

**Zoning Board of Adjustment
November 8, 2018 6:30 PM
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH**

PRESENT: Melissa Saccento, Chairman; Jeffrey Kessler, BOS Representative; Ben Nelson, Scott McCoy, Alternate

ABSENT MEMBERS: David Lain, Vice Chairman; Beth Cassorla, Tim Beard, Alternate; Virginia Irwin, Alternate

VIDEOGRAPHER: Nancy Meyer, NCTV

STAFF PRESENT: Liz Emerson, Planning & Zoning Administrator

COMMUNITY MEMBERS PRESENT: Fred Fairfield, abutter; Dorothy Holmes Lyman, abutter; Elizabeth Decelle, abutter; Parker Dewey and Karen Dewey. Mary Ann Campbell, Sharon Gamache, RN; and Ann Campbell applicants; Steve Warner, Senior Director Community Services; owner.

CALL TO ORDER: Chairman Saccento called the meeting of the ZBA to order at 6:31 p.m. and introduced the sitting Board members. Chairman Saccento appointed Scott McCoy (Alternate) to sit for Board member David Lain.

MINUTES: none

ADMINISTRATION: none

NEW BUSINESS:

Case #1070: Developmental SVCS of Sullivan County (Owner) James Shannon, Packy Campbell, & Ann Campbell (Agents): request a Special Exception as provided for in Article II Section 207.2 of the Zoning Ordinance and specifically the provision to permit the use of a convalescent or rest home. The property is identified as Map 108 Lot 066 and is located at 135 Beech Street in the Single Family (R-1) Zoning District.

Chairman Saccento opened the hearing. She then acknowledged Ms. Emerson. Ms. Emerson read her Administrative Review into the record. She stated that as of now it conformed to all State regulations for a rest home. The staff had no concerns with the application.

Chairman Saccento acknowledged the agent, Ms. Ann Campbell and asked her to present her case.

Ms. Campbell of Campbell House, LLC stated that they were seeking to open an assisted living facility for individuals fifty five years of age or older at 135 Beech Street, Newport, NH.

Employees would be: Ann Campbell, Administrative/Office work; Sharon Gamache, RN, registered nurse of record; Elaine Fagan, purchasing and Patrick Campbell (also real estate broker).

Stephen Warner, Senior Director of Community Services (current owner) was introduced by Ms. Campbell. He would answer any additional questions for the Board.

Continuing, Ms. Ann Campbell stated:

- ❖ There would be two staff members per shift (7 am-3 pm; 3 pm-11 pm) and one staff person for the 11 pm-7 am shift. Ms. Campbell stated the number was in keeping with the state licensing requirements under He-P 804.
- ❖ The facility would be a self-evacuating facility. All clients would be able to evacuate to an alarm by themselves. She stated if a client was in a wheelchair the client would be able to self-evacuate independently using a walker or their wheelchair.
- ❖ The building is set up for this use; it used to be a group home.
- ❖ The building has five exits.
- ❖ It is a twelve bed facility (ten residential beds, two respite beds). Ms. Campbell explained the meaning and use of the proposed respite beds at the facility.
- ❖ There would be daily activities for the clients, including gardening. Residents would be allowed to have pets.
- ❖ We believe the traffic level will be lower than it was when previously used.
- ❖ It would be in keeping with its prior use. We would turn a building that was vacant into current use.

Chairman Saccento addressed everyone in the room and explained the ZBA format to them. She said that abutters would get a chance to speak. If an individual was not an abutter and an abutter would like to give them their time; that will be permitted. Everyone would be given a chance to speak. Chairman Saccento said that she would call on individuals to speak.

Chairman Saccento asked for questions from the Board.

Mr. Nelson addressed Ms. Campbell and asked her to explain about the proposed assisted living format, in particular the distribution of medication.

Ms. Sharon Gamache, RN spoke to the medical question. She stated that under the state guidelines the nurse will delegate to the staff members any medication that the residents might need assistance with. The resident would still be responsible for their own medications. Staff might give the residents reminders or assistance (example: for insulin). All distributions would be under Ms. Gamache's nursing license and she would insure that the individual assisting would be up to the state standards for assisting with medication. It would be her responsibility to make sure that all residents were safe concerning medications.

