

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JUNE 1, 2016

MEMBERS PRESENT: Paul Maskwa, Chair, Matt Keiser, Vice Chair, Donald Routhier, John Kennedy and Bill Griffith, Alternate.

MEMBERS ABSENT: Roland Dumont

STAFF PRESENT: Shanna B. Saunders, Director of Planning and Community Development and Darcy Moore, Code and Assessing Clerk

The meeting was called to order at 7:02 pm.

Maskwa appointed Bill Griffith as a voting member of tonight's meeting.

1) APPROVAL OF THE MINUTES OF THE MEETING OF APRIL 6, 2016 AND MAY 4, 2016.

Motion: Keiser moved to approve the minutes of the meeting of April 6, 2016.

Seconded by Griffith. Motion carried with a 3-0-2 vote with Kennedy and Routhier abstained.

Motion: Keiser moved to approve the minutes of the meeting of May 4, 2016.

Seconded by Griffith. Motion carried with a 4-0-1 vote with Kennedy abstained.

2) OLD BUSINESS

A) Edwin Aviles is seeking a variance from Section 6.B.1.a of the Zoning Ordinance to increase a nonconforming use and a variance from Table 5.A.1 of the Zoning Ordinance to build within setbacks on property located at 3 Woodside Commons, in the Commercial Industrial (CI) District, Assessor's Map 84, Lot 3M, ZBA #05-2016.

Motion: Keiser moved to remove the item from the table.

Seconded by Kennedy.

Motion carried with a 5-0 vote.

Saunders reviewed her memo (see attached) and stated that the item was pending submittal of new information, including the location of the deck in regards to property the line. Stated there is now enough information to make a decision.

Routhier asked if there are two applications and if the Board is acting on both.

Maskwa stated the Board will act on both. Stated that the second one is on new business and in the packet there is guidance from the City's legal counsel.

Routhier asked which the Board is acting on and what the difference is between the two.

Maskwa stated the first application is for a building permit that was denied for 3 Woodside Commons, for a deck that was turned into a smoking room or roof and siding put on it. Stated the second is for 8 Woodside Commons and is for a variance to increase the size of a trailer. Stated the first is for a permit that was denied from the section of the Ordinance for non-conformity. Stated drawings have been submitted showing the deck with the covering and on the back of the page is noted the exact location of 3 Woodside Commons in relation to the deck.

Routhier stated the first issue is for a variance for non-conformity and a structure within setbacks. Asked if this is what is being addressed and if separate votes will be taken.

Maskwa stated yes two votes on first.

Public hearing reopened 7:10 pm.

Edwin Aviles owner of the mobile home and mobile home park addressed the Board and spoke on his request.

Keiser inquired what the reason you chose to enclose the porch is.

Aviles stated the deck already existed. Stated it was a door to the home, which was the primary reason to enclose.

Keiser asked if there was any consideration to adding it to the front door.

Aviles stated that there is an already existing deck on the front door.

Public hearing closed 7:12 pm.

Maskwa asked the Board to speak on the setback issue first.

Routhier stated the deck was not enlarged in anyway and has been existing for quite some time. Stated therefore the applicant did not encroach any further into the setback.

Keiser stated he is wrestling with using a deck versus an enclosed structure; from a practical stand point could this have been built anywhere else, where it would have been reasonable for a structure to exist.

Routhier stated it depends on where the doors to the house are. Asked if it was built on the other side is there any doors leading into the room.

Maskwa stated that as opposed to an ordinary wooden structure, it would be harder to rearrange the layout of a manufactured house. Stated he struggles with the extended period of time before grappling this because this was done in 2014 and the Board didn't get the case until 2016 because of delays. Stated agrees with Routhier the growth into the setback is not being increased, just adding a little to the top of the structure. Stated believes every time there is this situation it needs to come to the Board for a variance.

Keiser stated that as an abutter, when looking at this seeing a deck and seeing a structure is different.

Routhier stated there is a difference between a deck and a room; however the law makes no distinction between a structure and a room. Stated the original setback that was violated has not been violated any further by enclosing the structure.

Griffith stated that the last time the diagram was inaccurate. Stated that once the Board received corrected documents, he thought the Board would be all set.

Maskwa stated there is 7.5 feet from the edge of the structure to the setback and there is 40 feet from the front. Stated earlier the Board was worried about both setbacks as opposed to one.

Motion made by Routhier: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and I move that the request of Edwin Aviles for a variance from Section 6.B.1 of the Zoning Ordinance to increase a nonconforming use be GRANTED.

Seconded by Kennedy.

Motion carried with a 5-0 vote.

Maskwa stated that the second piece of the application is to expand a non-conforming use. Stated there is guidance on this from the attorney. Referenced e-mail dated May 31, 2016 from the City's Legal Counsel, Walter L. Mitchell (see attached). Stated after reading through the letter he finds it appropriate to require a variance.

Saunders stated that because this is for an addition the Board will need to speak specifically to this.

Maskwa asked if Saunders could explain the difference between the two votes.

Saunders stated the first vote was to allow for expansion into the setback. Stated now it is the expansion of a non-conforming use, per the Zoning Ordinance, referred to the second to last paragraph from Walter Mitchell's letter. Stated that for those reasons an expansion of the footprint of these mobile homes is an expansion of the use into the area that was otherwise not occupied. Stated this is a stick built addition onto a mobile home that was not a part of the original structure, should be looked at individually. Stated that to see if an expansion of a non-conforming use is appropriate should be looked at unit by unit, whereas structures built by mobile home manufacturers can be spoke about in general.

Routhier stated he feels strongly about this issue, but this is not a natural expansion and is a stick built expansion and he agrees with Saunders that this should be dealt with separately. Spoke to Laughlin being the expert on zoning law. Stated that the City Council is the legislative body that passed two Ordinances, one to only have a manufactured housing park in the manufactured housing district, stated Woodside Commons is not in the manufactured housing district and secondly that manufactured houses are only allowed in the manufactured housing district. Stated that it doesn't make any sense to have a manufactured housing park where the homes within the park are not allowed.

Maskwa referred to the attorney's letter, stated the conclusion down below says that Somersworth has a more restrictive Zoning Ordinance and it makes it appropriate to require a variance.

