

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 16, 2022

Members Present

Lynn Perkins, Chairman
Craig Corbett – Vice Chair
Crystal Morin, Secretary
Allan Virr
Donald Burgess

Members Absent

Alternates Present

Michael Donlon – Remote

Alternates Absent

Richard Tripp
Gaspar Obimba

Code Enforcement

Robert Mackey, Code Enforcement Director

Mr. Perkins called the meeting to order at 7:06 p.m. with the salute to the flag. Mr. Perkins stated that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 this public body is authorized to meet now physically and also electronically. As such this meeting is being held and will also be providing public access to the meeting by telephone with additional access possibilities by video utilizing the ZOOM app for the electronic meeting. To participate in this meeting, you can be present or by dialing 323-909-140 or by clicking on the website address: derrycam.org/TuneIn the phone numbers are 646-558-8656 or 312-626-6799 meeting ID: 323-909-140 or if anybody has a problem, please call 603-845-5585 or email at: ginnyrioux@derrynh.org. In the event that the public is unable to access the meeting, the meeting will be adjourned and rescheduled otherwise the meeting will end at 10:00 PM. Mr. Perkins said that all votes taken are taken during this meeting shall be done by roll call vote.

22-131 Family Promises of New Hampshire, Inc.
Owner: Roman Catholic Bishop of Manchester
(tabled from 5/18/2022)

The applicant is requesting a variance to the terms of Article VI Section 165-47.A of the Town of Derry Zoning Ordinance to allow a group residence in a zone in which the former use was a Church. The intent is to provide temporary residences for homeless families at 187 Hampstead Road, Parcel ID 10012, Zoned LMDR

Attorney Gerard Prunier, Prunier & Prolman, PA, Nashua, NH, said he was representing Family Promises of New Hampshire and also present was Randy King, Board of Trustees Chairman.

Mr. Perkins said that the Board had requested a purchase and sales agreement and a letter from the Roman Catholic Church to be on letterhead.

Mr. Corbett said that the items were provided, and he was satisfied with the additional information provided.

Attorney Prunier said that he also would like to submit an additional piece of how the facility is used and believe what was submitted was what the Board had requested at the prior meeting.

Board Questions

Mr. Burgess said that during the previous meeting it was stated that 34 families were in need from Derry. Attorney Prunier said that was correct.

Pamela Wellman, Executive Director, said that there are 32 families identified and have heard of additional families in need.

Mr. Burgess asked if process is families come in and leave so fill in when leave with another family. If Nashua has three Derry families where are the others housed. Ms. Wellman said that the families are part of a diversion program and stay with friends, hotels, safe harbor facilities, and many stay in cars and tents.

Mr. Burgess asked how far way do families come from such as Mass. Ms. Wellman said that they work with Rockingham and Hillsborough county so families do not come from Mass. If from another Town would refer to a different agency.

Mr. Burgess said there was concern of arguments among families that would require police assistance or such how is that dealt with. Ms. Wellman said that does not happen as if a couple is struggling they provide professional help.

Mr. Burgess asked if the potential facility would have people from Nashua. Ms. Wellman said their goal is to serve Rockingham County so the Nashua facility could work with Hillsborough County. Derry has been identified as a hot spot so do not anticipate going outside as currently have identified 32 potentially 34 families of which 16 families are average middle class families.

Mr. Burgess asked why the church site. Ms. Wellman said that the diocese came to them with option to purchase so viewed and felt that the property would be a safe place for families.

Mr. Virr said that he questioned who the applicant was as the purchase and sales agreement has a different entity than applicant so what is the actual legal name. He said

that there may be a title issue. Ms. Wellman said that the legal name was Family Promise of Greater Nashua, Inc. d/b/a Family Promise of Southern New Hampshire. The purchase and sales agreement is with Greater Nashua, Inc. and recorded with the secretary of State.

Mr. Perkins said that speculation of services no longer required how would the use change. Attorney Prunier said that the variance was for a specific use and would need to come back for any different use as would be unable to utilize other than what allowed. Attorney Prunier said that they deal day to day with schools and Health Department and various agencies so these people would know if the use was no longer in the building that any different use would need to come back to the Zoning Board.

Mr. Perkins said that emails have been received with regard to self police with staff and how environment controlled. Ms. Wellman said that there are 40 cameras in their Nashua facility so if needed can replay video. The building is fully sprinklered and the 2 resident staff are trained professionals on call 24/7 and have developed a partnership with the Fire and Police if emergency of a sick resident that may need ambulance other than that the staff has extensive training and trained with CPR, active shooter, etc.

