



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, May 17, 2022 – 6:30 p.m. – Town Hall Conference Room

Members Present: Steve Gerrato, Ron Gross, Dick Rugg, David Sandmann, Leonard Schwab

Staff By Phone (Late): Jack Shephard, Building Inspector

Chair Sandmann opened the Board of Adjustment meeting at 6:30 p.m. and a roll call was taken. He stated a quorum was present and the meeting was being recorded.

1. Reorganization of the Board

MOTION: S. Gerrato nominated D. Sandmann as Chairman. Second – L. Schwab; three in favor, one against (R. Gross); one abstained (D. Sandmann). MOTION CARRIED

MOTION: S. Gerrato nominated L. Schwab as Vice Chairman. Second – D. Sandmann; four in favor, one abstained (L. Schwab). MOTION CARRIED

MOTION: S. Gerrato nominated C. Hussey as an alternate, term to expire March 2023. Second – R. Gross; all in favor. MOTION CARRIED

2. 480 Breakfast Hill Road (R1, 9 – Residential/RCIM District)

Application: Request for a Variance

Owner/Applicant: Seacoast Family Promise

The owner/applicant is requesting a Variance from Article III – Establishment of Districts and Uses, Section 3.6.1 – Table of Uses, Table A – Residential Uses, Item 10 – Multi-Family and Article XIV – Non-Conforming Uses/Lots, Section 14.1 – Existing Use. A Variance is requested to permit the expansion of a non-conforming use: a group home serving homeless families where group homes are not a designated use in the Greenland Zoning Ordinance and multiple families are housed.

Tim Phoenix, Attorney with Hoefle, Phoenix, Gormley and Roberts and representing the owner/applicant, addressed the Board. Also present were Pati Frew-Waters, Executive Director – Seacoast Family Promise; Paige Libbey, Jones and Beach Engineering; Mark Fischera, Seacoast Family Promise Board Member; Irving Canner, President - Seacoast Family Promise; Molly Wynne, Vice President – Seacoast Family Promise. They were scheduled for the Zoning Board meeting in April; however, continued to May in order to meet with the neighbors. As a result of that meeting, the Board was given updated plans with one change. On the right side elevation, the building was turned 90°. The building was turned so there were fewer windows facing the neighbors. That change was made to try to accommodate concerns of the neighbors.

Attorney Phoenix noted that there was a barn in one of the older pictures the Board received. The barn has been removed. There is a barn-like structure that was designed to emulate the look of the old farmhouse. It is essentially in the same location as the barn. The architect included a heavy dashed line on the plan, showing the existing and what is proposed. Attorney Phoenix pointed out various areas on the map.

P. Frew-Waters explained what Seacoast Family Promise is and what it does as well as the purpose of the expanded building. She stated that Seacoast Family Promise creates healthier communities by serving families with children who are experiencing homelessness. Seacoast Family Promise provides very intense case management, financial training, budgeting, credit repair, etc., as well as referrals for medical or dental care. A master clinician is available who provides very good mental health assistance to families. P. Frew-Waters stated that 90% of the families they have worked with over the past 20 years have not returned to homelessness. That statistic is higher than the national overseer and homelessness in general in the United States. Seacoast Family Promise has a very successful program.

P. Frew-Waters noted that Seacoast Family Promise is a dry shelter: they do not take people with active drug and alcohol problems. They may have individuals who are recovering and going to the clinic or receiving counseling; however, they are not actively using while in the Seacoast Family Promise program. There are random drug and alcohol screenings.

When shelter is needed, a pre-screen is done by phone. If everything looks good, an in-person interview is done. Seacoast Family Promise wants the family to understand they are going to get help and they must help themselves. There is a tenancy program to help them become good tenants.

P. Frew-Waters continued there is also a program called 'Home Again' and they follow the families. Home Again provides intensive tenancy training and families are followed when they leave the program. Case management continues as well as other services.

P. Frew-Waters explained the program was originally called the Interfaith Hospitality Network and is approximately 40 years old. They utilized a network of volunteers in the faith communities to bring in meals in the evenings; families would go to the day center during the day. Seacoast Family Promise operates the same today; there are no faith communities due to COVID.