Routhier stated he didn't look at where the authority came from in the Zoning Ordinance. Stated he made leap of faith without looking at the law to see if it in fact said that.

Saunders asked that with the stick built addition you are in agreeance that the variance application is the way to go.

Routhier confirmed yes.

Griffith asked if the Board needs to have a public hearing on this.

Maskwa confirmed no.

Maskwa stated he is in favor of granting this piece, tempered by the fact that the Board will be looking at every stick built addition to every manufactured home.

Keiser stated it meets all 5 criteria, would be in support.

Motion made by Keiser: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and I move that the request of Edwin Aviles for a variance from Section 6.B.1.a of the Zoning Ordinance to increase a nonconforming use be **GRANTED**.

Seconded by Routhier.

Motion carried with a 5-0 vote.

B) Any other old business that may come before the Board.

None.

3) **NEW BUSINESS**

A) Edwin Aviles is seeking a variance from Section 6.B.1.a of the Zoning Ordinance to increase a nonconforming use on property located at 8 Woodside Commons, in the Commercial Industrial (CI) District, Assessor's Map 84, Lot 8M, ZBA #12-2016.

Saunders reviewed her memo (see attached) and gave an overview of property. Stated in the past the Board has found it appropriate to change units to today's size units. Stated it would be appropriate to make a motion to approve the variance for the entire park, all 9 units. Stated the park would not be able to expand without the variance. Stated however, the units could not be any closer to the property lines than what currently exists.

Public hearing opened 7:34 pm.

Edwin Aviles owner of the mobile home and the mobile home park addressed the Board and stated that there is a hardship. Stated this unit was very old and was removed and units of that size are not approved for the colder weather. Stated the abutter is Key Auto and he will not be encroaching any closer to Key Auto than the units that currently exist. Stated they are taking the precaution of asking to move this unit 5 feet to the left when facing the unit. Stated that the proximity to lot #9 created a fire hazard, by moving the unit there will now be 15 feet to the other units.

Keiser asked for clarity lot #8 is the third unit in on the right and you would like to move it to the left. Asked if currently it is no closer than 10 feet and you are not going to be encroaching any further.

Aviles stated going from a 12'x56' to a 14'x66'. Stated that if it is replaced in the exact location of old unit, the new unit would be right on unit #9. Stated that unit #9 is much closer to the setback. Stated that the application shows 30 feet to the Key Auto line to the new unit.

Keiser stated the required side setback is 10 feet and the drawing from the City shows it as 11 feet.

Aviles stated there's a wooden fence around Key Auto and is the boundary line.

Keiser asked in regards to unit #8, in your opinion how far was that from the Key Auto boundary line.

Aviles stated 30 feet.

Saunders added that the City is using outdated GIS database which hasn't been updated in several years, as no survey was submitted.

Keiser asked will the new unit encroach on the setback, in your opinion.

Aviles stated no. Stated doing an improvement, right now unit #9 and unit #8 there was 8 feet between them. Stated that by moving five feet gives thirteen feet between them, which is much safer.

Routhier asked is this brand a new manufactured housing unit.

Aviles confirmed that no the unit is from Hillcrest Estates in Portsmouth. Stated the unit is a HUD approved 1977 home in excellent condition and there is the nicest layout in the home that he has ever seen.

Routhier asked if Aviles if he is moving any other home.

Aviles stated at this point no. Stated there are two units' not on pads and he is hoping to put pads under them.

Saunders inquired which units.

Aviles stated unit #7 does not have a pad.

Routhier asked how many units.

Aviles stated there are 9.

Routhier stated there is a distinction between a double and a single, asked if Aviles has doubles.

Aviles stated there are 5 double wide units, three are 26'x58'.

Routhier stated so there are 5 double wide and 4 single wide.

Aviles confirmed yes.

Public hearing closed 7:46 pm.

Routhier stated the need to examine the nature of the nonconformity. Stated that we all agree it is nonconforming. Stated that if the Ordinance was not in there for nonconforming uses in regards to mobile homes, then Aviles would not need a variance. Stated that because the generic language of the Ordinance, Walter Mitchell interprets this to need a variance. Stated when the City Council adopted the Ordinance they were not speaking to manufactured housing in mobile home parks. Stated that the City was complying with the law, but Somersworth only allowed manufactured housing in certain districts, but that would not apply to the parks themselves.

Motion made by Routhier: I move that due to the nature of Mr. Aviles' park that a variance is not needed and that he may enlarge as long as it does not violate the setback requirements of that zone.

Saunders stated she would disagree per Walter Mitchell's memo (dated May 31, 2016, see attached).

Maskwa stated the memo says very clearly that this is not how Legal Counsel feels. Stated he does agree with previous discussions and that the Board needs to encourage and make it easy to facilitate the upgrade of the parks. Stated Mr. Aviles would like to upgrade to a 14'x66' mobile home which would be an upgrade and the Board is encouraging owners to upgrade.

Routhier reiterated his motion.

There was no second to the motion.

Motion failed.

Maskwa stated that an improvement of the park would be a great thing to happen and this meets with all of the criteria. Stated the Board should do this in a manner that will not require Mr. Aviles to come back for all of the units.

Routhier stated Aviles has a hybrid park, with single and double wides, asked how would this be addressed.

Maskwa restated the guidance from the Legal Counsel. Stated there are safety issues putting this together. Stated if all 9 units were made into double wides it could not be safe. Stated this being a hybrid makes it more difficult.

Keiser asked if the mobile home park is in the right zone are there density requirements.

Routhier confirmed yes there are only a certain number of homes allowed.

Saunders stated that the density would not change, but the covered impermeable surface would change.

Keiser confirmed yes that is true.

Routhier stated Mr. Aviles is never going to have more than 9 units. Stated the 5 double wides would be replaced with doubles and for the 4 single wides he would like to move forward to approve up to 14'x70'.

Motion made by Routhier: After review of the application, the file and all of the information presented to the Board, I feel that all five criteria have been satisfied and I move that the request of Edwin Aviles for a variance from Section 6.B.1.a of the Zoning Ordinance to increase a nonconforming use be **GRANTED WITH THE FOLLOWING CONDITIONS:**

- **Allowed to increase all single wides in the park up to a 14'x70' as long as they do not violate the setback requirements any further than they presently exist. and**
- **To replace any double wides in the park with a larger unit the applicant will have to come before the Zoning Board for approval.**

Seconded by Keiser.