Mrs. Morin asked if there are any families not accepted or removed from program. Ms. Wellman said yes, but not because of criminal activity but only not ready for program as there is a 30 day probation period and if they do not participate in classes or holding a job.

Mr. Burgess said he was concerned of length of stay no more than 1 year. Ms. Wellman said that a family may stay a bit longer if a mortgage not close on time or an apartment not ready that some allowances are made and some families only need 6 months.

There was some discussion with regard to traffic volume but would be a Planning Board review process.

Mr. Perkins said that the process is applicant based system. Told that there are 14 families in review process of people displaced in Derry if not good fit for the program what happens to those families. Ms. Wellman said that if not a good fit for the program then assist to other agencies that will help with diversion program and case management.

Mr. Perkins said that traffic volume for East Derry Memorial School has seen a drop in volume. Out of 32 families only 5 fit program criteria who bring in next. Ms. Wellman said that they try to keep children in the same school to help with security and reduce trauma for child.

Mr. Corbett said he struggles with location of Church to 16 housing unit. Ms. Wellman said that they viewed the property with Diocese and churches are supporters of their program so felt it was a beautiful spot and have not looked at other areas.

Mr. Donlon asked Mr. Mackey if someone built an oversized garage would they require a variance. Mr. Mackey said not necessarily as it would determine the use from the garage or if it was to be built to close to a property line.

Mr. Donlon asked if could view as a special exception. Mr. Mackey said it was the Board's purview to set specific conditions and rebuttal statue to aggrieved parties need to speak how affected.

Mr. Corbett informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and will answer your call.

Opposed

James Foley, 178 Hampstead Road, said he was concerned of process of hearing as the case was heard on May 5th meeting the abutters were told the case would be continued to May 19th and then continued to June 2nd and not heard and here it is June 16th and no abutter notices were sent out so feel that a process was missed. He said that a variance needs to meet 5 conditions and that the 2nd criteria Mr. Corbett said that he felt the use was not right for the area. Mr. Foley said numerous studies of shelters decrease property values and was told no changes would be made to the area so why require 24 hour staffing. The hardship has not been shown. The Church went out and approached the applicant as need to get rid of is not a hardship. Mr. Foley said #5 spirit and intent – residential area not multi-family housing and once a variance is granted to group quarters funding can go away so they move and request another variance. Grant from Church to group quarters changes to multi-family unit and ordinance states required to be connected to Town water and sewer. He said he was concerned that the director spoke to industry 24 hours a day 7 days a week and that they did not look anywhere else. Mr. Foley said he feels granting the variance would create a substantial change to the neighborhood.

There was some discussion with regard to use variance.

Maria Goleo, remote, said she was a resident of Derry and questioned if no longer a Derry resident that they focus on Derry and not bring in other families that do not have a vested interest.

Andrew Rojee, 164 Hampstead Road, said that many studies of property value decrease in value with use in area. He said 16 bedroom statement not correct as there would be 32 bedrooms. Mr. Rojee said that the zoning requires 2 acres per single family dwelling of which the area consists of single family homes and farms. He said that he purchased his 2.01 acre home due to location and have done maintenance to his home and have seen an increase in value and equity and feel change of the Church to transitional homeless shelter would decrease his property value. Mr. Rojee said that Mr. Virr stated that he has waited 5 minutes or more to enter onto Hampstead Road now add an additional 30-35 vehicles to also wait would create a traffic problem.

Mr. Perkins asked how define value decrease occurs. Mr. Rojee said studies show search of 17% decrease in property values when this type of use comes in.

Jessica Rojee, 164 Hampstead Road, said that she had concerns with increase of traffic as there have been many accidents in the area so concern with volume. She said that she

also concerned with noise as not always inside building and 16 units full of children playing outside would generate noise so feel not appropriate location for this type of use.

Winston Pemberton, 4 Wishing Well Lane, said he felt that his property value would decrease with this type of use and also had the same concern for traffic increase. He said that the Nashua facility fits the area but this area does not fit use as no multi-family homes in the area. Mr. Pemberton said that everyone needs help sometimes but this location is not suitable for this type of use.