Mr. Nelson asked about residents that transitioned to needing full time care. Ms. Gamache stated that at that time their rest home would seek alternative care for the resident. The state guidelines are very clear on levels of assisted living, she explained to Mr. Nelson and the Board.

Mr. Kessler asked Ms. Emerson if this facility would need an occupancy permit. Ms. Emerson stated there already was one in place. The building inspector will go back out and do it again.

Mr. Kessler asked about the Health Inspector. Ms. Emerson stated yes; both the Building Inspector and Health Inspector will have to sign off on it. All code requirements will be met before the applicants occupy and convert the building to an assisted living facility.

Ms. Campbell informed the Board that there will also be two additional inspections by the State after the Town approves the facility. She listed the state departments that would do them.

Chairman Saccento addressed Ms. Campbell and stated that the floor plan showed ten rooms; Ms. Campbell had stated a twelve bed facility. Ms. Campbell stated that two rooms were large enough for two beds. Medicaid requires a two-bed room in the facility.

Referring to the map of the building, Chairman Saccento stated there were two bathrooms. She was corrected by Mr. Kessler who showed her a third half-bath.

Chairman Saccento asked why the applicants thought the future residents would not be driving. She was told that in most cases people going into assisted living facilities give up their vehicles.

Chairman Saccento asked if the applicants would be transporting the residents to doctor's appointments, etc. She was told yes.

Chairman Saccento asked how many parking places there were. She was told twelve parking spaces in the back as well as three visitor parking spaces in the front of the building. More cars could be parked along the side of the (long) driveway. There would be no need to park on the street. Ms. Emerson stated the parking spaces were shown on the map in the Board members packets.

Mr. McCoy addressed Ms. Emerson and asked her to explain the copy of the State of NH Department of Health and Human Services form included in their packet. Ms. Emerson explained it was the previous State approval for the building to be a group home. When asked, Ms. Emerson clarified for Mr. McCoy that it was an eight bed group home. Ms. Emerson stated the building was made for ten bedrooms; two can be double occupancy. Mr. McCoy stated, for clarification, that they were making use of all the existing space. There would be no renovations. Ms. Emerson agreed with Mr. McCoy.

Chairman Saccento addressed Ms. Campbell and asked if they were planning to cut down any existing (screening) vegetation. She was told no, but they were planning on doing some landscaping to the property.

There were no further initial questions from the Board.

Chairman Saccento addressed the public present and stated the Board would hear from any abutter in favor of the case.

Mrs. Karen Dewey addressed the Chairman and began speaking.

Chairman Saccento asked if she was an abutter speaking in favor of the facility. Mrs. Dewey said no. Chairman Saccento asked her to wait.

Chairman Saccento asked if there was someone who would like to speak in favor of the applicants.

Mr. Steven Warner, Senior Director of Community Services (current owner of the house) asked the Chair if he could speak. Chairman Saccento acknowledged him to speak as one of the agents.

Mr. Warner, current owner, addressed the Board and gave the history of the building and its use. He explained it was opened by the State as an intensive care facility when the Laconia State School closed. When his organization ran the facility they were required to bring the residents into the community, many times; 30 hours a week. They would not get paid (by the State) if they did not bring the residents out into the community. The home was used to service individuals with profound disabilities for a long time. Mr. Warner explained over this time the demographics of the population were changing and it was the reason for their closing the facility.

Mr. Warner said it had been a very different facility than what the applicants were proposing.

Continuing, Mr. Warner stated his organization cannot keep the house vacant. It is costing them money with no return on the dollar. The two options were: to sell it or begin using the facility again themselves.

Mr. Warner spoke in favor of the community taking care of the senior population and using the building in the medical model it was intended for. He wanted the Board to know, as they considered the case that his organization will be doing something with it and one option would be to sell it to the applicants for an assisted living facility.

Mr. Warner told the Board they would be seeing him again (if the Special Exception was not approved). He corrected himself, saying that he would not need to go before the ZBA to reopen it with the state.

Chairman Saccento thanked Mr. Warner. She then acknowledged Mrs. Karen Dewey.