R. Gross asked about the building in 2001. P. Frew-Waters responded that under the auspices of the Bethany Church the house was converted into two apartments, an upstairs and downstairs. The Bethany Church let missionaries live in the house. R. Gross stated that in 2001 Bethany Church purchased the building and converted it into multiple families living there. P. Frew-Waters responded it was in 2001 by Bethany Church; Seacoast Family Promise purchased it in 2021. She explained that Bethany Church housed families in their rotation schedule around the missionaries. Families being housed there were in the downstairs apartment; there is no working kitchen upstairs.

Seacoast Family Promise houses four to five families, or 14 individuals; one room is allocated to overnight staffing. Families will arrive at 5:30 pm, volunteers bring dinner, sleep there, and leave the building by 7:30 am. D. Rugg explained that Map R1, 9 is the original Coakley property. The Bethany Church purchased the property from Coakley; Seacoast Family Promise purchased the property in October 2020. The zoning was residential when it was a duplex.

R. Gross clarified that when they purchased the building it was a duplex and they decided it was okay to house multiple families. He questioned the onus that allowed them to think that was okay. Attorney

Phoenix had a Certificate of Occupancy from 2002 for the two family. Attorney Phoenix has spoken to Mark Fougere, Planning Board Consultant, about the Residential-Commercial-Industrial Mixed-Use (RCIM) District; this use did not qualify for that district because it was not a mixed-use project. M. Fougere explained to Attorney Phoenix that the mission house was considered a form of group home (form of residence). The original use, without changing the building, was permitted because it was the same kind of use by the Church. Group homes are no longer a permitted use in that zone and would have been a prior non-conforming use and need to go to the Zoning Board for expansion. There are currently five bedrooms (one is for staff); they are proposing expanding to 12 bedrooms (two for staff).

R. Gross stated that group homes are not a permitted use in Greenland. Why would anybody call it a group home? There is nothing in any records anywhere that allowed them to change this and allow families to live in a single multiple dwelling. R. Gross continued it was not necessarily a non-conforming use; it was an illegal use. P. Frew-Waters explained that a group home is a longevity scenario as opposed to transitional shelter housing. No one was going in there and staying forever; the families go there with the intent to leave. P. Frew-Waters continued that since she arrived 17 years ago, Bethany was doing the very same thing by having the missionaries in addition to housing Seacoast Family Promise families. When Seacoast Family Promise purchased the building, they had known it worked like that for years, without a problem. P. Frew-Waters did not understand why, over the years, there was not any conversation between the Town of Greenland and Bethany Church about what was happening in the Joshua House. Seacoast Family Promise uses the building as they know it to be used.

R. Gross stated that in the beginning, and for a long time, there was only one family living there. Someone decided to house more people there and no one said anything. P. Frew-Waters noted that Bethany Church owned the building at the time. Attorney Phoenix added J. Shephard sent a letter to the Board of Selectmen in May 2021, shortly after Seacoast Family Promise purchased the building. In that letter he quoted M. Fougere (copy on file). P. Frew-Waters wanted to be very, very clear that they purchased the building in good faith and were not trying to 'slide under' or under anyone else's coat tails. When they purchased the building, they had no reason to believe there was anything wrong with the use.

C. Hussey stated that Fairweather Lodge is a group home and located across the street. He questioned if they had received a Variance. C. Hussey noted that was a temporary living situation, not permanent.

D. Rugg asked for more information regarding the use of the building, the number of people that would be living there and the actual burden to the Town. P. Frew-Waters responded that as the Director and working in the program daily, she did not see a burden to Greenland or any other communities where they have been. She continued that with the addition, two bedrooms will be allocated to staff (additional people requires appropriate staff). With the growth of family homelessness, they have found that it is not always an adult and a child. It could be two adults or an adult and 'X' children. They currently do not have the capacity to handle larger families due to the size of the rooms. They would like to be able to comfortably accommodate larger families overnight. In the expansion they plan to continue comply with CDC guidelines. Before they purchased the building and applied for grants, the CDC required decompression rooms in the event of a COVID outbreak for quarantine purposes.