James Yartz, 179 Hampstead Road, said that property values are a direct concern. Wishing Well Lane is located across the street from the Church consisting of all single family homes. Mr. Yartz said he was also concerned of 16 units consisting of 32 bedrooms would create water pressure problems and potentially drain well as there are no town facilities in the area. He said that there are other areas more suitable for this type of use. The applicant is going to invest a lot of money for fit up for use and feel that there are better areas with sidewalks and stores etc. not a remote area such as this as there is no infrastructure set up here and would be a better fit downtown. Mr. Yartz said that the church had Sunday services and some classes that utilized very little water so feel this use would be a greater impact for surrounding properties. As for traffic the speed limit is 35 mph and cars easily go 70 mph. He said that feel if the applicant wants to spend money should find a better location for fit where it would not cost so much to create a fit up. The sprinkler system also requires water and the septic system would need to be increased and the existing hot top is considered hazardous waste.

Mr. Burgess said that the water system is Pennichuck so not a private well and that a fire sprinkler system is already a requirement.

Mr. Yartz said he purchased his home due to area and feel use is not fair to abutters. Property is zoned residential so potential for 3 homes and requesting multi-family not fair to rezone 1 property to make one use fit.

William Davidson, 1 Wishing Well Lane, feel that there would be a decrease in his property value and that the property is serviced by Pennichuck water but the water still comes from the area so feel would be an impact to surrounding wells.

Mr. Mackey said that the property is serviced by Pennichuck Water which well is located on Olesen Road.

Mr. Foley said that he also has a concern of decreased property values as website information supports decrease. He said he has been a taxpayer for 22 years and that the Church pays no taxes and the shelter would be also tax exempt so feel would be a 7.1% decrease to his property value.

Mrs. Morin said website information is from New York. Mr. Foley said decrease references many areas.

Karen Anderson, Colony Brook Lane, said she echoes concerns of abutters. She said if she was here to request a multi-unit dwelling she believes it would not be approved. This

is a low density area and concern with carry over and believe a worthy cause but if grant make sure conditions be adhered that not apartments for rental units.

Mr. Corbett informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and will answer your call.

Favor

Mr. Corbett said that Mr. Mackey received emails from the following people in support of the proposed request.

Douglas Flood, 6 Jessica Lane.
Beth Nelson, 16 Dubeau Drive.
Liz Greenberg, 71 North High Street #1.

Mr. Perkins said in reference to concern of meeting process that the Board has the right to grant continuances as allowed by right.

Mrs. Morin asked where churches were allowed and if this use would be considered as an accessory use. Mr. Mackey said churches were allowed everywhere except the Industrial District. He said that churches are allowed such uses schools but would need a legal opinion if this use would fall under an accessory use.

Rebuttal

Mr. King said studies over 40 years may find 1 decrease value of a home. He said that typical findings in summaries and that Nashua properties have increased twice rate. Feel adverse value different characteristics enhance value as run by agency with supervision and that families are not long term residents. Mr. King said that they have viewed other properties but not a lot of availability as reviewed property on Route 111 but property was not appropriate for use. The church had regular CCD classes daily and there were always people coming and going not just on Sunday so feel no additional traffic increase. Mr. King said that Family Promise of Southern New Hampshire does take other families and not always from Derry but transportation is provided for those children to their schools so no impact would be to the Derry School system. He said that they are aware of the cost involved to renovate the property as have had drawings and estimates done and if there are cheaper ways would like to hear about other properties that are available. The concern for water impact they have a letter from Pennichuck stating that the use could support their needs. Mr. King said that there would only be 14 units as 2 units would be utilized for resident staff.

Mrs. Morin asked if requesting funding. Mr. King sad not there yet.

Mr. Perkins asked if changes were needed if they would need to come back . Mr. Mackey said yes.

Mr. King asked if he could submit the information on housing and well.

Mr. Corbett motioned to accept the additional information.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Deliberative Session

Mr. Burgess said he felt that the request would be a good use for the facility and that Family Promise answered concerns of water and traffic. He said that he did not feel that people would all be leaving at the same time and that there would be no more of a wait than what do now at an intersection. Mr. Burgess said that the people coming into the program have to attend classes and various programs to learn how to reestablish themselves and that the facility guides them along the way and if they do not work then they did not stay. He said that he felt that the staff will self police the families there so did not feel it would be an issue.

Mr. Virr said it was a noble cause as homeless is a serious matter but did not feel it was the proper location for this type of use.

Mr. Corbett said that Mr. Burgess brought up some good points and that there other facility has no issues. He said that this area consists of single family homes and this type of use would completely go against the zoning area and change the dynamics of the area. It's one thing to be a church but the requested use is a different venue than a church.