Referring to a posted map of the area, Mrs. Dewey addressed the Board. She identified the property at 135 Beech Street as well as the neighboring lots. Mrs. Dewey stated that she was speaking for the group of abutters. Mrs. Dewey acknowledged that she was not an abutter.

Mrs. Dewey gave the history of the area as a subdivision created by Al Gauthier.

She gave a listing of the properties in the subdivision, which totaled six houses.

Mrs. Dewey explained the deed restrictions on their properties.

Mrs. Dewey explained the streets leading to their neighborhood.

Mrs. Dewey stated they had had no voice when the group home was built and occupied to carry out the state plan of finding homes for residents of Laconia State School.

Mrs. Dewey stated that the proposed use is a business which went against everyone else's deeds.

Mrs. Dewey listed difficulties that the neighbors have had when the (closed) group home was there.

Mrs. Dewey stated the neighborhood has had a respite of three years with the closing of the group home.

Mrs. Dewey addressed the Board and stated she knew the ZBA had three questions they had to answer to decide what happens with the case. She continued, saying she and the neighbors believe:

1. *it will be injurious and detrimental to the neighborhood,*
2. *it will be contrary to the public health, safety and general welfare by use of the undue traffic congestion or hazards that posed a risk to life or property*

Mrs. Dewey concluded by giving additional reasons she felt the facility should not be allowed in the neighborhood.

Mrs. Dorothy Holmes Lyman, abutter, expressed her affection for the neighborhood. She told the Board of the changes when the initial group home was built and used. At eighty years of age, she was not anxious to see it happen again.

Mr. Fred Fairfield stated he concurred with Mrs. Dewey and Mrs. Lyman. He said that he was angry that the State allowed the group home to be built without neighborhood input or knowledge. He is an advocate of the elderly, but not if it affects the elderly in his neighborhood. For clarification, Mr. Fairfield stated he was in opposition to the assisted living facility.

Mrs. Elizabeth Decelle described an incident with a large truck on Beech Street hill for the Board members. She explained that extra traffic on the hill concerned her.

Mrs. Dewey stated that they all understood that the Pathways organization had to use the building or sell it. But that is not the neighborhood's problem. The house was built twenty three years ago without anyone asking how the neighbors felt about it. She did not know whether zoning would have allowed the building to be built (in their R-1 District) without the State's assistance. She did not believe it would have been allowed back then. Ms. Emerson stated that Eleemosynary is still a permitted use.

Chairman Saccento addressed the Board and asked if they had questions of the abutters.

Mr. Kessler asked if everyone at the meeting had covenants on their properties. Mrs. Dewey said yes and that the properties with covenants ended at the 135 Beech Street property.

Chairman Saccento addressed Mr. Fairfield, abutter, and stated that his property did not have a covenant. She was told Mr. Fairfield did not (have a covenant).

Mr. Nelson asked Mr. Fairfield how much traffic he got going into the trailhead of the Town Forest. He was told that the trailhead to the Town Forest was on Cheney Street.

Mr. McCoy stated Mr. Fairfield said the land (135 Beech Street property) was given away. He asked him to explain. Mr. Fairfield explained the previous owner sold the 135 Beech Street lot before he foreclosed on the land (that is currently owned by Fairfield).

The ZBA members inquired about any Planning Board cases to subdivide the land. Ms. Emerson stated she would have to check the files.

There was a discussion on the historical aspects of the land, its sale, purchase and use between the Board, Mr. Warner and Ms. Emerson.

Mrs. Dewey stated historical information from the initial group home.

Chairman Saccento acknowledged Ms. Ann Campbell. Ms. Campbell stated that their proposed population are already members of the community and want to continue being members of the community. They will be people that want to go to the Senior Center, to the Fitness Center, out to eat, etc. She acknowledged it would create some vehicle traffic but it would not be eighteen wheelers, rather a minivan. Any deliveries would be done using a vehicle the size of a Schwan truck. The employees would be purchasing and self-transporting most of the food.

The kitchen was residential not commercial. The facility would serve three meals a day. The applicants had plans for a minivan for transport of residents.

Ms. Campbell stated she did not know how to allay the fears of the neighbors. She understood they did not get a voice previously. The applicants were trying to provide a service to the community. It was about having people who wanted to stay in Newport, stay in Newport. To live in a home-like environment and not an institution. We feel it is an ideal facility usage because we can use the facility as a home.

