



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

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

Members Present: Steve Gerrato, Ron Gross, Dick Rugg, David Sandmann, Leonard Schwab, Chip Hussey (Alternate)

Staff Present: 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. 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.

This application was continued from the meeting on Tuesday, May 17, 2022. 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.

The site is 3.05 acres. Attorney Phoenix noted that the primary issues from the last meeting were how the use was initially allowed, is it permitted and can a Variance be granted. Attorney Phoenix's office followed up as did J. Shephard; Attorney Phoenix agreed with J. Shephard's documentation. At Attorney Phoenix's request, Mark Fougere (Planning Board Consultant) clarified his earlier email (copy on file). Attorney Phoenix stated that their position as established in May was correct. Before purchasing the property in October 2020, Seacoast Family Promise checked with the Town Planner who checked with the Town's attorney and confirmed that the use was a similar use to what the Rye Bethany Church had done for approximately 20 years. Therefore, the use as a full group home could continue. Attorney Phoenix continued that the use had been determined by representatives of the Town that it was a prior non-conforming use.

R. Gross requested plans that they may have been given to M. Fougere. Attorney Phoenix stated they had not given M. Fougere any plans and did not think it was relevant. M. Fougere knew the intended use of the building. Attorney Phoenix continued they purchased the property relying on what they were told. Discussion between R. Gross and Attorney Phoenix continued regarding the plans. D. Sandmann

stated the issue was that two years ago they had discussed Seacoast Family purchasing the house from Bethany Church and continuing use as a duplex.

Attorney Phoenix stated that in 2001, Bethany Church received Planning Board approval for two units which were used for their ministry, arriving travelers and homeless families in need. The building was originally approved as a duplex. M. Fougere called it a group home. They relied upon what they were told when they purchased the building in 2020 and spent a great deal of money on renovations. Now they would like to expand the building. When they purchased the building, it had been two apartments with two separate kitchens, and five bedrooms. In 2021, one kitchen was removed and it is five bedrooms.

Attorney Phoenix noted there are numerous documents in the file detailing the history of the church, including an expansion and other work that was done. There was very little in the file about Seacoast Family Promise. J. Shephard had questioned the use of the building and submitted a letter to the Board of Selectmen in May or June of 2021; nothing has happened since that time. Attorney Phoenix stated that since the Board of Selectmen did not take any action, it must be a permitted use as a group home.

Currently there are five bedrooms which accommodates 14 individuals and one staff member. They would like to expand to 10 bedrooms: 8 families and two staff members, or a total of 28 family members and two staff. P. Frew-Waters explained that currently it was either five families or 14 individuals, whichever happens first.

The Board had also requested what happened in similar locations in Town. Fairweather Lodge (Seacoast Mental Health) has been operated as a group home since 1986; in 2004 it was deemed as a rooming house—there were no Variances or similar relief in the file. Greenland Community Church: received a Special Exception in 2016 for overnight guests four to five times a year, traditionally staying up to one week. Attorney Phoenix noted this was done for Seacoast Family Promise. The Special Exception was granted under Article III – Establishment of Districts and Uses, Section 3.6 – Table of Uses, Item B, 4R; Attorney Phoenix noted there must have been a zoning change. The Special Exception for the Church was granted with similar hours—people could not be in the building between 7:00 am and 5 pm. R. Gross noted he was on the Board at the time and people were only there a few times a year. Attorney Phoenix noted that at that time there were a number of churches involved and people would move from location to location. He continued that did not work well due to COVID; the current model is not meeting the demand and the reason for requesting expansion. New Generations: A building addition was approved by the Planning Board in 1997, 2005 and in 2009 Variances were granted for parking spaces within the front yard. Variances and/or Special Exceptions could not be found for the use.

D. Rugg was not comfortable with the burden on the Town and read a portion of P. Frew-Waters impact statement (copy on file). Attorney Phoenix clarified that 480 Breakfast Hill Road could not be a permanent residence; the goal was to have people out and on their own. Children would attend school in the town where they originally resided when the family became homeless. Families would have the choice to enroll the children in the SAU 16 schools because their legal address was the Seacoast Family Promise building in Exeter. Attorney Phoenix further explained the only way a family would be a burden on the Town was if they lived in Greenland at the time they became homeless or when they moved out of the Seacoast Family Promise building and moved to Greenland. Then they would be a resident of Greenland. D. Rugg responded he was concerned about the court system and their decisions: if you sleep there, you become a resident. P. Frew-Waters further explained people are there for overnight hosting as part of the program. They cannot be considered residents because they stayed overnight;

they are legally residents of 27 Hampton Road, Exeter. D. Rugg countered that if a judge disagreed, they could become residents.

