definition in the Exeter Zoning Regulations and requested that the Permitted Principal Uses for the R-2 Single Family Residential Zoning district be enforced, and that the applicant's request for special exception be denied. She stated that denial of the Seacoast Family Promise application in no way impacts their ability to continue their valuable work at their present location. They also have the ability to expand their operation in another appropriately zoned district within the Town of Exeter or to relocate in any other Seacoast community from where their guests originate.

Mr. Boyd Allen, 8 Hunter Place, inquired about who would be responsible for the enforcement of the conditions of approval, if the Board were to grant the Applicants' request. He also asked what recourse and/or protection there would be for the abutters.

Code Enforcement Officer Doug Eastman advised that any violation of an agreement of this board, first we would check it out and assess what the circumstances were -- what happened and why it happened. A warning would be issued first. If there were another violation, a special exception could be moot. The community building definition, he has to base his decisions on the information they give him. When people read the definition, they don't read the entire definition which reads: "Focusing on promoting health and general welfare of the community." There were other organizations that were going to be part of the YMCA. Seacoast Family Promise could have been part of that campus.

Mr. Kurt Virkaitis, President of Exeter Farms Homeowners' Association (26 Exeter Farms Road) also had questions regarding enforcement of the proposed conditions. He inquired if the Town would be checking records on any type of a regular basis. He expressed considerable concern relative to the diminution of market values of the surrounding properties.

Acting Chairman Hauschildt interjected and asked that public comment be addressed to the proposed use as presented in the application; he stated that it was not a 'homeless shelter' being proposed by the organization.

Mr. Kurt Virkaitis stated he knows that, but that's not how it's going to be perceived. It's a homeless transition facility.

Mr. Chris Gilroy, 25 Hampton Road, Unit A-3. Indicated that he had also delivered some materials to the Planning office today. He proceeded to make references to concerns with the Family Promise organization in other locations.

Mr. Reinhardt Schumann, property owner of 25 Hampton Road, also expressed vast concern relative to market values. He stated that it was the burden of the application to show there is no loss of property value for these properties. He indicated that the professional opinion rendered was from the Applicant's own realtor. It's not the burden of the public to provide this evidence.

In rebuttal, Attorney Somers stated that Mr. Eastman's interpretation was sound. She noted that his interpretation was not part of the administrative appeal. There is a history of evidence of community buildings. It is an issue that does not need to be worried about. Neighboring properties would be protected and not adversely affected. She asks that they grant the application.

At this time, Vice Chairman Hauschildt indicated that the public portion of the hearing was closed and the Board would not be taking any further public input from the audience.

Prior to deliberations, the board took a short break; the meeting was reconvened at 10:05 PM.

### *DELIBERATIONS*

Board consensus was there seemed to be a large concern from the abutters as to whether the proposed use should be considered a "community building" in accordance with the definition set forth in the town's ordinance.

Mr. Ouimet suggested that the Board should have discussion on this issue as it may become the basis for an appeal if the application should be granted. Mr. Carbonneau commented that it was unfortunate that such discussion had not taken place at the September meeting. He proceeded to read the definition of "community building" from the ordinance. Code Enforcement Officer Doug Eastman indicated that he had reviewed the application and found it acceptable for consideration by the Board. Vice Chairman Hauschildt polled the Board members for a vote to see if they concurred with the interpretation that the proposed use would be considered a "community building" (and to proceed with deliberations). All board members, with the exception of Mr. Thielbar, concurred; the Board continued with deliberations.

Lengthy discussion ensued regarding the conditions of approval presented by the Applicant and the practicality of enforcement.

It was represented that any conditions imposed upon the Applicant should be limited and enforceable. It was noted that any special exception approval (and conditions) would run with the property. Mr. Carbonneau commented that the operational conditions would be difficult for Town staff to monitor on a daily basis; however, most likely such violations would be generated by a complaint from an abutter. Ms. Davies commented that Conditions #4,5 and 12 relative to the hours of operation and capacity of the facility were reasonable. The Board extended their discussion to include scenarios of the potential for future occupancy of the site and enforcement of conditions that may have been specific to this application. Mr. Carbonneau commented that approval of a "community building" could become really broad. Mr. Hauschildt reiterated that any conditions imposed upon the Applicant as part of a special exception approval would run with the land and would apply to future occupants; he noted that any deviation of such conditions would require further review by the board.

- MOTION:** *Mr. Thielbar moved to deny the special exception request, as requested, on the basis that it failed to meet the special exception criteria, specifically the following:*
- *B. That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected;*
  - *C. That the proposed use will be compatible with the zone district and adjoining post 1972 development where it is to be located; and*

*These minutes are subject to possible corrections/revisions at a subsequent  
Exeter Zoning Board of Adjustment meeting.*

- *H. That the use shall not adversely affect abutting or nearby property values.*

*Motion was seconded by Mr. Carbonneau.*

**VOTE:**      *The motion passed, 3-2. Ms. Davies and Mr. Hauschildt voting in the negative.*

**OTHER BUSINESS:**

**APPROVAL OF MINUTES:**

The minutes of the September 18<sup>th</sup>, October 2<sup>nd</sup> and October 21<sup>st</sup>, 2014 meetings were deferred until the Board's next meeting.

**MOTION:**      *Mr. Thielbar moved to adjourn.*

*Mr. Carbonneau seconded.*

**VOTE:**      *The motion passed unanimously.*

The meeting was adjourned at 10:35 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, December 9<sup>th</sup>, 2014 at 7:00 P.M. in the Nowak Room at the Exeter Town Offices.

Respectfully submitted,

Barbara S. McEvoy  
Deputy Code Enforcement Officer  
Planning & Building Department