

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Tuesday, January 9, 2018

6:30 PM

Council Chambers

Members Present:

Nathaniel Stout, Chair
Josh Gorman, Vice Chair
Sean Wallin
Jeff Stevens, Alternate
Louise Zerba, Alternate

Staff Present:

Gary Schneider, Plans Examiner
Tom Mullins, City Attorney

Members Not Present:

Michael Welsh
John Rab, Alternate

I. Introduction of Board Members

Chair Stout called the meeting to order at 6:31 PM, introduced members of the Board and welcomed everyone to the meeting.

Chair Stout stated the intention of this Special Zoning Board Meeting is to deliberate on ZBA 17-20. He noted that the public hearing was closed at the last Board meeting that was held on December 20, 2017.

IV. Hearings

ZBA 17-20/ Petitioners, Prospect House, LLC of 35 Keene Rd., Winchester, NH, requests a Special Exception for property located at 361 Court St., Tax Map Parcel #008-02-001, which is in the Medium Density, and is owned by The Prospect Hill Home of 361 Court St. The Petitioners requests a Special Exception from Section 102-37(b)(1) and Section 102-392 to increase the number of beds from 16 to 26 within the same area/footprint.

Chair Stout stated the nature of the discussion at this meeting will be whether or not the applicant's property, as described, qualifies under the group home stipulation. He said following that vote the direction of the meeting could go in one of two ways. Chair Stout explained that the Board would limit the discussion to that of a group home.

Mr. Schneider stated that Mr. Wallin was not present for the first two meetings regarding this petition. He explained to Mr. Wallin that he was given a significant amount of information and wanted to make sure that he had read and understood all of the information and was comfortable

with proceeding. Mr. Wallin replied that he has had ample time to review this information, listened to all of the testimony, has a good understanding and was prepared to proceed.

Chair Stout began the discussion by explaining that a Special Exception was granted to the former Prospect House in 1989 and by that Special Exception the property qualified as a group home under the nature of what it did at that time. Chair Stout read the definition of a group home as follows, *“any premises, privately or publicly sponsored, where board and supervision are given to five or more persons not related by blood or marriage to the owner or primary occupant thereof, for the purpose of social rehabilitation and/or long term sheltered care”*.

Chair Stout asked everyone to remember that The Zoning Board of Adjustment is one of Keene’s Land Use Boards and the role of the Board is clearly defined by statute and City Ordinance. He said perhaps by chance the enormous issue of drug rehabilitation has come to the Board peripherally. Chair Stout stated that no one would argue that the larger issue before the Board is far bigger than one single land use board can or should decide. He said that the Board would do their best to provide a careful and thoughtful decision. In addition, he stated that the Board is confined in its role by legal parameters.

Chair Stout explained that the Board’s vote will not nor can it reflect personal opinions on cultural issues. He stated that the Board is mindful of the importance of the votes and as Board members they will do their very best to make the right decisions.

Chair Stout opened the discussion by stating that this is a complicated issue but there are definitions available in order to make a decision. He explained that he went back to the definition of a group home, tried to reconcile what he has heard for the current property and determine whether or not it qualifies for the 1989 Special Exception. Chair Stout read the definition of a group home again. He explained that he tended to linger over the purpose of social rehabilitation and/or long term sheltered care. Chair Stout said it has been mentioned repeatedly there is a difference between what would be the occupants of the proposed application and those that lived there before. He noted that the difference to some degree is distinct. The long term care of the occupants of the previous use were there for an indistinct period of time and would be very different in what would be with the occupants in rehabilitation now. Chair Stout said the Board has heard testimony that 180 days was a planning number for occupancy of a resident and also heard shorter and longer terms. Chair Stout stated that it was fair to take the conclusion that 180 days was a typical stay at the proposed facility. He questioned if that qualifies as long term care and noted that the Board would have to make this decision.

Chair Stout said that another part holding up his decision was the definition of social rehabilitation and the difference between social rehabilitation and addiction rehabilitation. He would maintain that there are differences and sited the materials in this case that were submitted are worthy of consideration. Chair Stout referenced The Fair Housing Amendments Act of 1988. He explained that the Board needs to consider the difference between those suffering from physical and mental impairment and those that are not considered handicap according to The Fair Housing Amendment Act of 1988. Chair Stout read a portion of the Act as follows, *“the following shall not be considered handicap: current illegal use or illegal use of or addiction to a controlled substance”*. Chair Stout said that what this says to him is not so much that it has a direct bearing on this case but it does say that there is legitimacy in making a distinction between a health care population and a drug rehabilitation population.

Ms. Zerba stated that her focus was on the definition of a long term living facility. She explained that the group home that was approved in 1989 was for people who would spend the rest of their lives in that facility. Ms. Zerba stated that the intent was definitely long term care. In addition, she said in comparing a group home to social rehabilitation, the rehabilitation that existed in the Prospect House nursing facility was social in nature. She noted that the facility would provide activities such as arts and crafts, and other activities of this nature to keep the residents busy.