Ms. Campbell concluded, saying Mr. Warner said it had to be used. Their usage of the facility (assisted living) was going to be less disruptive to the neighborhood and community. It would be productive; residents would enjoy being there and want to be part of an assisted living community.

Chairman Saccento said visitor's traffic had been brought up. She gave the example of Sunapee Cove and the number of resident and visitor vehicles. Chairman Saccento asked if there was enough parking for visitors and staff. She was told there would be two staff per shift. Residents with vehicles would use a few other parking places.

Ms. Campbell stated that most of their activity would be at the rear of the house (gardening). She explained their plans to the Board.

Chairman Saccento acknowledged Mrs. Holmes Lyman. Mrs. Lyman stated that the facility would change her life a lot. She did not want her neighborhood to change.

Mr. McCoy addressed Mrs. Lyman and asked if there was any accommodation the applicants could make that you (neighbors) would accept to have the facility there.

When asked, he repeated his question. He was told no. Addressing the neighbors he stated, for clarification, that they hoped the Board would deny the Special Exception. He was told yes.

Mr. McCoy said he wished someone had asked him for an accommodation in a previous, personal instance.

Mrs. Dewey addressed the Board and stated that they had all made Mr. Warner and the workers at the previous facility aware of how unhappy they were. They had contacted the police department as well as the facility administrators and workers.

Mr. McCoy asked Mrs. Dewey if they ever got any positive response or change from the previous facility and employees. Mrs. Dewey said that Mr. Warner was wonderful and the agency was very receptive when there were complaints. They had addressed their staff about the complaints.

Mr. Fairfield asked if the ZBA would decide the case at the meeting (November 8, 2018) or would the abutters have to wait. Chairman Saccento stated the case would be decided at the November 8, 2018 meeting unless the Board needed additional information not available to them.

Chairman Saccento acknowledged Ms. Campbell. Ms. Campbell stated that the proposed assisted living facility would not be staffed at the same level as was previously. She stated that three of the employees were at the meeting. Within a twenty four hour period there would be five staff members on the property. She explained the patient/staff ratio for assisted living facilities to the neighbors and Board.

It will not have the same amount of traffic and it is a family owned business.

Mr. McCoy asked the Chair and Ms. Emerson how the Special Exception came to be for this property. He asked if it always existed. Chairman Saccento stated it is allowed in the R-1 Zoning District. At some point the Town added it in (to the Zoning Ordinances). Ms. Emerson agreed, although she did not have a date.

There was a general discussion among the Board members concerning Special Exceptions in R-1 Districts in Newport.

Chairman Saccento addressed Mr. Warner and stated if his organization had to sell it because the ZBA denied the Special Exception, there would need to be extensive renovations to the building. Mr. Warner explained why he could not sell to a single family; the square footage was too much. The building was made to serve a community residence with a population like this (assisted living facility).

Chairman Saccento asked if the Fire Chief and Police Chief are okay with the road (access). Ms. Emerson stated yes.

Chairman Saccento asked if there were further questions from the Board.

Ms. Campbell was acknowledged. Ms. Campbell stated that the Fire Chief had been up to the property and inspected it. He had done yearly inspections of the property; sprinklers, safety systems, etc. He had had no problems with the usage. The Fire Department could get all emergency vehicles up to the property. The Fire Chief is aware he will have to sign off on the State required licensing for it.

Chairman Saccento said that the floor plan the applicants had provided showed the sprinkler system and evacuation layout.

Ms. Emerson added that the previous State permit that was in the Board packets had been signed by Fire Chief Conroy as well. Mr. Kessler stated Fire Chief Conroy would have to sign off on the proposed new facility. Ms. Emerson agreed with Mr. Kessler.

The Chair asked if there were additional comments from the public. There were none.

Chairman Saccento asked if there were additional comments from the applicants.

Chairman Saccento stated that once they were in Deliberations they would not be speaking with the public present.

Ms. Campbell addressed the Board and said she wanted to remind the Board of what Mr. Steve Warner had said. The facility would be used. It came down to the neighbors having a choice of how it would be used.