R. Gross questioned how they arrived at all the families living in one place; any residence in Town could start adding families living in a house and that was not allowed. The letter does not actually state it is permitted. R. Gross continued that they were not guided by emotion but by what the Zoning Board said. They also have to be careful not to set a precedence. Bethany Church did something they were not allowed to do. Seacoast Family Promise is coming to the Board and saying they were doing it so

they should be allowed to continue and make it even more. Attorney Phoenix responded that was not quite fair. He got the point; they did not know what Bethany Church was doing or if it was lawful. However, it checked out with the Town Planner and the Town Attorney and were told to go forward. R. Gross stated that the Building Inspector said the ZBA should not allow this. Attorney Phoenix read a portion of the letter from the Building Inspector. Attorney Phoenix did not think the letter told P. Frew-Waters or the organization to do anything; he felt it was the Building Inspector stating his opinion to the Selectmen.

Attorney Phoenix understood R. Gross' concerns. He hoped the Board would not vote against Seacoast Family Promise, especially with what they have invested. R. Gross responded the Board had to make sure they do it right so there are not any issues down the road or that every other house in Town does the same thing. There are no special circumstances here. Attorney Phoenix stated there are use and dimensional Variances. This property is 3 acres and there is plenty of room for it. It is a non-conforming use because other than single families and duplexes by conditional use permit, anything more is not permitted. The Zoning Ordinance is specific: if it is not specifically stated that it is okay, then it is not permitted. The use has been non-conforming approved by the Town Planner and Town Attorney. If there was a mistake, it was an honest mistake in interpretation by the Town's representatives telling them to go forward. The Building Inspector's letter dated 05.05.21 was given to the Selectmen and nothing was heard. The Administrative Assistant stated that the Building Inspector keeps the Selectmen informed. His letters are normally in the FYI Section of the Selectmen's packet for informational purposes; it has not been an agenda item.

C. Hussey suggested that the file for Fairweather Lodge be checked for any Variances. It should be handled the same way. It was noted that when the Greenland Church wanted to increase the number of people staying there, they applied for a Variance and it was granted by the Zoning Board. D. Sandmann added it was part of the Seacoast Family Promise program that the Church participated in at the time, as other churches in the community were doing. Bethany Church was using the building at 480 Breakfast Hill Road for housing during that time.

D. Rugg asked for the total number of people that will be in that facility at one time. P. Frew-Waters responded it could be 8 families and as many as 22 individuals, not including two staff members. There was no way of knowing the number of children or their average age. Currently, the children are aged 1 through 13. There was a discussion about where the children attend school. P. Frew-Waters stated that the McKinney-Vento Act gives individuals the right to maintain their home school unless they move.

D. Rugg was very concerned about the burden to the Town. He noted they would be using Town facilities and asked if there would ever be a request for a welfare payment. P. Frew-Waters responded they could bill for payments from all the municipalities they serve. Their organization has chosen not to do that. They write to municipalities requesting support. D. Rugg asked if children attended Greenland School. P. Frew-Waters responded, 'if they lived in Greenland'. R. Gross clarified they would attend Greenland School if they were living in Greenland and attended school when they became homeless.

P. Frew-Waters noted that McKinney-Vento also states students have the right to be bussed. Seacoast Family Promise works with school districts because McKinney-Vento is unfunded. Families transport their children to school for a stipend. D. Rugg was concerned about children with special needs. D. Sandmann clarified that any children staying at this facility who may have special needs would be the responsibility of the sending school district not Greenland. D. Rugg stated he could not support their proposal based on what he has been told. R. Gross asked about the time limit for people staying in the facilities. P. Frew-Waters responded that three to six months is the prediction; the average is 84 days.

