

EXETER ZONING BOARD OF ADJUSTMENT
March 31, 2015 MEETING MINUTES

PRESENT:

Regular Members: Chair Bob Prior, Vice Chair John Hauschildt, Clerk Rick Thielbar, Kevin Baum
Alternate Members: Dave Mirsky
Deputy Code Enforcement Officer: Barbara McEvoy
Building Inspector: Doug Eastman

The meeting was convened at 7:00 PM in the Nowak Room of the Exeter Town Office Building. Chair Prior introduced the Board members and explained the protocol for the meeting.

AGENDA:

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

NEW BUSINESS:

1. Case #1480: Seacoast Family Promise

Continuation of 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.

Chair Prior said they had closed public comment during the March 17th meeting on this matter, and moved to deliberations. He said they got into the weeds discussing the words “and”, “recreation” and “community”. He made a note that everyone that had testified either for or against the application was complimentary to Seacoast Family Promise. He urged the board not get in the weeds again during this meeting. He started the meeting with the following motion.

Motion: ***A Motion was made by Chair Prior that the Board approve the application for special exception for Seacoast Family Promise for the parcel of land located at 27 Hampton Road subject to the proposed conditions of approval that have been written out by Seacoast Family Promise, themselves. He noted there were twelve items on the list. (He distributed a copy to all board members. With no second, Motion fails.***

Mr. Thielbar suggested starting over with a review of the relevant comments from the previous meeting would be helpful noting that fatigue certainly played in to the last meeting. He said it would provide continuity of covering all the issues discussed, all in one evening. Mr. Mirsky concurred. Mr. Baum also agreed and stated that the Board needed to have discussion on the definition of ‘community building’ and determine if it applies in this case. He also indicated that it was necessary for the Board to go through the individual criteria for a special exception.

Mr. Mirsky commented that, from his perspective, the easiest decision to deal with would be the ‘community building’ issue. He said the term ‘community building’ is meant as a

limitation and is not supposed to be overly broad. He said the YMCA was a good example of a 'community building'. The primary purpose is to provide social and recreational services, which he thinks is a limitation. He said the applicant wants to provide a social service for people who are suffering from a specific problem, making this proposal overly broad to fit the definition of 'community building.' Mr. Mirsky stated that he would make a Motion to deny the application because the proposal doesn't meet the definition of a community building.

Chair Prior said social and recreational services are focused on promoting the health and general welfare of the public. He was concerned that Mr. Mirsky was making the use too narrow. He said SFP is providing a broad range of social services centered on the fact that in order to be in the program, the client would have to be homeless. He stated that people that met that criterion are provided with financial advice, health advice, educational advice and support which are most definitely promoting their (clients') health and general welfare.

Mr. Mirsky made reference to the Sargent Consulting report submitted by the applicant in which they are identified as a 'social service' agency. He stated that the applicant had stated in testimony that the reason they have background checks, drug testing and other such requirements is because they are serving "outsiders" which could be dangerous. Chair Prior inquired as to what he meant by "outsiders". Mr. Mirsky responded "homeless people from outside, from anywhere". Mr. Hauschildt commented that the Board has spent a great deal of time talking about community building; he indicated that the real question is if the proposed use is permitted. He said if the board members' thought is that the use is a community building, then the answer to criterion A. is yes. Likewise, Mr. Hauschildt indicated that if the proposed use is something different, it would then have to be determined whether it qualified for a special exception. He indicated that there was nothing that required all of the Board members to agree that the proposed use meets one definition or another; however, it was relevant whether the use is a permitted special exception. Mr. Hauschildt noted that the Board has been dealing with the definition of 'community building' (and the word "and" contained in the definition) because it has been brought up as a point of contention, and it will continue to be a point of contention after it leaves our decision process. Mr. Mirsky suggested that the Board should vote on whether the proposed use met the definition of 'community building'.

Mr. Hauschildt commented that he believed actually voting on each of the criterion individually (and not as a group, i.e. Criteria A. – J.) would be a procedural error and would come back to cause detriment to the board in the long run.