Ms. Campbell stated, "We ask that the Board approve the Special Exception so we can have people live there who wants to be a part of the Newport community. We will use it at a lower level of staffing and traffic than what it would be if it was a different type of facility." She thanked the Board.

Mr. Warner stated he wanted to thank the community for supporting the population that came out of Laconia (State School). It has been a wonderful experience for them to live among the community. Many individuals they served lived and died at the home (135 Beech Street) and they felt a great connection to their community.

Chairman Saccento asked if there were follow-up questions from the Board. If not, she requested a motion to go into deliberations.

On a motion by Mr. Nelson, seconded by Mr. McCoy; ***the Board voted to go into Deliberations. The motion passed 4-0-0.***

Zoning Board of Adjustment Special Exception

Chairman Saccento addressed the Zoning Board members and asked if they had any further discussion.

Mr. Nelson told the Board that he plowed the McCoy Home (on the Newport/Claremont Road). In the ten years he had been doing it, there had been one resident who had a car. He didn't want to give it up, the car just stayed there. He explained the use of the small staff at the Home (two employee cars). He stated they bought their groceries at the store; it is cheaper for a facility of this size. The biggest trucks to the property are for oil delivery. Mr. Nelson said there were visitors.

He agreed with the abutters that Beech Street is a nasty hill.

Continuing, Mr. Nelson stated that it (135 Beech Street) is the perfect building, and the lot is perfect. One criterion for the ZBA is Standard C. Mr. Nelson, Mr. McCoy and Chairman Saccento all questioned that standard, whether it meant previous (open facility) or current (vacant). They held a general discussion on the true meaning of Standard C. with traffic. They questioned traffic accidents (unknown) and the lack of a traffic study.

Mr. Kessler said what the ZBA heard was five employees within a twenty four hour timeframe, a visitor or two, maybe a delivery. He reminded the Board members that UPS trucks could go to any of the houses with that size truck.

He also reminded the ZBA members that the organization could subdivide it and put in a couple of homes. Those people might have a couple of cars and kids with cars. That would be the same amount of traffic.

If there is a problem with the condition of the road in winter, it is something the Town needs to address. As far as a streetlight, Mr. Kessler would ask the Town Manager about installing one. There was a general discussion with the neighbors about streetlights.

Mrs. Dewey began talking to Mr. Kessler about streetlights. Chairman Saccento stated the ZBA had broken their rules about talking to the public during Deliberations.

Mr. Kessler stated that Beech Street hill was not in the discussion. Mr. Nelson stated that oil and garbage trucks would be the largest vehicles that entered the neighborhood.

The Board discussed what was and was not allowed by Special Exception in R-1. Mr. Kessler stated convalescent homes were among those things permitted.

Mrs. Dewey interrupted, stating not in our neighborhood. Chairman Saccento reminded her that the parcel of land in question was not under any covenant restrictions. Mrs. Dewey agreed with Chairman Saccento.

There was further discussion among Board members on the minimal amount of traffic that would be created by the assisted living facility.

Mr. McCoy asked how the ZBA could satisfy the neighbors in attendance.

There was general discussion on the aspects that had been brought forward to the ZBA and whether they were pertinent to the case.

Mr. Nelson asked Chairman Saccento if he could ask a question of Mr. Warner. Chairman Saccento agreed.

Mr. Warner was asked if the property was being used now for parking. Mr. Warner stated they parked agency vans on the property that were used for day services (by Pathways).

Mr. Kessler asked Mr. Warner if there currently is traffic to and from the property. Mr. Warner stated yes, agency vehicles were parked there that were used for day services. Mr. Kessler stated that realistically the agency was using it every day. Mr. Warner stated staff would often drive to the property and get a vehicle (van) that is used for day services Monday-Friday. Sometimes there would be two vans.

Mr. Nelson asked if the case is not approved, what would Pathways use it for. Mr. Warner stated it has not been vacant all three years. He therefore would look to open it up with the State and put it back into use to serve the population that needs the services.

Chairman Saccento asked Ms. Emerson if Pathways would need approval from the Town if it used the building to serve developmentally disabled individuals or individuals with round the clock care,

Ms. Emerson stated it depended what they filed under the State. If it was Eleemosynary or Philanthropic Institution (charity), they would not have to come to the Town.