Motion carried with a 5-0 vote.

- B) Seeds of Faith, Inc., on behalf of GEM Farms Revocable Trust are seeking a special exception as specified in Section 4.B of the Zoning Ordinance for a group care facility on property located at 21 Grand Street, in the Historic Moderate Density (HMD) District, Assessor's Map 11, Lot 17, ZBA #13-2016.

Saunders reviewed her memo (see attached) and stated this application is for a special exception for use as a homeless shelter. Stated there are 6 parking spaces and it may be a benefit to the Board for the applicant to show where parking is. Stated it might need to go to the Somersworth Planning Board for parking. Stated if they do need to go to Planning Board there is very little room for on-site parking.

Public hearing opened 7:57 pm.

FX Bruton of Bruton and Berube PLLC addressed the Board and stated that Seeds of Faith is looking to open a homeless transitional housing. Stated he has been the President at My Friends Place in Dover and he is very familiar with this. Stated that Dover is an emergency shelter and Seeds of Faith is looking to have transitional housing. Introduced staff of Seeds of Faith, Theresa Tozier is the founder and executive director of Seeds of Faith has been involved with homeless issues since the beginning of

2000. Stated she has served assistant executive director at the homeless center for Strafford County in Rochester and she has a significant amount of experience in dealing with local programs. Stated that with Theresa is Rob Simmeny is the project manager. Stated there are various board members and volunteers also with Seeds of Faith. Stated there are over 25 volunteers for New Beginnings Thrift Boutique. Stated the homeless have a chance to work and earn money at the boutique and it provides revenue for organization. Stated Seeds of Faith also operates a community center in the Canal Street Mill. Stated the Community Center is a space for services, advocacy and support for homeless. Stated most clients are now women with children. Stated there is occasionally a male with the family that they will offer services, but the focus is not on single men. Stated they also do the Angel Tree at Christmas for the homeless children, a back to school for GED and other options, supply clothing vouchers, a diaper fairy program, a dress for success program to obtain clothing to get job and be successful, a winter wear program, an emergency homeless backpack which has supplies helpful to a homeless situation, supply gas cards and bus passes and a prom prince and princess program. Stated they have operated in conjunction with Crossroads for a lunch program on Saturday. Stated Crossroads is the homeless shelter located in Portsmouth. Stated that Seeds of Faith were there over 15 years ago when Crossroads needed the support. Stated they help the Rollinsford food pantry. Stated that the group is well versed with the needs of the homeless and are active in supporting the homeless. Stated My Friends Place can be thankful for this group and for them helping these people that are near to his heart. Stated this project is intended to be at 21 Grand St. the large facility on the hill. Stated this is a request for a group care facility, this operation fits squarely within that definition. Stated Seeds of Faith is looking for what it is asking for and nothing more. Stated that if granted it will be for a group home facility for homeless transitional housing. Stated that the basic idea is that a homeless family will come to the home, known as Lydia's House of Hope, they will be asked to submit an application and go through a criminal background check. Stated domestic violence and drug use disqualifies someone. Stated that like other homeless shelters there is a clear zero tolerance policy. Stated that they will require residents to work or be looking for work or they can work in the boutique. Stated it will be limited to 25 beds. Stated the prior use of property was granted a special exception for elderly housing for 32 beds. Stated this will be a scaled back version. Stated that with this program there will be no physical modification to the building; stated the house has the benefit of a kitchen which was certified by the state for up to 35 people; and stated that no changes will be made to the exterior or the grounds. Stated that parking will not permit any car that would exceed the 6 parking spaces. Stated that if they were looking for more spaces they would go to the Planning Board. Stated they would employ 5 employees but not at the same time. Stated there will be coverage at all times and that the homeless clientele do not have cars. Stated they will allow for staff parking and others but will stay limited to the 6 spaces. Stated as a background the executive director Tozier wrote to the abutters to contact her in regards to the application and they hosted a community meeting. Stated the meeting was well attended by neighbors and abutters. Stated a lot of questions were asked and answered and wanted to share those. Stated that's most reflective of how this facility will fit in this area. Stated that it was asked will the granting of a special exception be approval for another use should Lydia's House cease to exist; no the request is for a specific use. Stated that they are a different use from what was previously granted and this was made clear to the abutters that any other use would need approval. Stated it was asked about the length of stay. Stated it is very different for each individual, the process involves mandatory classes and training on budgeting, nutrition and spiritual counseling, wellness for kids, resume, job search, mock job

interview, saving for future and dressing for success. Stated each is assigned a case manager, they work to create a budget and sense of empowerment to survive and move on. Stated it was asked how many people; stated the group was told 25, with a combination of family's being single women and children. Stated the policies with drug and alcohol are a written policy for zero tolerance. Stated if it occurs a person is exited from property. Stated they will do random drug tests. Stated the number of staff was a question. Stated it was asked what would happen if a resident gets a job and loses funding. Stated that it is very important for the residents to have a vested interest. Stated they are individually required to pay rent and if they are not able to they can work in the boutique, in trade. Stated it was asked if there is a curfew. Confirmed yes 9pm with lights out by 11pm. Stated it was asked where the kids will go to school. Stated that per the McKinney-Vento Act, when a child is in transitional housing, their school of origin is required to school them and make transportation arrangements. Stated if a child is from Somersworth then that is their origin, but if they are from Rochester than that is their school. Stated currently in Dover there are arrangements made for a child to not go to Dover. Stated these accommodations are made because this is not permanent resident. Stated the intent is so that when a person graduates from the program, the child can maintain where they were going and fit in. Stated it was asked what the criteria are for the residents. Stated other than passing the application and background check, it's basically being homeless. Stated Seeds of Faith will not take Federal funds and can restrict admittance. Stated they won't be equipped for single men and can therefore omit them. Stated that if he is a father than he could be a resident. Stated he wanted to go through the criteria. Regarding criteria #1 for a Special Exception, how all requirements of the Ordinance have been complied with, stated he believes they have complied with all requirements; the only form of relief is the Special Exception for 25 beds as a group care facility. Stated this use is permitted with a Special Exception in the HMD Zone. Stated it's important to note that a group care facility is only allowed by Special Exception in 4 zones and not permitted in the other 11 zones. Stated that is a suitable area for this use. Regarding criteria #2 for a Special Exception, how it will not impair the integrity or be out of character, stated this should be considered in context. Stated this property has been a group care facility for many years and will now be mostly inhabited by women and children. Stated that if children playing outside is outside of the integrity of the community, then all hope is lost. Stated this is an important use and resource for the City. Regarding criteria #3 for a Special Exception, how the operation has adequate site improvements, stated there has never been an issue with utilities. Stated there is a self-imposed limit on parking, unless staff needs all 6 spaces, however they are more than happy to go to Site Plan for more spaces if needed. Stated that the Planning Board did approve extra parking spaces, they were just not created. Regarding criteria #4 for a Special Exception, how nuisances will be eliminated or controlled, stated that it seems this criteria relates more to Commercial Industrial uses and not sure that it is applicable. Stated the property is surrounded by a natural buffer of trees and indicated curfew rules. Regarding criteria #5 for a Special Exception, how there is adequate pedestrian and vehicular access, stated this seems more applicable to retail and commercial operations. Stated they don't anticipate traffic congestion due to the self-imposed parking ban. Regarding criteria #6 for a Special Exception, how it will not be a burden to municipal services, stated the McKinney-Veto Act will apply. Stated from personal knowledge if a child comes out of district they will remain in the school of origin. Regarding criteria #7 for a Special Exception, how it will not impact public health, safety and general welfare, stated this is a lesser use than was previously approved. Stated there is a zero tolerance policy. Stated wanted to emphasize that they are not asking for Variance and that this use is allowed by Special Exception. Stated there is a