R. Gross noted that when a Variance was granted, it was on the land. If they decide to sell the property, it would be a large home and a burden on the Town. Attorney Phoenix stated that the Zoning Board had the ability to put reasonable conditions on any approval. They were happy to stipulate to the tax burden as well as if the building were sold or the use changed. R. Gross stated there was an option of impact fees from the Planning Board.

Fairweather Lodge and New Generations were briefly discussed. R. Gross noted they were much smaller with five bedrooms and four bedrooms. Attorney Phoenix noted that the potential burden on the Town was close to what they were requesting.

Attorney Phoenix stated that the building was not purchased with the intent to expand in the future. After they purchased building, there was the realization that the need and demand outpaced the ability to provide the services.

Attorney Phoenix mentioned the concerns neighbors had at the May meeting. They were unaware of any complaints about toys in the yard or trash. P. Frew-Waters is more vigilant about those concerns now they have been brought to their attention. There was also a concern about the proximity to the neighbors. Attorney Phoenix pointed out that the building is 80 feet from the common property line to the nearest neighbor. There is a fairly healthy stand of trees, including evergreens, between the building addition and the nearest neighbor. They scheduled a meeting with the neighbors; the concession was to turn the building 90° so there are fewer windows facing the neighbor.

Attorney Phoenix read an email from M. Fischera to M. Fougere on June 21, 2020 (copy on file). The email from M. Fischera specifically states that three or four families, or a total of 14 people, could be brought in at one time. This is currently being done and they are requesting an expansion. M. Fischera added that when they purchased the house, they wanted to make sure multiple families could stay there. They would not have purchased the building without the 'go ahead' from M. Fougere that multiple families could stay there. R. Gross noted it was a non-conforming use at the time and group homes are not allowed. P. Frew-Waters stated that Bethany Church had hosted families from Seacoast Family Promise two consecutive weeks in a row, between six and eight times a year, for a number of years.

Attorney Phoenix reviewed the Variance requirements (copy on file), adding it would be with stipulations about the number of rooms, the number of families, the number of occupants, and the tax burden on the Town. The building is connected to City water; the water line runs along the back of the property to the Church.

L. Schwab questioned the term 'group home'. Their application used that term; an email from M. Fougere in June stated he had a discussion in 2020 and informed them that 'group homes were not permitted, in most cases a Variance would be required from the ZBA'. L. Schwab traced the term 'group home' back to 2020. He asked if it was used before that by Bethany Church or other party. It was Attorney Phoenix's understanding that M. Fougere and the Town's attorney at the time were satisfied the use was a group home and was the same, or similar in nature, to what the Church had done for the better part of 20 years. M. Fougere initially used the term 'group home'. L. Schwab stated it was an undefined use in the Zoning Ordinance and was not necessarily illegal. It means it is non-conforming and a Variance is needed. Attorney Phoenix noted that was their position and agreed with R. Gross that

M. Fougere did not want to use 'multi-family' even though that is a defined term. L. Schwab hoped that the Planning Board would address and codify group homes for the next Town Meeting. L. Schwab noted that the use was not that different from a bed and breakfast which is allowed with a Special Exception. He felt the requested use was similar to others that required a Special Exception.

C. Hussey asked their definition of 'temporary': how long would families be living there. P. Frew-Waters explained that each family is looked at individually (some have greater hurdles than others). The average time in the program is from three to six months. The average length of stay is approximately 80 days for a family. It depends on different circumstances.

S. Gerrato was interested in how the Board could help and protect Greenland at the same time. He added that it 'was nailed down' and the Board could move forward.