R. Gross stated part of the issue was how this happened and how the Board has to resolve it. Attorney Phoenix asked D. Rugg what he would need to see or hear to be comfortable with the Greenland burden issues. D. Rugg stated he could see the Board supporting it in a very limited way. R. Gross noted the Board could include restrictions when granting a Variance. D. Rugg voiced concerns that someone in Seacoast Family Promise could become a resident of Greenland with a special needs child who would attend the school. P. Frew-Waters reiterated that the legal address for all Seacoast Family Promise families was the day center in Exeter.

Irving Canner, Seacoast Family Promise President, asked how New Generations was brought through, noting that some of those children go to Greenland School and then move out. R. Gross responded that would have to be researched because Greenland's Zoning Ordinance did not allow that. A Variance would have to be granted for something that pertains to it. I. Canner noted it mirrored Seacoast Family Promise to a certain extent. P. Frew-Waters stated that their families technically lived in Exeter. I. Canner commented that New Generations may be tax exempt, and the Town was funding those children attending Greenland School, adding that the burden aspect is there.

L. Schwab, addressing R. Gross, asked if his concern was that the Zoning Ordinance, as written today, was incomplete. R. Gross responded that nobody follows the Zoning Ordinance. Not everyone knows what goes on in Town. R. Gross continued that if it is not in the Zoning Ordinance, it is not allowed. To which Attorney Phoenix responded that was the purpose of a Variance. Attorney Phoenix felt they could address D. Rugg's concerns through research and documentation.

Attorney Phoenix stated that the Ordinance provided a list of permitted uses in various zones. R. Gross stated this use did not fit in any zone. Attorney Phoenix stated if the use was not specifically permitted, it was prohibited. They were before the ZBA requesting an expansion of a use that would otherwise be prohibited but was permitted by the actions of the Town Planner.

A motion was made by C. Hussey and seconded by R. Gross to continue the request for a Variance to the June meeting. It was noted by Attorney Phoenix that C. Hussey was an alternate and could not make a motion. The motion was withdrawn. Attorney Phoenix was willing to continue and asked for another Board member to make the motion.

R. Gross noted that the Town Planner's letter (dated 05.05.2021) stated Seacoast Family Promise could move forward was before any updated changes were proposed and at that time the building was empty. P. Frew-Waters noted it was not empty; it was not a rotation week and there were not missionaries living there (they only live there during the summer). The Building Inspector offered his opinion that it should not be allowed.

P. Frew-Waters noted that many updates to the building were required, and the Building Inspector signed off on them. Attorney Phoenix stated the reason for the continuance was that D. Rugg did not have information or documentation to feel comfortable about the burden on the Town. Attorney Phoenix did not want the Board voting on the Variance until all the information was available for the Board to make an informed decision.

L. Schwab stated they could file for a Variance to allow the existing situation. If that passed, they could file a second Variance for the expansion. R. Gross stated that seemed like a reasonable idea. Attorney Phoenix responded that he would advise his client to reject that. If they came back for an expansion and it was denied, would they have to shut down the business? He noted there was municipal estoppel: decisions are made on behalf of the municipality that people rely upon, and it is discovered that the

decision should not have been made but was too late to be undone. The building was purchased and rehab work has been done. Attorney Phoenix continued that they have a right to rely upon what has been done to date and what they were told. R. Gross was very concerned about setting a precedent.

Jack Shephard, Building Inspector, joined the meeting by phone. He explained received a complaint and went to the property with the Fire Department; fire extinguishers were required. The permitted use was for two families. J. Shephard contacted the Town Planner, who confirmed the use was for two families. J. Shephard noted the building was set up as a dormitory, which was not an allowed use. R. Gross clarified that the Town Planner felt it was a two-family building when the letter was written. He asked J. Shephard to email any information he had during the meeting. R. Gross wanted as much information as possible for the Board to make an informed decision. There was a discussion about an egress on the west side of the building (second story). P. Frew-Waters stated the Town Planner and Building Inspector were aware of the proposed use.

Paige Libbey, Jones and Beach Engineers, stated a new septic system will be required for an expansion. She noted where the tank would be located on the west side of the building. There was a discussion about the septic system and easements with the Bethany Church.