critical need and that the history of the organization suggests that it is the perfect group to utilize the structure.

Maskwa read from the Handbook for Local Officials- Board of Adjustment, New Hampshire RSA 674:33 entitled "Powers of Zoning Board of Adjustment". Stated tonight we will be talking only about homeless transitional program. Stated one of the questions that arose at the public meeting, is it an opportunity for a group care facility to alter and do something different, if that were the case they would have to come back to the Board for another hearing.

Russell Purrey of 23 Mt. Vernon addressed the Board on behalf of himself and the property owner, Charles Kinney. Stated Kinney submitted a letter. Purrey read letter (see attached). Stated initially against the idea, but upon hearing what the attorney has said, has no objections to that. Asked are they purchasing or renting and with the zero tolerance policy where do they go if kicked out, is there a way to disperse them to another location. Stated kids' playing in this area is quite common. Stated there is a broken down car and an old small mobile home that have been there for years and are an eyesore. Stated expects that if they are buying it they would get rid of these but if they are renting it do they have any input on that.

Woodard Openo of 25 Grand St. addressed the Board and stated hopes that if the application is approved that they succeed. Stated it's important for the neighborhood. Stated the application mentions that the proposed use as group care facility, this is neither permitted nor prohibited in the Historic Moderate Density neighborhood and it depends on the ruling of the Zoning Board, if all requirements are met. Stated his wish to address the 7 points. Stated the first mentions that the facility is in operation by the current owner for the past 25 years, interpret to mean around 1990. Stated this is highly misleading it was operated as boarding home for the elderly for approximately 15 years, but has not been that for some years now. Stated the house behind has 14 people, but has apartments occupied by residents and family's. Stated 21 Grand St. has never been used as group home and it is not in the character of the neighborhood. Regarding the third point, stated there is not really an entrance on Grove St., it is rarely used. Stated the most used entrance is on the side that faces us. Regarding the fourth point, stated the buffering trees are only for 4 months of year, but they do not buffer noise. Stated most of the year there is no buffering and therefore no privacy. Submitted pictures (see attached). Regarding the fifth point, history of noise, stated for the most part not a problem. Stated they are only talking about 3 to 4 estimated people living there for the most part. Stated certainly not 25 people and can hear talking and TV's now. Regarding the sixth point, stated it has never been used as group home. Stated the 1990 Variance for elderly housing for 10 residents is not the same as 25. Regarding the seventh point, stated this has never been convalescent facility and never had 32 beds in use. Stated claimed it had approval, however the City does not have evidence that it was approved for 25 yet alone 32. Stated wish to say that we think the proposed facility should have a smaller number of residents, 10 to 15 and more buffer. Stated granting this could open up the hill to institutionalization. Stated that any large house would become game for such a use. State thinks the applicants are well intentioned and with the number of occupants limited and a buffer established it might be an acceptable use of the property.

Amelia McCarthy addressed the Board and stated has been involved with Seeds of Faith for 10 to 15 years and the Boutique for 5 years, has stepped in as manager.

Stated she has a vested interest. Stated she has headed up the angel tree project, which provided 85 families in this area with a multitude of gifts to 200 children. Stated the families are abundantly grateful and want to give back. Stated that none of the families have chosen to be in this situation and have a desire is to get out. Stated there are many low income housing in this district, with no supervision, motivation, guidance or leadership. Stated this home will provide the knowledge that they have never been taught and they won't be wandering around or idle. Stated they will be supervised at all establishments. Stated was talking with an elderly woman today who was trying to find a place to live with assisted living and was having trouble going through home. Stated this would be a volunteer experience with supervision to take things and move them for her. Stated there are numerous opportunities for help with mowing and trimming bushes. Stated they so want to help and give back. Stated the TV's and volume from her experience, most are due to hard of hearing and the staff will keep the noise level respectful. Stated the curfew is 9pm. Stated this is a great opportunity to make an impact, just like My Friends Place and to make a real difference in this area. Stated this will make Somersworth stand out for having done an excellent job meeting needs.

Theresa Tozier the executive director of Seeds of Faith addressed the Board and stated they are purchasing. Stated the goal is to purchase and retrofit. Stated they have the first year's expenses and salaries. Stated the focus will be on the residents. Stated this is not an emergency facility and it is a mandated program. Stated they walk through alphabet with the individual and offer wrap around services. Stated they will have up to 25 residents and that children make up more than 40% of the homeless. Stated there are 19 rooms in house. Stated there are community living and a kitchen on the first floor and the second floor bedrooms. Stated they are looking for people willing to change. Stated they will need to take classes in order to help. Stated they will be involved in their case management. Stated this is a holistic case management. Stated the children are allowed to play while the adults gain life skills. Stated that when someone comes in, if they decide they can leave. Stated they have up to 365 days in the program. Stated that if exited they are then taken back to the shelter and are not allowed to wander. Stated that all dilapidated vehicles will be gone. Stated the goal is to make the house beautiful and bring it up to standards of the neighborhood. Stated it will be 4 to 5 families, mostly children upstairs in rooms with moms. Stated not all 19 rooms will be bedrooms. Stated it is not a homeless shelter, it's a program.