Board discussion ensued regarding the procedural actions required with respect to reviewing the special exception criteria. Mr. Mirsky stated that it was necessary to judge the facts and suggested that each board member have the opportunity to go through and give their views on the facts.

Mr. Thielbar asked if they need to vote on each criterion. Mr. Baum responded no, but the Board did need to have a discussion on each.

Mr. Thielbar suggested said they need to talk about 'social and recreational services'. He said you can't look at these out of context and understand the meaning. He stated that when he reads these words together in context (including the word 'and'), it doesn't mean nearly as broad of an

interpretation as others suggest; he would contend that if you do not take a contextual understanding of what is written, any non-profit would meet the requirements to be classified as a 'community building'. He commented that it was clear to him it was not the intention of the authors of the definition that the definition would include all non-profit organizations. Mr. Mirsky said when you consider the YMCA to be a community building; you don't need to include a list of proposed conditions as being discussed for this application. Mr. Baum indicated that it was not out of the ordinary for an applicant to provide proposed conditions. Chair Prior added that the applicant was proposing these conditions to make people feel the element of comfort. He said they need to decide if SFP meets the definition of 'community building'. He explained that the proposed conditions (provided by the Applicant) are assurance that the proposed use will be operated in such a manner that the public health, safety and welfare will be protected (noting this was in reference to special exception criteria B.).

At this time, Chair Prior asked for comments from the other Board members.

Mr. Baum said he hasn't changed his position from the last meeting. He indicated that he was hesitant to keep going forward comparing this to the YMCA; the definition does not say the YMCA. He stated that the residents of town voted on this definition, and he was hesitant to read too much into what voters may have been thinking, because that was unknown. He also made mention of the citizen's petition that came forward at the March Town Meeting vote to change the definition, and it was voted down. Mr. Baum stated that he has considered each element of the definition and believes the applicant meets what is known as social and recreational services. He indicated there was nothing in the definition that gives a weight or percentage on social and recreational services. He said he considered the 'community' to be broader than just citizens of Exeter; it was represented that their users (as well as participants and volunteers) would be residents of Exeter and surrounding communities in the Seacoast area. He acknowledged that the programs being offered by SFP would be a more direct use of the site than a non-profit organization using the facility for office space and such. He concluded by stating that the element of the definition "focused on promoting their health and general welfare" was important and he believed the applicant met that as well, and therefore, the application as presented satisfied the definition of 'community building'.

Mr. Hauschildt stated Mr. Baum had articulated his thoughts well. He acknowledged that subsequent to the last meeting he knew there would be a problem with "...and recreational services" and that element of the definition was questionable to him. However, he said there are several activities that meet the definition of recreation and he would concur with Mr. Baum, saying the definition of a community building is met in this case.

Chair Prior stated that he also believed it meets the criteria for a community building. He read the definition aloud, and reiterated that the proposed use clearly met the definition. He stated it was a non-profit that provides a valuable service. Mr. Mirsky said his analysis was clear, but he was concerned with needing all the proposed conditions.

Chair Prior asked for final thoughts on community building. He said others kept saying the proposed use is not what the abutters bought into. However, they bought in when the use was a professional medical office and daycare. The Board decided to finish up with criteria A and move to B.

Chair Prior read criteria B. Mr. Thielbar said he had two problems here. The first being that homeless people often come from domestic violence. He said they are homeless for a reason. The proposed location is far from the Police Station. He said they are almost asking for someone to misbehave. He said this activity needs to be in an area with a lot of other people around. Secondly, he said they have this list of proposed conditions that was asked to be included in their approval. He said there is no viable mechanism to confirm these conditions will be enforced. For that reason, he suggested tearing up the conditions paper. He said if the proposed conditions are included, it will be a terrible burden and obligation. Mr. Baum said they provided these conditions to address some misconceptions about the program. He said it is the idea that because they are being proposed that there is a problem. Mr. Hauschildt said there is evidence that there is no danger to the community from the 8a-5p operation. He doesn't think just because background checks are done means that these are dangerous people. He talked about background checks that he himself has had to have being a teacher. Chair Prior said he had to have a background check to volunteer at his daughter's school. Mr. Thielbar said the population that SFP attracts brings with it an increased risk of misbehavior. Chair Prior said he understood that, but overall he does not think it arises to be a problem in the neighborhood. Mr. Hauschildt said the history of the operation is that there is safety.