P. Frew-Waters clarified for the Board that there was not a complaint about the fire extinguishers. There was an open house which was attended by representatives from the State and federal government. They had inspectors in the building all the time. The house would not have been allowed to open without fire extinguishers. Everything was done through the inspector. There is a sprinkler system. J. Shephard stated that Chief Cresta had requested a walk through due to fire concerns. J. Shephard and members of the Fire Department did a walk through and suggested different areas be equipped with fire extinguishers.

Attorney Phoenix stated the primary question to be answered: what was done on behalf of the Town and what was relied on by Seacoast Family Promise to get where they are now. If the Board was not comfortable with that, were they willing to move forward with the request for an expansion to allow additional transitional families to stay there while recovering from homelessness. They should be prepared to discuss D. Rugg's concerns at the next meeting. D. Rugg stated he would like to have all Variances issued for this property, prior to this, become null and void if the Variance is granted. Attorney Phoenix stated he could not agree to that at this time without knowing what they were. C. Hussey noted that Variances remained with the property forever; Attorney Phoenix added 'unless the use changed'. C. Hussey recommended Seacoast Family Promise research how Greenland Church, Fairweather Lodge and New Generations were allowed to do something similar; all had to be granted Variances. Attorney Phoenix stated he would like to hear from the Town Planner.

L. Schwab asked how water would be handled. P. Libbey stated there is an existing well on the property that will be used. L. Schwab requested they include that in the discussion at the next meeting. R. Gross requested a copy of the deed that states the easements on the property. He also asked that septic information be available.

R. Gross noted there did not seem to be handicap access. P. Frew-Waters stated that none of their buildings were built with handicap access. She stated if they accepted someone into the program who was wheelchair bound, there was a small section in the day center. They currently do not have the capacity for wheelchair access.

D. Sandmann opened the meeting to public comments. Residents were concerned about the proximity of their homes to the residence, the number of bedrooms and number of guests (there could be 30 individuals in the building, including staff). Attorney Phoenix will have more information for the next meeting. Concerns also included what happens if someone staying at the house arrived before 5:30 p.m., the use of the building should be defined, what happens if the property was sold, trash pickup, more traffic, more noise, maintenance of the property and facility, outside storage, water, impact on the community, seems like a huge project and big expense and it is a significant change on the old farmhouse property, as a neighbor it felt like it will be a facility from what exists now in a very residential area.

M. Fischera stated that the meeting with residents was to address their concerns. Floor plans were also shown. Communication about the meeting with residents was discussed as well as the lack of transparency on the part of Seacoast Family Promise. Property maintenance and upgrades, including a sprinkler system, were discussed. P. Frew-Waters stated they want to esthetically enhance the property.

Attorney Phoenix noted this project will go through the Planning Board. Many of the issues and concerns from the neighbors will be addressed there.

There being no further public comments, D. Sandmann closed the public hearing and returned to the Board. C. Hussey asked that concerns from residents should be emailed to the Town, attention of the Zoning Board. He also noted that last year that area became the Residential-Commercial-Industrial Mixed-Use (RCMI) District. Attorney Phoenix clarified that this project does not fall under that district because they are not mixed use. However, a store with apartments above it could be proposed and allowed because it would be considered mixed-use.

MOTION: L. Schwab moved to continue the Variance application for 480 Breakfast Hill Road to the meeting on Tuesday, June 21, 2022. Second – S. Gerrato; all in favor. MOTION CARRIED

3. Approval of Minutes

MOTION: R. Gross moved to approve the minutes of Tuesday, February 15, 2022. Second – S. Gerrato. Four in favor, one abstained (D. Rugg). MOTION CARRIED

4. Other Business

There was no 'Other Business' to discuss.

5. Adjournment

MOTION: R. Gross moved to adjourn at 8:55 p.m. Second – S. Gerrato; all in favor. MOTION CARRIED

NEXT MEETING

Tuesday, June 21, 2022 – 6:30 p.m., Town Hall Conference Room

Submitted By: Charlotte Hussey, Administrative Assistant