R. Gross questioned 'hardship'. They proved, and stated to him, that they purchased the house to do as it was. A lot of money was spent to make code. The hardship had nothing to do with buying it for a particular reason and now they could not do what they wanted to do when they bought it; the hardship was for a general issue: there is a housing shortage for many families. R. Gross was not sure he agreed with the hardship; it was not related to the house. Attorney Phoenix responded hardship was easier when talking about a dimensional variance; it is a little more nuanced when discussing a use Variance. He felt it was proper to consider their situation: buying a property that could support a certain number of families and/or individuals in 2020 believing that would be sufficient to meet the need, when it was not. SFP purchased the building and has received funding from federal programs as well as individual donations. There is a building on a large lot that does not suit the current demands. Attorney Phoenix continued that given the circumstances, it was a special condition that entitles them to a Variance.

Discussion continued with R. Gross addressing hardship. Attorney Phoenix stated it required the Board to stretch itself a bit and balance what they are requesting vs. the effect on the public and neighbors, which they felt was negligible at best. R. Gross stated that the Variance goes with the building. Attorney Phoenix countered that they agreed to a stipulation that if the use were to change or it was sold, the Variance ends; it would be a deed restriction.

D. Sandmann opened the hearing to public comments. Frank Hansler, 542 Portsmouth Avenue: Believed the building could be returned to its original status. He was also concerned about where children could and could not go and used the contaminated stream as an example. This was a fragile piece of property. Granting the Variance could hurt the Town. He did not think it was a safe property for temporary residents; it could be a dangerous property. C. Hussey reminded those present that parcel was mixed use and there could be apartments on the top floor and retail on the bottom. He felt individuals would be protected just as well as they are now; the area needed to be better marked or fenced off.

Bob Krasko, 11 Portsmouth Avenue: Questioned who was paying for this. Attorney Phoenix responded that the Town was paying for nothing. Funding is through donations and federal programs and grants. People living there will be homeless and will not be paying rent. L. Schwab stated that when the individuals were back on their feet, they would be paying rent somewhere.

Debbie Huebner, 10 Seavey Way: Disputed the tree line and evergreens between the proposed expansion and the abutting neighbor on Seavey Way. Noted there were people on the property at 480 Breakfast Hill Road at different times. Attorney Phoenix responded that they could go in at 5:30 p.m. and had to be out by 7:30 a.m. P. Frew-Waters noted that Bethany Church had youth programs at

different times. D. Sandmann stated it needed to be clear to the families when they could arrive and enter the building. Staff and cleaning people may be there during the day.

Bob Huebner, 10 Seavey Way: Stated they supported the two-family home as intended. They were concerned about the expansion; there are people hanging out on the property and children were not supervised.

Judy Rivaïs, 3 Berry Farm Lane: Trash is in her woods, toys are by the street and people are there at other times. She also voiced her concerns about water.

There being no further comments, D. Sandmann closed the public hearing and returned to the Board.

MOTION: S. Gerrato moved to grant the Variance for 480 Breakfast Hill Road (R1, 9) to allow the expansion of a non-conforming use: a group home serving homeless families, with the conditions of protecting the Town: only people residing in Greenland when they become homeless may attend Greenland School. There was not a second.

MOTION: L. Schwab moved to grant the Variance for 480 Breakfast Hill Road (R1, 9) by Seacoast Family Promise, a non-profit organization based in Exeter, New Hampshire, be granted subject to the following conditions: (1) submit a definitive site plan for approval by the Greenland Planning Board; (2) design and implement a new sanitary sewer system for full occupancy loading; (3) include in the site plan a provision for a secured storage shed for the night time storage of toys and other items; (4) provide year round visual screening in the form of evergreens (arborvitae) on its eastern border of the Sewall Meadows subdivision; (5) obtain an agreement with the adjacent Bethany Church for the permanent on site parking of all vehicles used by staff and occupants of the Joshua House group home and on property owned by Seacoast Family Promise. Second – D. Sandmann

Discussion: L. Schwab explained that on a map seen earlier, cars were parked on Church property as well as the 3-acre SFP property. Attorney Phoenix stated that an adequate number of parking spaces on SFP property has been provided by the engineer. S. Gerrato noted that many of the conditions listed by L. Schwab would be handled by the Planning Board.