Kelly Perkins of 40 Grove St. addressed the Board and stated has been a resident for 25 years, even before the barn. Stated thinks this is great program. Stated daughter is a teacher and knows this is great for the children. Stated the concerns are with the property. Stated this was a group care facility for a little and then they were renting rooms and then it changed to 55 and older. Stated there are constantly cars coming and going and everything echoes. Stated it's very loud, whether they intend to be or not. Stated the number is too much, there has never been more than 10 people when it was an elderly and it was busy then. Stated as of late there are about 3 to 4 people and there's a lot of coming and going. Stated they were only allowed 6 spaces, they wanted 13 but the City only allowed 6, all facing the building. Stated the concerns for parking, with vehicles coming and going and the number of people. Stated that with 2 employees and 10 residents it was busy.

Deborah Labicata of Seeds of Faith addressed the Board and stated she has been with Seeds of Faith for 8 years. Stated it started out in small increments, helping to get food, helping with referrals. Stated started out managing the food pantry in Rollinsford, which

before was in Theresa's basement and has grown exponentially. Stated the need is great. Stated was there for the inception of the program. Stated the time, effort, input and heart and soul to get the program to where it is. Stated it is a transitional 12 month program. Stated is a volunteer at the Boutique but also oversees the community room. Stated it's a big misconception, people really want to make it out of the system, system leads to recidivism. Stated if a person wants to get out of the rut the system doesn't help and end up in recidivism. Stated there are numerous amounts of external circumstances that don't allow them to get beyond, it's like taking two steps forward and two steps back. Stated our goal is to rehabilitate people to get out of the state of recidivism, to be able to be part of the community upstanding citizens, to teach them how to do standards of daily living. Stated to help them to get out of survival mode, that is where recidivism is. Stated that any of us could be one of those people, it could be a niece, a sister. Stated the way things are going its increasing.

Goody Goodrun Valentine a volunteer for Seeds of Faith addressed the Board and Stated as a volunteer and a landlord, wears two hats and can see both sides of the coin. Stated Theresa has never failed at anything. Stated helped set up the community room, which helps anyone from anywhere. Stated they provide diapers, food, shampoo, and conditioner. Stated what's really important and wants Lydia's House of Hope to break the cycle of poverty that is occurring in this town and several towns in the Tri-City area. Stated has Section 8 housing and sees the cycle of poverty not being broken. Stated before this worked for community mental health, Strafford County. Stated seen kids grow up and have kids and those kids are in housing and on the street. Stated it's frustrating as a landlord and someone who wants to help. Stated the beautiful thing about Lydia's House is it's a 12 month program, it would address things such as if people needed to go the AA of HA or if people needed to learn how to shop. Stated that some people don't know how. Stated has met people in other towns who are interested in what we are doing. Stated wouldn't it be a feather in Somersworth's cap to have a model for the state. Stated the first thing she told you was she never fails and want to be on the winning team.

FX stated this will institutionalize the hill. Stated this is attractive for this use because it is sprinklered and is unique in this respect. Stated the notion of whose homeless and it's antiquated to suggest that homeless all loiter. Stated the replacement director at our facility was a client and was homeless and is now the executive director and she does represent what homeless is and who are homeless. Stated loitering is absolutely not the case.

Keiser stated talked about limited application, asked what would be a limited application, transitional family housing program.

FX confirmed it's a homeless transitional housing facility.

Keiser asked from your experience, how many beds are at My Friends Place.

FX stated they house up to 24 individuals and the property is smaller and very residential. Stated they have a wonderful relationship with the neighbors. Stated impressed that someone can come to this meeting in opposition of this project but can better understand and say that. Stated this is a very appropriate facility if not larger than it has to be to restrict the number would make it non-functional. Stated the need to have

a certain number of people to have 5 staff. Stated this facility exceeds My Friends Place. Stated My Friends has supported 24 for numerous years.

Keiser asked the reason for 25 beds is that it is an efficient number to run the facility.

FX stated that for the model that Seeds of Faith has come up, with that works.

Keiser asked where does the number 25 come from.

FX stated would ask Theresa to respond to that, but the facility can accommodate that number in terms of what they want to do and who the clientele will be.

Theresa stated that is the number we can take care of with 5 staff. Stated realized over the last 15 years, you have a case manager that a resident will have to wait until next week to get through a crisis today. Stated that with 25 people it doesn't overload staff.

Keiser asked of the 25, the rough number of children.

Theresa stated for 5 families, for every adult you have 2 children, 10 to 12 children. Stated it's a piloted program and cannot give exact numbers. Stated in most residents they see 1 single parent to 2 to 3 children.

Keiser asked the length of stay up to a year.

Teresa stated up to 365, but if they need more it can be more, if they need less, it can be less.

Keiser asked if the facility is not equipped for men.

Theresa stated the program is meant for families. Stated if a single father comes in with his children they will take him but will not take in single men. Stated they will not take in single mother with two children and boyfriend.

FX stated that My Friends Place is equipped for single men with a separate area.

Keiser asked with the vehicles in disrepair and lots of personnel smoking there is concern with neighbors, will there be a plan to address.

Theresa stated there will be no smoking. Stated they will struggle but it's not allowed.

Griffith asked with the smoking can they walk around neighborhood.

Theresa stated no, there will be no smoking. Stated that while in the house, outside and at the programs they are always going to have someone with them, whether it's staff or volunteers.

Griffith asked about with the children after school.

Theresa stated they will have a small daycare and parenting classes. Stated they will be responsible for the children. Stated there will be story time and mom will be responsible

for children. Stated that being a parent to that child is their first responsibility. Stated that child becomes more important than the telephone or a cigarette.