Next, Chair Prior read criteria C. There was discussion about what "compatible" is. Chair Prior does not think there will be any additional noise or traffic to the area. Mr. Baum said the shell of the house, in its residential state, fits in with the neighborhood.

Chair Prior next read criteria D. Mr. Hauschildt said the dynamics have changed and adequate screening should be provided for the neighbors. Chair Prior suggested fencing to keep the abutters feeling secure.

Chair Prior read criteria E. He said the amount of traffic will be less than that of its prior use, the daycare. The Board agreed.

Chair Prior read criteria F and G, and said he doesn't believe G is appropriate because they are not seeking a setback or any development.

Next, Chair Prior read criteria H. Mr. Thielbar said he would argue that nearby folks are not at risk, but he thinks direct abutters are going to be affected. Mr. Mirsky said nobody from Exeter Farms wants this. He thinks it will affect property values. He said one neighbor had said they would not have bought their house at any price if they knew SFP was going in. He said Mr. Berg's report doesn't address how abutters feel. Mr. Baum said this is difficult. He understands abutters concerns. He said just because one abutter wouldn't buy, doesn't mean no one would. He said Mr. Berg's report is an expert opinion from a qualified professional. The abutters had the opportunity to get an expert as well. Mr. Mirsky said all of Exeter Farms are concerned with this use. Mr. Hauschildt said they cannot dismiss expert testimony. He said he understood what Mr. Berg was doing, and that was speaking on the effect of property values. He said what would cause devaluation was an external obsolescence. Mr. Mirsky said he found the report to be belittling to the neighbors. He said it was a litigation argument rather than expert knowledge. Mr. Thielbar thought the report contradicted itself throughout. He said no one can prove devaluation. He said the report was talking about general impact. Chair Prior said he has wrangled with this

one the most. He said he is not sure if there is anyone in Exeter Farms that supports this. He is specifically concerned with the direct abutters (behind specifically). In the long term, however, he does not believe there will be any negative impact on the neighborhood from the proposed use; he doesn't believe the existence of SFP will have an impact on any abutters. He emphasized that it was not a "homeless shelter" as others have referred to it; there will be no one living there. He indicated that it would be the same as the other non-residential uses that have been at the location (and other nearby properties) and will become part of the community.

Chair Prior indicated that having completed their review of the special exception criteria A. – H., he asked if there was any further board discussion, otherwise, he would entertain a motion.

Mr. Mirsky commented that he does not believe the Board has credited the people who did not show up to voice their opinion. He indicated that the Board should listen to the public; the abutters attended not just one, but multiple meetings to voice their concerns. He stated that he heard those people and was speaking for them – the abutters would not have chosen to purchase their homes in this location had they known of the potential of SFP locating in the neighborhood. He stated that the residents have a real fear that their neighborhood community will be threatened if the special exception is granted and that their property values will be adversely affected.

Motion: A Motion was made by Mr. Mirsky and seconded by Mr. Thielbar to deny the application because it does not meet the definition of a community building.

Discussion: Mr. Hauschildt indicated that the motion should specify which criteria the application did not satisfy. He noted that Mr. Mirsky's motion would be relevant to criteria 'A.'.

Amendment: An amendment to the Motion was made by Mr. Thielbar and seconded by Mr. Mirsky to specify the application also did not meet criteria 'B.' and 'H.'.

Vote on Amendment: Amendment carries – 5-0

Discussion on Motion: Mr. Thielbar said if this application is granted, it could be opening up a huge door by saying anyone can come into your neighborhood and apply to put this type of use next door and he has a problem with that. Chair Prior said they are talking about a specific application in a specific location and that they are not opening up any doors or attempting to change the zoning regulations.

Vote: 2-3, Motion fails.

Motion: A Motion was made by Chair Prior and seconded by Mr. Hauschildt to approve the application for special exception for Seacoast Family Promise so they may operate in the facility at 27 Hampton Road.

Discussion: The Board talked about approving the application without certain conditions. Mr. Hauschildt thought the conditions were warranted; Chair Prior agreed. Mr. Hauschildt suggested continuing the discussion on the conditions. Chair Prior talked about placing the burden of upholding the conditions on the applicant and not on the Town of Exeter (Code Enforcement Officer). Chair Prior said the conditions being proposed by SFP are protecting their own staff, volunteers and clients by proposing these conditions. ; they are doing this

because it is their procedure. Mr. Mirsky asked how would the proposed conditions protect the abutters if they are not enforceable. Mr. Thielbar commented that the proposed conditions were good; however he did not want them to be part of the approval as a requirement from the Town because the Town would then be responsible if the conditions were not adhered to. Mr. Baum said he would like to include the conditions to clarify the record. Chair Prior talked about dividing the conditions into two parts noting that some of the conditions would be easily monitored, while others (which are part of Seacoast Family Promise's standard operating procedures) should not be part of the approval because they are potentially harder to monitor and could be burdensome on the Town. The Board agreed and continued discussion about which conditions should be included in the motion and their appropriate wording. Consensus of the Board was to include the following block of conditions as part of the special exception approval being considered:

- The conditions of this approval shall run with the property.*
- No more than fourteen (14) people will be allowed in the program at any one time.*
- Guests will be restricted to between the hours of 7:30 A.M and 5:00 P.M. There shall be no overnight stays permitted on the property.*
- An adequately trained staff member will be on site whenever guests are present.*
- No alcohol or non-prescribed drugs shall be permitted on the site.*
- No one who has been arrested, or convicted of, a violent or drug-related crime will be allowed into the program or allowed to stay in the program.*
- The occupant shall conduct alcohol and drug screenings prior to allowing guests into the program; and a criminal records check with the Verity Background Check (or similar program) shall be conducted to ascertain the criminal history of all potential guests.*

Chair Prior also asked that adequate screening be provided with allocation given to the south and west of the property. Mr. Hauschildt asked what adequate screening consists of. Chair Prior said it would need to be sufficient to delineate the property line and to screen for noise/sound. Mr. Hauschildt suggested that secure fencing also be part of the proposed condition.

Motion: An amendment to the Motion was made by Mr. Hauschildt and seconded by Mr. Baum to attach the following eight conditions (as previously discussed):

- 1. The conditions of this approval shall run with the property;***
- 2. No more than fourteen (14) people will be allowed in the program at any one time;***
- 3. Guests will be restricted to between the hours of 7:30 A.M and 5:00 P.M. There shall be no overnight stays permitted on the property;***
- 4. An adequately trained staff member will be on site whenever guests are present;***
- 5. No alcohol or non-prescribed drugs shall be permitted on the site;***
- 6. No one who has been arrested for, or convicted of, a violent or drug-related crime will be allowed into the program or allowed to stay in the program.;***
- 7. The occupant shall conduct alcohol and drug screenings prior to allowing guests into the program; and a criminal records check with the Verity Background Check (or similar program) shall be conducted to ascertain the criminal history of all potential guests; and***
- 8. Adequate screening and secure fencing shall be provided along the southerly and westerly property lines of the site.***

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

Motion: *An amendment was made by Mr. Hauschildt and seconded by Mr. Baum to amend the amended Motion to change condition #2 to read “guests” instead of “people”.*

Vote: *Amended amendment carried – all in favor.*

Vote: *Amended Motion on conditions carried – all in favor.*

Vote: *On original Motion with amendments carried – 3-2. (Messrs. Thielbar and Mirsky voting in the negative).*

A Motion was made by Mr. Mirsky and seconded by Mr. Hauschildt to adjourn the meeting at 9:07pm.

The next Zoning Board of Adjustment meeting will be Tuesday, April 21, 2015 at 7:00pm in the Nowak Room of the Exeter Town Office.

Respectfully submitted,

Nicole Piper
Recording Secretary

Reviewed and amended,

Barbara S. McEvoy
Deputy Code Enforcement Officer