AMENDED MOTION: D. Rugg moved to amend the motion by adding the following: any prior Variances become void with granting this Variance, the sale of the property terminates this Variance, and the Variance be recorded at Rockingham Registry of Deeds. Second – S. Gerrato

Discussion: D. Rugg wanted SFP to stipulate that any educational costs would be paid by their organization. Attorney Phoenix stated that they would be attending school in the town they lived in or Exeter unless they were Greenland residents. L. Schwab was concerned about the wording “the sale of the property terminates this Variance”. If SFP sells the property to another company running a similar business, the Variance would be null and void. The wording would need to be changed before L. Schwab would vote in favor and suggested: the sale of the property to a use converting the use would cause it to be null and void. D. Rugg did not agree, stating whoever buys the property comes back for another Variance. J. Shephard asked if the amendment meant the property would revert back to a two-family if the Variance became null and void. D. Rugg agreed that was the intent. C. Hussey clarified if it was a change of the use the Variance would be null and void.

AMENDED MOTION: D. Rugg moved to amend the motion by adding the following: any prior Variances become void with granting this Variance, the sale of the property terminates this Variance, and the

Variance be recorded at Rockingham Registry of Deeds. Second – S. Gerrato; roll call vote: S. Gerrato – yes, R. Gross – no, D. Rugg – yes, L. Schwab – no, D. Sandmann – no (two in favor, three against). AMENDED MOTION FAILED

MOTION: L. Schwab moved to grant the Variance for 480 Breakfast Hill Road (R1, 9) by Seacoast Family Promise, a non-profit organization based in Exeter, New Hampshire, be granted subject to the following conditions: (1) submit a definitive site plan for approval by the Greenland Planning Board; (2) design and implement a new sanitary sewer system for full occupancy loading; (3) include in the site plan a provision for a secured storage shed for the night time storage of toys and other items; (4) provide year round visual screening in the form of evergreens (arborvitae) on its eastern border of the Sewall Meadows subdivision; (5) obtain an agreement with the adjacent Bethany Church for the permanent onsite parking of all vehicles used by staff and occupants of the Joshua House group home and on property owned by Seacoast Family Promise. Second – D. Sandmann

AMENDED MOTION: R. Gross moved to amend the motion to limit the maximum number of occupants to 20 plus two staff. Second – S. Gerrato

Discussion: L. Schwab requested it be increased to 22 plus staff. Attorney Phoenix stated they would not proceed with 20 occupants. It did not make sense and did not meet the need. They would look at an RCIM District development; this was a very modest request. C. Hussey disagreed with R. Gross. The number of rooms will increase and the building will be sprinkled. He would stay with the number of 30 occupants including staff. He did not agree with reducing the number due to the need. S. Gerrato withdrew his second to the motion. He agreed they should be allowed 28 occupants plus two staff.

MOTION: L. Schwab moved to grant the Variance for 480 Breakfast Hill Road (R1, 9) by Seacoast Family Promise, a non-profit organization based in Exeter, New Hampshire, be granted subject to the following conditions: (1) submit a definitive site plan for approval by the Greenland Planning Board; (2) design and implement a new sanitary sewer system for full occupancy loading; (3) include in the site plan a provision for a secured storage shed for the night time storage of toys and other items; (4) provide year round visual screening in the form of evergreens (arborvitae) on its eastern border of the Sewall Meadows subdivision; (5) obtain an agreement with the adjacent Bethany Church for the permanent onsite parking of all vehicles used by staff and occupants of the Joshua House group home and on property owned by Seacoast Family Promise. Second – D. Sandmann; roll call vote: S. Gerrato – yes, R. Gross – no, D. Rugg – no, L. Schwab – yes, D. Sandmann – yes (three in favor, two against). MOTION CARRIED

2. Approval of Minutes

D. Rugg noted that alternates serve a three-year term on the Zoning Board. The minutes will be corrected to read*C. Hussey as an alternate, term to expire March 2025*. The Board discussed verifying the terms for alternates.

MOTION: S. Gerrato moved to approve the minutes of Tuesday, May 17, 2022, as amended. Second – D. Sandmann; all in favor. MOTION CARRIED

3. Other Business

D. Rugg stated that the Zoning Board must adopt Rules of Procedure. C. Hussey noted the Rules of Procedure for Zoning Board's was included in the Office of Strategic Planning's handbook. D. Rugg

suggested that S. Gerrato ask RPC for several sets of Rules of Procedure from other towns for the Board to review.

4. Adjournment

MOTION: R. Gross moved to adjourn at 8:15 p.m. Second – L. Schwab; all in favor. MOTION CARRIED

NEXT MEETING

Tuesday, July 19, 2022 – 6:30 p.m., Town Hall Conference Room

Submitted By: Charlotte Hussey, Administrative Assistant