Griffith stated some of the people that spoke said there are errors of fact in the application. Asked how would respond to the approvals by the Board and how the house operated as a matter of facts.

FX stated information what was understood from the current owner. Stated there was relief for 10 people a long time ago and then after the addition it was then approved for up to 32 with the C/O.

Griffith stated his research shows this is not the case.

FX stated if that is the case, this is what they understood. Stated not exactly sure if that is determinative of our application. Stated our application does not need to be approved premised on what was approved 20 years ago. Asked the Board to consider our application for what it is. Stated there are 19 rooms in the facility, are asking for 5 families. Stated this was the information and understands there may be a discrepancy. Stated suggesting our application is reasonable for the use. Stated there was no intent to mislead board.

Griff stated the owner might have a vested interest and if the application was going to stand on its own it should not misrepresent the facts. Stated the answers to the questions are part of the rational and should be accurate.

FX stated understanding was use was limited until the barn was approved. Stated there was an excess of the 10.

Griff stated there was an excess of beds but there was never a vote in the Zoning Board to approve that.

FX stated they are more focused on what they are asking for and are not trying to recreate history. Stated they are not asking for that and if there was an error, want to apologize to the Board, it was not intentional. Stated have proposed our facts and that it is appropriate for this facility.

Routhier asked do you have purchase and sales agreement.

FX confirmed yes.

Routhier asked if it is contingent on approval by the Zoning Board.

FX stated would assume.

Theresa stated yes.

Routhier asked are you a 501(c)3.

FX confirmed yes.

Routhier asked if will be paying property taxes to the City of Somersworth.

FX stated if owned by this entity then it would most likely be exempt from that.

Dale Sprague realtor who represents Seeds of Faith addressed the Board and stated that a 501(c)3 can apply to Council to have all, portions or percentages of your taxes waived. Stated must prove to state and the feds in the 501(c)3 process and then make application to the Assessing Department and then they would make application to Council. Stated not sure if the intention is to that yet, it has been a long process and this is one hurdle to accomplish before they get into that direction.

Routhier stated there are references to spiritualism, asked if this is a church based organization, and is it exempt under the Constitution.

FX stated that speaking to RLUIPA doesn't apply but other exemptions may.

Theresa stated it is in their budget to pay a portion of taxes. Stated they are not affiliated with a denomination, but are faith based.

Routhier asked when speaking of spiritualism, are you speaking of a 12 step program or any specific religious group.

Theresa stated they are dealing with the whole person and it is faith based. Stated it began with the church but became a 501(c)3 and grew out of that.

Routhier stated that not receiving federal funding and asked then not tied to any federal requirements about discrimination.

Theresa stated that they do not discriminate but they can.

Routhier asked is there any population you don't cater to.

Theresa stated does not care where they come from or came. Stated there is no discrimination but must be willing to change and come into a house of hope and be willing to commit.

Routhier asked if they discriminate on the basis of gender identity.

Theresa asked for clarification.

Routhier stated sexual orientation.

Theresa stated no, they will not discriminate.

Routhier asked FX the distinction between a variance and a special exception.

FX stated a variance is more difficult to obtain, a hardship is the most difficult to prove. Stated the test of hardship is relevant in a variance but not in a special exception. Stated the hardship test has been battered around in the Courts. Stated again the test of hardship is relevant in a variance but not in this application. Stated this application is for a special exception and both forms of relief serve as a safety valve. Stated this is more of a case of is this a suitable facility for a group care facility. Stated the Chair

made an excellent point at the beginning that if the criteria are met for this particular use and no other, then the statute says you shall grant the use.

Routhier asked if Seeds of Faith assigns interest in the property to another entity that could be done without granting a new special exception.

FX stated the law says specific to use and not to the property.

Routhier asked this could be assigned to another group

FX stated yes but that is clearly not the intention. Stated that in no aspect of the law state, statutory or ordinance does it say that any special exception should be considered whether or not based on assignment. Stated that there is no chance in this; this group is committed and has a track record with the homeless. Stated they have financing, have capital of \$850,000, they raised all of the money. Stated this will give comfort.

Routhier stated per this conversation with the different rules, non-smoking, background check, but all rules could be changed with new personnel. Asked how this could be enforced from a zoning point of view.

FX stated that the record is a condition of approval. Stated that question could be asked of any form of relief. Stated that the people watching closely can tell code enforcement if there is a problem. Stated there's a private right of enforcement that anyone can enforce on their own.

Routhier asked what the geographic population will be, if all residents to be living there will be Somersworth residents.

FX stated this has not been their representation.

Routhier stated there's been no description of where the people come from.

FX stated cannot tell you that in order to be here you must be from Somersworth. Stated that for the temporary housing in Rochester, Rochester the homeless gravitate to there. Stated people in Dover tend to gravitate to My Friends Place and Portsmouth tend to gravitate to Crossroads. Stated there are many church organizations that provide homeless situations in their basements. Stated this facility will be in Somersworth and it is highly likely residents will be local. Stated there are no requirements to be a resident.

Routhier stated his question was will there be a criteria for geographical location as part of coming into the program.

FX stated no per say, but premised upon understanding how people gravitate to a specific institution or location

Routhier stated 25 beds; if you have a mother with a young child is that 1 bed or 2.

FX confirmed 2.

Routhier asked during the off hours, what are they going to be doing, where will they be staying, is there a TV room in there, are they going to be outside at all.

FX stated he hopes the children will be outside.

Theresa stated in regards to the question on residents, right now 60-70% of the people served are Somersworth residents.

Routhier stated this will be based on need not where they come from. Stated this is the third application to come before the Board for this. Stated a concern of the neighborhood is this piece of land is small, and with the people not being elderly or sickly they will be hanging outside, probably on the street. Asked why this doesn't apply to your application.

Theresa stated they will be taught that food comes from the land not a can. Stated they will be gardening either at the property or a local garden. Stated they will use the playground. Stated they have mandatory classes for GED and for fun. Stated the kids will be in playground outside. Stated that they will have free time, but they will also go to their room to read, garden outside, play with kids or go shopping for food.

Griffith asked what if there are 4 or 5 teenagers, teenagers' changes the game.

Theresa stated yes it does.

Routhier asked if there is a bus stop.

Theresa stated no not on the street.

Routhier referred to Openo's picture and asked if opposed to putting up more landscaping.

Theresa stated they want to make it beautiful and clean and are not opposed.

Griffith stated that teenagers have a different social life, asked how it will be addressed.

Theresa stated there will be a cross fit program and other resources from school to come in and help. Stated they have so many teenagers that come to the Boutique for food. Stated that two years ago they tried to create a youth center. Stated that teens have very specific needs and need mentors. Stated they are going to be able to give wrap around services to every person coming in.

Routhier asked at the neighborhood meeting, how many were in attendance.

Theresa stated 9.

Kennedy stated the residents have complained about the property line and driveway, asked if the organization would be able to plant shrubbery down the property line to distort noise and block view.

Theresa stated they can do that. Stated her only pause is the need to put in a garden and in basement there will be a hydroponic garden.

Maskwa asked if during mealtime a cook is provided or are the mothers helping. Asked how does that work.

Theresa stated the New Hampshire Food Bank has a program called cooking matters, and UNH has a program, where they will come to the house and teach the residents to cook.

Maskwa asked if food deliveries were by truck and if they will be minimal.

Theresa stated that food comes from the New Hampshire Food Bank and goes to the food pantry and then the residents are responsible for picking up the food from the food pantry.

Maskwa asked if the children at My Friends Place, for non-Dover residents, if any end up in Dover schools.

FX stated no, the parental preference is for them to stay in the school system for where they came from.

McCarthy stated in regards to the teenagers they have a relationship with a scout master Don Driver and many volunteers who work with the scouts for fishing, archery and those types of activities. Stated they have volunteers committed to being a part of this program, not under guise of scouting, and open to not only boys. Stated it would open to anyone who would like to participate in a fishing derby.

Perkins stated there is no playground equipment at the old school and to keep in mind it is not an active park, the City took out all of the equipment.

Purrey stated there is the Pines, the skateboard park, and baseball field. Stated that the old Hilltop school has a basketball court and grass to play on. Stated with this doesn't see a problem for kids to play.

Diane Griffith a resident addressed the Board and stated that yes there is a basketball hoop and that is it. Stated the ground itself is not safe for running. Stated there are sink holes and it is not a place for a handful of kids to be playing in. Stated that if talking about a playground then you need to focus on the Pines. Stated the school yard is not conducive to kids.

Public hearing closed 9:47 pm.

Keiser asked does this need to go to the Planning Board.

Maskwa stated no.

Routhier asked if it could be recommended to the Planning Board.

Maskwa stated yes.

Routhier stated he would like to recommend it because of the picture which shows no screening. Stated the applicant has an interest in screening. Stated he thinks having screening is a good idea.

Keiser asked if the Planning Board review would be limited or if it would be a full review.

Saunders stated that the Board could put it as a condition.

Routhier asked how enforcement would happen.

Saunders stated that Code Enforcement could handle it.

Routhier asked if they would have to outline what kind of screening.

Saunders stated you would want to be general.

Routhier asked if it should apply to the other side of the property.

FX stated in his experience it is usually a fence or arborvitaes. Stated arborvitaes are much taller.

Routhier stated that arborvitaes take a lot longer to grow.

FX stated the applicant is willing to consider either of those, if that makes it easier.

Griffith asked could a restriction on the number of people, as a condition.

Saunders stated there can be. Stated it is completely reasonable for the Board to grant special exception based on the evidence presented tonight, including what is in the application and part of the testimony that becomes essentially an exhaustive list of conditions.

Griffith stated when they presented the five staff to twenty-five people, the cart and the horse got reversed. Stated shouldn't it be what a reasonable number of people would be and then figure out the number of staff. Stated someone had mentioned about other applications.

Routhier stated Bonfire and others.

Griffith stated there were statements in this application that were not changed from pervious applications.

Routhier stated the fact that there is a homeless center that is going in here and that is training and helping is a very good thing. Stated he thinks they do tremendous work. Stated the City has one of the highest tax rates in state. Stated that we pay enormous taxes and are being inundated with churches and medical buildings that do not pay taxes. Stated it's a concern to have another large building off of the tax role. Stated there is no yard, and whether they admit it or not there will be people hanging outside. Stated it is questionable whether that will be conducive to the neighborhood. Stated that neighbors are entitled to screening and that may eliminate concerns.

Keiser asked this building, could it be used for apartments, separate from this discussion. Stated this could in theory be a multi-family building in that zone.

Saunders stated it could be.

Motion made by Keiser: After review of the application, the file and all the information presented to the Board, I move that the request of Seeds of Faith, Inc., on behalf of GEM Farms Revocable Trust for a Special Exception as specified in Section 4.B of the Zoning Ordinance for a Group Care Facility be **GRANTED WITH THE FOLLOWING CONDITIONS:**

- Be restricted to a homeless transitional family housing facility.
- A maximum of 25 residents.
- Screening be erected between this property and the abutters.

Routhier asked do we need to add a condition that Seeds of Faith holds title to the property.

Keiser stated no in his opinion a special exception goes with property, so therefore someone else come in and run it.

Seconded by Kennedy

Griffith asked if they would initially start with a lower number of people and see how that goes.

Maskwa stated that is part of programmatic implementation, would assume they wouldn't have 25 the first day. Stated from the stand point of the application process, assumes it would take longer. Stated this is appropriate with the screening piece. Stated if there is code enforcement for parking, delivery, noise complaints and things like that this would be an appropriate way to handle it.

Motion carried with a 4-1 vote, with Griffith opposed.

Motion: Routhier moved to take a five minute recess.

Seconded by Kennedy.

Motion carried with a 5-0 vote.

The meeting was called back to order at 9:59 pm.

- C) Ashley Holt is seeking a variance from Section 19.C of the Zoning Ordinance for placement of a pool within setbacks on property located at 12-14 Mt. Auburn Street, in the Residential Multi Family (R3) District, Assessor's Map 09, Lot 184, ZBA #14-2016.

Saunders reviewed her memo (see attached) and stated the denial of the building permit was for a pool within the setbacks.

Public hearing opened 10:01 pm.

Ashley Holt owner of the property addressed the Board and stated that she is from Dover and last year she put up a pool but was told about requirements and took it down.

Kimberly Phillips of 10 Mt. Auburn St. addressed the Board and stated that she is a neighbor and that the pool was successful for the kids and that it didn't seem to be a problem until she was told to take down for not having permit.

Maskwa asked Phillips which side of the property she lives on.

Phillips stated the left side.

Keiser asked when looking at property.

Phillips stated the left side

Kaiser asked what size of pool is it.

Holt stated a 22' circular pool.

Keiser asked if it is temporary.

Holt stated it is easy to put up and down. Stated it has a ladder to take down and that is put in the shed while not in use.

Keiser asked it's not inflatable.

Holt confirmed no. Stated it has a metal frame you put together.

Keiser asked Holt why she chooses to take it down.

Holt stated she believes the snow damages it and that's what the box says.

Keiser asked Holt how close you are to the back line of the property.

Holt stated from the left over 12 feet. Stated to the right about 10. Stated to the rear it is probably 5 feet but the house sits back about 14 feet.

Keiser stated the setback is 12 from any property line and Holt would like to put it, from the drawing 7 feet from any feet want to put at 7 feet.

Holt stated yes.

Keiser asked if it was a 22 foot and definitely temporary pool.

Holt stated yes and it's above ground.

Routhier asked what kind of safety protections you have to make inaccessible for children.

Holt stated that a ladder is necessary to get in and there is a cover that ties on the side. Stated the ladder is placed in the shed that is locked at all times to store.

Routhier asked if the water is not accessible.

Holt stated that you couldn't jump in the pool, you would hit the tarp.

Routhier asked if there is a fence.

Holt stated the whole yard is fenced in.

Routhier stated there is no fence around the pool. Asked if there was a barrier on the top. Asked if the City of Somersworth has any specific regulations for pools.

Saunders stated that typically a fence is required with in-ground pools and that with above ground it's not necessary.

Routhier asked can the pool go anywhere else on the property.

Holt stated no.

Maskwa asked if the pool sprung a leak, where would all of the water leak.

Holt stated last year drained it with the house and after that must flip it to drain completely. Stated the water ran down the driveway into the sewer.

Maskwa asked if it would run along the fence into the rear neighbor's yard.

Holt stated no, it would run down the driveway.

Keiser stated to fit within the 12 foot setback you would have to have a pool that was only approximately 17 feet in diameter. Asked would a 17 foot pool be too small.

Holt stated she already has the pool. Stated no, if they sold 17 foot pools.

Keiser asked if a 22 foot pool is what you used last year.

Holt stated yes.

Keiser asked was that a reasonable sized pool for your use.

Holt stated yes, for her two toddlers and the neighbors.

Public hearing closed 10:21 pm.

Keiser stated we could add to the variance, to make it only applicable to a temporary pool.

Maskwa stated would go for that.

Routhier stated he is having a hard time with the criteria. Stated there does not seem to be a hardship. Stated there are setbacks and setbacks shouldn't be imposed upon without hardship. Stated that a pool doesn't stand up to the standard of a hardship.

Griffith stated he wonders the costs and if being told she can't use it is a hardship.

Saunders stated that a hardship must relate to the characteristics of the property.

Keiser stated the reason of the hardship is due to the unique shape of the property. Stated it didn't allow the pool to be placed anywhere else on the property. Stated the pool can't reasonably be located anywhere else. Stated the size of the pool is actually small for a normal above ground pool. Stated 24 feet is normal and 21 feet for a tight space. Stated that 22 feet would be reasonable. Stated the hardship is the want to have a pool but that it can't reasonably be put on the property without infringing on setbacks.

Maskwa stated he agrees. Stated from the standpoint that it's a temporary pool that is put up in the summer and taken down in the fall.

Routhier asked to add a condition for it to be seasonal.

Griffith stated we could say seasonable above ground pool.

Motion made by Griffith: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and I move that the request of Ashley Holt for a variance from Section 19.C of the Zoning Ordinance for placement of a seasonal above ground pool within setbacks be **GRANTED**.

Seconded by Kennedy.

Routhier asked how they are going to enforce that a pool is an attractive nuisance to young children. Stated the Board has made no inquires to adequate insurance. Asked how we enforce minimizing the danger this inherently opposes to other young children in the neighborhood.

Saunders stated that the building inspector makes sure that all building requirements are met through the permitting process.

Motion carried with a 5-0 vote.

D) Request from Vision 2020 Committee for the Board to review the Growth and Development Strategy Implementation Matrix from the City's Master Plan.

Saunders reviewed the memo (see attached) and stated that this page is from memo that is several pages long and it does address each of the criteria that were asked for in the Zoning Boards memo.

Maskwa asked if a motion is needed to accept this.

Saunders stated either way is fine.

Maskwa asked what the Boards pleasure is.

Routhier stated it looks great to us.

Griffith stated that this doesn't look completed.

Saunders stated that she is fairly new and according to her research does not think that it is completed. Stated she wrote it the way she did because she doesn't mind being over turned. Stated if the Board knows of other information, she doesn't mind adding it.

Keiser asked if these were the existing goals from the Vision 2020 Committee. Asked if based on this not being complete are you saying it should still be a valid goal.

Saunders stated that what the Vision 2020 Committee asked for is basically a status update, whether it's been acted on or not.

Maskwa stated that number d. on Goal 1.7 (see attached), the Planning Board has looked through that and spent hours going over the suggested uses and did appear to complete at least one piece. Stated it does appear, it takes a while and you need to study the Table of Uses, but some of it has been done.

Keiser stated that's not really even a Zoning Board goal. Asked if it was a City Council goal.

Maskwa stated the Planning Board made a recommendation to the City Council and then the City Council voted on it. Stated the other piece is the request from the Vision 2020 Committee to have a member of the Zoning Board to sit on that Committee. Stated if any of the members are interested they may let the City Planner know they are interested.

E) Any other new business that may come before the Board.

None.

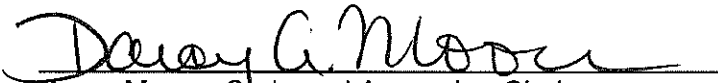
Motion: Kennedy moved to adjourn the meeting.

Seconded by Keiser.

Motion carried with a 5-0 vote.

Meeting adjourned at 10:21 pm.

Respectfully submitted:


Darcy Moore, Code and Assessing Clerk
Somersworth Zoning Board of Adjustment