Vice Chair Gorman said this was a difficult question to have presented and that he has spent many hours contemplating the definition of a group home in comparison to the definition of a healthcare facility. In his hours of internal deliberation, it has led him to believe that the opioid crisis is a disease and there is no argument. Vice Chair Gorman said for that reason it requires treatment and that leans him toward the proposed use as a health care facility. He said to deny that the addiction crisis requires treatment would be incorrect. Vice Chair Gorman said when he refers back to a group home he sees nothing about treatment for addiction, he sees potential long term sheltered care but not by necessity. He stated that he relies heavily on the definition of a group home and the purpose of resocialization. Vice Chair Gorman stated that he thinks drug rehabilitation is for the purpose of healing sick people. He noted that he has a hard time fitting the use into a group home and has an easier time fitting the use into a healthcare facility.

Mr. Stevens stated with a group home it would have to qualify for social rehabilitation and/or long term care. He said 30-180 days in his opinion does not qualify for long term care. He said by looking at a healthcare facility the Board was looking at two different things. Mr. Stevens read the definition of a healthcare facility, *“an institution such as a nursing home, convalescent home, sanitarium, or home for the aged, in which sick patients or injured persons are given chronic medical, recovery or surgical care; or an institution for the chronic care of contagious diseases or incurable patients; or an institution which provides home and/or care for the aged”*. He stated that the question was if residents would receive medical care or social rehabilitation care. Mr. Stevens said that he thinks the use qualifies as medical care and everything that he has read medically, this is a disease that qualifies for medical treatment and falls under healthcare.

Mr. Wallin read the definition of a group home and stated that social rehabilitation would occur at the facility. He stated that short term to him was a two week vacation and anything longer than that would be considered long term. Mr. Wallin noted that the residents could come back to the facility due to relapse and possibly be at the facility for six months to a year. He noted that this would then be considered long term care.

He stated that the use in his opinion goes with a group home.

Chair Stout noted that one thing that affected his decision was a definition of an ASAM Level 3.1 facility and what that would look like according to the American Society of Addiction. He stated that the American Society of Addiction subscribes to the thinking that addiction treatment is a medical problem. Chair Stout cited the definition of a Level 3.1 facility according to the American Society of Addiction Medicine *“Clinically Managed Low-Intensity Residential Services, this adolescent and adult level of care typically provides a 24 hour living support and structure with available trained personnel, and offers at least 5 hours of clinical service a week. Level 3 encompasses residential services that are described as co-occurring capable, co-occurring enhanced, and complexity capable services, which are staffed by designated addiction treatment, mental health, and general medical personnel who provide a range of services in a*

24-hour living support [DMI] setting". Chair Stout stated that the Board is not qualified at defining outside of the City realms what health care is and all the Board has available is what is prescribed by Ordinances.

The City Attorney stated that the first thing the Board needs to decide is whether or not it is a group home. He noted that the request to go to 26 beds could not be determined until that threshold is crossed.

Ms. Zerba made a motion that under ZBA 17-20 the Board approves the application that it meets the definition of a group home. The motion was seconded by Mr. Wallin, which carried unanimously.

Chair Stout explained that if the vote is denied by a majority of three, the Board would rephrase the motion and turn it into a motion to deny. If that is the case, he explained the meeting will adjourn and the Board will not need to address the second portion of the application for ZBA 17-19.

The City Attorney added there is an application before the Board and what the Board was trying to do was pass the threshold question of the group home definition. He said once this has been decided and there is a vote to deny then there should be a vote to deny the application because the application is still before the Board.

With a vote of 4-1, The Zoning Board of Adjustment voted to deny that, under ZBA 17-20, the application meets the definition of a group home. Chair Stout, Vice Chair Gorman, Ms. Zerba and Mr. Stevens opposed.

Ms. Zerba made a motion to deny the definition of ZBA 17-20 as a group home. The motion was seconded by Vice Chair Gorman, which carried unanimously.

With a vote of 4-1, The Zoning Board of Adjustment voted to deny the definition of ZBA 17-20 as a group home. Mr. Wallin opposed.

The City Attorney stated that due to that vote and by the Board deciding that the application does not meet the definition of a group home, the application ZBA 17-20 is predicated on it being a group home. He suggested the Board vote on ZBA 17-20 in order to deny the application.

Mr. Stevens made a motion to deny application ZBA 17-20. The motion was seconded by Vice Chair Gorman, which carried unanimously.

With a vote of 4-1, The Zoning Board of Adjustment voted to deny ZBA 17-20. Mr. Wallin opposed.

VII. Adjournment

Mr. Stevens made a motion to adjourn the meeting at 6:57 PM. The motion was seconded by Vice Chair Gorman, which carried unanimously.

Respectfully submitted by,
Jennifer Clark, Minute Taker