Mr. Kessler explained that they were before the ZBA because the land will be leased to owner/operator individuals and not to a remote company. The applicants don't own the property but they own the business.

Ms. Campbell corrected Mr. Kessler, stating Campbell House, LLC would own the property (if the approval was given).

Mr. Warner added the property has been on the real estate market for one year.

Chairman Saccento asked the Board if there was anything further. Mr. McCoy stated the question was whether the situation would get better or worse with an approval of the Special Exception request.

Mr. Kessler restated that any deficiencies in the road would need to be addressed by the Town and not the ZBA. There was a general discussion on this and the traffic. The Town wants a building that it could tax. Any way it is used, there will be additional traffic.

Chairman Saccento stated she understood the frustration of the abutters with the building on the property, but it is not in the ZBA purview. The State did that (construction).

There was a general discussion on Woodlawn and the duplex that was constructed for independent living on Pine Street using a Variance and Special Exception. Traffic and potential traffic as well as road width (further down on Beech Street) was again discussed.

Mrs. Dewey was acknowledged. She stated that three potential private homes will have a different investment than a facility will have.

Mr. Kessler addressed Mrs. Dewey and stated it would not be a corporation, it would be the three ladies present in the back row (who would own the facility).

Mrs. Dewey interrupted and asked if they would be living there.

There was a general discussion on the case.

The Board contemplated Standard C and traffic. They discussed whether they should consider the Standard from the initial usage of the building as a group home or from three years ago when it was vacant.

Mr. Warner stated that the previous operating home had four staff during the day and two at night (twice what is being proposed). He reiterated that each resident that lived at the home had to spend 20-30 hours a week in the community or the agency would not get paid by the State. That was why they had four staff on during the day.

Ms. Campbell said her staff would be half of the previous staff.

Chairman Saccento thanked them for the clarification.

The Board again discussed traffic and cars driven by residents.

Chairman Saccento called for a motion on the three standards.

Standard A

On a motion by Mr. McCoy, seconded by Mr. Nelson:

The proposed use will not be detrimental to the overall character of the neighborhood by reason of undue variation from the nature of other uses in the vicinity including design, scale, noise and odor. ***Standard A has been met. The motion passed 4-0-0.***

Standard B

On a motion by Mr. Kessler, seconded by Mr. McCoy:

The proposed use will not be injurious, noxious or offensive or in any way detrimental to the neighborhood. ***The motion failed 2-2-0 (Nelson, McCoy voted no).***

Standard C

On a motion by Mr. Kessler, seconded by Mr. McCoy:

The proposed use will not be contrary to the public health, safety and general welfare by reason of undue traffic congestion or hazards that pose a risk to life and property or be unsanitary or create unhealthful waste disposal or unhealthful conditions. In discussion, Chairman Saccento stated she did not believe the traffic would be increased. It is an existing facility. Would traffic overall change? You can't compare the three years it was vacant with the proposed use. We have to compare the twenty three years to the proposed use.

The motion failed 2-2-0 (Nelson, McCoy voted no).

Mr. Nelson stated he felt bad because it was the perfect use for the building.

Chairman Saccento addressed the applicants and stated the Special Exception failed. The applicants had thirty days to appeal the decision if they feel the Board has done something improper or illegal. She stated they might want to speak to attorneys about that.

The recording secretary addressed Chairman Saccento and asked for a motion to memorialize the decision of the ZBA.

On a motion by Chairman Saccento, seconded by Mr. Kessler; ***the Board voted to approve Case #1070 requesting a Special Exception as provided for in Article II Section 207.2 of the Zoning Ordinance to allow the use of a convalescent or rest home. The property is identified as Map 108 Lot 066 and***

located at 135 Beech Street in the Single Family (R-1) Zoning District. Chairman Saccento called for a vote. *The motion failed 2-2-0 (Nelson and McCoy voted no).*

CONTINUED BUSINESS: none

On a motion by Chairman Saccento, seconded by Mr. McCoy; *the Board voted to adjourn at 8:11 p.m. The motion passed 4-0-0.*

Respectfully submitted,

Maura Stetson, Scribe

Approved on: November XX, 2018