Mr. Burgess said that a church could possibly have this as an accessory use.

Mr. Corbett said that would probably need to have a legal opinion.

Mrs. Morin said she has mixed feelings about the use as this is a different world and there will always be "I don't want in my neighborhood" but she remembers that Calvary had a similar use and maybe it was not long term but it was there. She homeless families into a program and get proper medical care and this program pushes accountability to be successful.

Mr. Virr said he remembered that Calvary did do something but it went away. He said that property values go up and down due to various factors and mortgage rates and interest rates change consistently so hard case for effect for change of property values.

Mr. Perkins said that this property is in an area where a bunch of homes are on quarter acre lots and facility abuts 3 – 10 acre properties. He said can structure motion with guidelines.

Mr. Burgess said property values over the last month or so have changed and people looking for mortgages have dropped 30% which also affects property values. He said that testimony was given that Family Promise in Nashua property values have increased 2 times. The program is for one year and possibly a bit longer but family will leave and do on their own.

Mr. Corbett said that he hears the program but need to hear why it fits the area.

There was some discussion with regard of use fit into area.

Mr. Corbett said that the Nashua facility is in a whole different area. He said that this request needs to answer the 5 criteria.

Mr. Perkins said that with regard to public interest he feels good application will serve a need.

Mr. Virr said that he hears Mr. Corbett about criteria points and the spirit of and intent of ordinance as there are 20 zoning districts and the only one that does not allow churches are the industrial zones and this area is LMDR which is low density.

Mr. Perkins said the criteria of substantial justice and what would be the justice if approve as uncertainty of what comes later or what if fails.

Mr. Burgess said that the applicant is and affiliate of a nationwide program so they have other resources available.

Mr. Perkins said 4 standards reviewed and hardship justified to allow something with potential decrease of property values. He said that the Board needs to structure a motion.

Mr. Corbett reviewed the standard conditions and that he felt that possibly a sunset clause needs to be added but unsure of wording.

Mr. Perkins said that the variance would discontinue if Family Promise no longer continues or would need to come back for an additional variance.

There was some discussion with regards to the conditions.

Mr. Perkins reviewed the conditions for the record.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Mrs. Morin motioned on case #22-131, Family Promises of New Hampshire, owner: Roman Catholic Bishop of Manchester, to grant a variance to the terms of terms of Article VI, Section 165-47.A of the Town of Derry Zoning Ordinance to allow a group residence in a zone in which the former use was a Church. The intent is to provide temporary residences for homeless families at 187 Hampstead Road, Parcel ID 10012, Zoned LMDR as presented with the following conditions:

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Subject to Planning Board review.**

Mr. Corbett said he would like to amend the motion to read Family Promises of Greater Nashua, Inc., d/b/a Family Promise of Southern New Hampshire, owner: Roman Catholic Bishop of Manchester as listed on the purchase and sales agreement.

Seconded by Mr. Burgess.

Vote:

Mr. Virr: No. Spirit and intent of ordinance is not observed as there are better locations where this type of use would fit. Hardship is self-created as would be changing the existing use.

Mr. Burgess: Yes.

Mrs. Morin: No. For the same reasons as stated by Mr. Virr. Do not feel the LMDR zone is the best location for this type of use.

Mr. Corbett: No. Spirit of the ordinance is not met.

Mr. Perkins: No. Spirit of ordinance of value to surrounding property value points made. Substantial justice not shown.

The application was Denied by a vote of 1-4-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

Other Business

Mr. Perkins said that the summer schedule needs to be addressed and voted on. He said that the Board typically meets once in July and August so the dates would be July 21st and August 18th.

Mrs. Moring motioned for the Board's summer schedule for July and August to be Thursday – July 21, 2022 and Thursday – August 18, 2022.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Donlon, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Approval of Minutes

Mr. Virr motioned to approve the minutes of May 5, 2022 as written.

Seconded by Mrs. Morin.

Vote: Unanimous.

Mr. Donlon, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Mr. Virr motioned to approve the minutes of May 18, 2022 as amended.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Donlon, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Mr. Corbett motioned to approve the minutes of June 2, 2022 as amended.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Donlon, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Obimba, Mr. Tripp, Mr. Donlon, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins

Adjourn at 10:04 pm

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

Approval of Minutes July 21, 2022

Mr. Corbett motioned to approve the minutes of June 16, 2022 as amended.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Tripp, Mr. Donlon, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins