



Town of Barnstable
Zoning Board of Appeals
Minutes
October 10, 2012

Laura Shufelt - Chair	Present
William Newton	Absent
Craig Larson	Present
Alex Rodolakis	Present
Brian Florence	Present
George Zevitas	Present

Also present for staff were Elizabeth Jenkins – Principal Planner and Carol Puckett – Administrative Assistant.

As a quorum has been met, Laura Shufelt opens the hearing at 7:07 PM and the members introduce themselves.

Approval of minutes from August 22nd, September 12th and September 26, 2012

Laura opens the Homeless not Hopeless appeal and reads it into the record:

7:00 PM

Appeal No. 2012-052

Homeless Not Hopeless, Inc

Homeless Not Hopeless, Inc is appealing the Building Commissioner's denial of a building permit to renovate the premises at 22 Main Street, Hyannis. The Appellant is proposing to create 12 bedrooms to be occupied by no more than 14 residents, plus a live-in resident manager, all of whom (except the manager) are formerly homeless persons who will be taught to live independently. The Appellant seeks a permit on the basis that the proposed use is exempt from zoning requirements under M.G.L. Chapter 40A Section 3 (the "Dover Amendment") because the use is for primarily educational purposes. The property is located at 22 Main Street, Hyannis, MA as shown on Assessor's Map 342 as parcel 028. It is in a Medical Services (MS) zoning district.

Members assigned: Craig Larson, Alex Rodolakis, George Zevitas, Brian Florence, Laura Shufelt
Attorney Peter Freeman is representing the applicant.

Attorney Peter Freeman indicates that after the appeal papers and memos, they have also submitted a Purchase & Sales agreement showing that they have the agreement to purchase the property and giving authority to be before the board tonight.

Board member, Alex Rodolakis, discloses that, in the past, he had represented E.A. Ready Sons, Inc., and that Mr. Ed Ready has since passed away. He indicates that since then he has not represented anyone from that family or business. Attorney Freeman indicates that he does not have a problem with him sitting on this tonight.

Attorney Freeman indicates that the Building Commissioner did not make a determination that the proposed use was not educational, believed that they didn't fit under the Dover amendment, and felt that it would be beneficial to have a public hearing. He indicates that in Mr. Perry's letter and the staff memo, the Dover amendment was cited which is Regis College versus the Town of Weston. He recapitulates that case. He indicates that there are three key things from the Regis case and that, in regards to the Dover amendment, it protects those uses of land and structures that have as their bona fide goal, something that can be reasonably described as educationally significant. Second requirement is that the educationally significant goal must be the primary or dominant purpose for which the land or structures will be used which he believes is the case. Thirdly, the courts stated emphatically that the courts do not view the Dover amendment as applicable only to a traditional school or classroom. He indicates that the concept of education is broad and expansive in Massachusetts and encompasses non-traditional classrooms and concepts such as the Fitchburg Housing Authority. He summarizes documents that have been submitted and some that he will submit tonight which includes an educational curriculum, educational tracking form, agreement with the participants, training materials for house managers, etc. He believes that it is clear that they fit within all of the discussions and criteria and requirements that our courts put in the Dover amendment.

Regarding the staff report, he disagrees that one issue that the Building Commissioner considered was the proposed area of the structure dedicated to residential use versus educational use. Based on the cases, that concern is misplaced and is not correct that this should be a consideration. He indicates that the cases are clear that it is not quantitative but qualitative.

He indicates that In the Fitchburg case, the court, in discussing what the facility was, pointed out it was a single family house run by managers. But, in fact, taught many of the things in that facility that qualified for the Dover amendment such as what they will teach. He quotes from his memo regarding the Fitchburg case. He then cites Campbell versus City Council of Lynn and reads a summary of it. He indicates that their proposal is not a traditional educational facility. They might not have a traditional curriculum, but have retired teachers who teach literacy, have trained house managers, and educational tracking. He gives the board a handout (The United States Interagency Council on Homelessness e-newsletter) and reads part of it. He gives another handout:(Targeting Life Skills, another one (What is it) , and a fourth one

Attorney Freeman then talks about some misconceptions and that they are not just a house or a shelter, they are more than that and teach men and women how to get back into society. He adds that in fact, at the end of his memo, that there is an 85% success rate and that participants have gone on to become assets to society. He talks about support letters from Duffy Health Centers, support letter from Cape & Islands Council regional network and a letter from a neighbor, Wendy Oliveria, which he reads.

Questions from the board

Brian Florence has a technical concern as there is nothing from the Building Commissioner denying a building permit and asks if this can be remanded back to the Building Commissioner to make a determination.

Elizabeth Jenkins did not see any issue with respect to standing and that Tom Perry submitted a letter saying he would deny a building permit for the requested use. Ms. Jenkins indicates that this was also reviewed by the legal department which did not see a problem with standing. Brian is concerned of the issue of standing if this goes to the appellate court. Laura Shufelt indicates that she has also spoken with the Town Attorney who is okay with it. Attorney Freeman thinks they are also okay as to standing and would hope that they proceed as delay would be harmful.

George Zevitas asks how many other homes they have which he is told is three. George asks how they are funded. Attorney Freeman indicates that it is privately funded. George indicates that he noted in the agreement

that food stamps can be used towards their obligations towards utilities and asks how many meals are served there on a daily basis. Attorney Freeman indicates that it is described in his memo but at least two meals are served daily. Craig Larson would like to hear from the speakers.

Attorney Freeman introduces the president and founder of Homeless not Hopeless, Billy Bishop.

Mr. Bishop indicates that they are in the business of saving lives and if not for this organization he wouldn't be here as he once lived in the woods for 10 years. They also take people from shelters and other programs who are all dysfunctional people either mentally, spiritually and physically challenged and have no other place to go. The facilities are supervised 24/7 unlike a school. Their schooling goes on as long as people are awake. They are running at an 85% success rate. His house managers are former homeless people.

Attorney Freeman introduces Dick Murphy who is on the board, Treasurer of Homeless not Hopeless, a Deacon at St. Francis Xavier church and served as Catholic chaplain at the Barnstable County Correctional facility for almost twenty years. Mr. Murphy gives a PowerPoint presentation. He indicates that one thing he learned at the correctional facility in dealings with the inmates is that jail wasn't working. He indicates that once you first have to start to address the self worth issue then you see progress. He indicates that once they start to teach people, they then start to feel better about themselves. He talks about the house on Baxter Road and how the men were taught how to paint and what was more important was that the education made them feel better about themselves. He indicates that this is not a shelter, not a halfway house but an educational program which teaches people how to feel better about themselves and how to live independently. It is not a typical education because its personal. The message is that they provide education, housing, and a clean and nice place to live which, for most people, is the first nice place they have ever lived. He indicates that their key point is that people have to feel comfortable and that the people teaching are comfortable and care about them. He then shows the "Benefits to Main Street" and indicates that they have taken 146 people off Main Street and thinks that it is important to the businesses. He shows the "Benefits to Town of Barnstable", "Benefits to Hyannis Fire District Tax" and "Benefits to the Neighborhood". He indicates that the message here is that they do perform a public service. Next slide is HnH = a Positive Influence. Next slide is Our Primary Function is Education and the "We need your help" which ends with "Please help us to help the homeless women of our community".

Attorney Freeman introduces Jeffrey Howell who is a member of the board and a 9th grade teacher at Dennis/Yarmouth High School.

Mr. Howell indicates that he has a Masters Degree in education, met Billy in 2006 and that his experience hit a cord with a girl who living at the RFK shelter at the time and was a sophomore and wanted her classmates to get involved which resulted in coat drives, bake sales, etc. In 2008, the program needed someone to come in and solidify the teaching credentials He indicates that in speaking with Billy Bishop to see what worked, he did research on how to run these types of programs, put it together and came up with a curriculum. The central integrity of the program comes from someone who was homeless teaching someone who is currently homeless. He indicates that what it comes down to is what happens 24/7 in these houses to make it a living curriculum.

Next to speak is Steve Brown of Centerville who owns a business in Barnstable called Commonwealth Solutions which provides educational services and in the past has worked as an educational consultant to HnH. Tonight he speaks as a volunteer as asks the board to approve their permit. All these programs are grounded in education and would like to cite three specific perspectives on education that document that HnH activities are fundamentally educational in nature. He reads a definition of education from the American Heritage dictionary. He then cites the Classification of Blooms taxonomy

"Bloom's Taxonomy is a classification of learning objectives within education proposed in 1956 by a committee of educators chaired by Benjamin Bloom who also edited the first volume of the standard text, *Taxonomy of educational objectives: the classification of educational goals*^[1] (referred to as simply "the Handbook" below). Although named after Bloom, the publication followed a series of conferences from 1949 to 1953, which were designed to improve communication between educators on the design of curricula and examinations about

effective education in America. "

Thirdly he indicates that an education entity arises in how adults who have experienced trauma recover and learn. He cites the works of J. Douglas Bremner, MD regarding how our brain and bodies heal and how we learn.

Attorney Freeman introduces Joseph Riordan. Mr. Riordan is a retired judge and on the board of HnH. He took the time to find out more about what this program does and is pleased at what he found out and accepted to be on the Board of Directors. He indicates that HnH is an educational facility made available to those people where they won't find any other place. The education that is offered to these men and women in these homes which enable them to be whole, physically healthy, spiritually well and compassion which are things that we take for granted. The most important thing we teach them and one of the major principles is that differences disappear which helps them so that they can assimilate to put it back together again. He indicates that as a judge, jail doesn't work as we punish but we don't rehabilitate. He believes that this project it is an educational program because of its success.

George Zevitas asks how the occupants are kept busy. Attorney Freeman indicates that the house managers are there 24 hours and that some occupants have part time jobs. It is mandatory that the occupants wake up early and have assigned house tasks. If they have jobs, they go to the job. Some occupants receive educational instructions and all have a communal dinner.

Alex Rodolakis asks what he mandatory length of time is for an occupant to be at the facility. Attorney Freeman indicates usually six to nine months. Alex asks if the other properties are single family houses. Attorney Freeman answers yes.

George asks how the permits were received for the other properties. Attorney Freeman indicates that the educational aspect wasn't questioned. Craig Larson indicates that group homes are allowable in the Town of Barnstable but are limited in size and asks if this one can be as effective as a normal smaller group home. Attorney Freeman indicates that it is the same as one of the Ocean Street houses and each facility would dictate the size.

George Zevitas asks what the criteria is for one of these facilities, i.e., does it need to be near services, etc. Attorney Freeman indicates that part of it is what is available and to a certain degree they are near supportive services such as Duffy facility is a factor but part of it is the number of bedrooms.

Laura Shufelt asks if there is anyone here that would like to speak either in favor or in opposition:

Chris Turner and his family reside at 14 Main Street, Hyannis which abuts this project. He is concerned and his concern is with respect for what they do. He also has given a large part of his life to help people and with that he is familiar with the difficulties it poses. His concern is the 15% that live next door to him and his children and thinks it works out better in theory than in reality. He asks if it would be better for these people not to be close to the perils of Main Street.

Lawrence Brown is clergy, teaches at Cape Cod Academy, is vice-chairman of the Interfaith Coalition on Cape Cod and writes a weekly column in the Cape Cod Times. These people are doing what every faith has taught us to do such as feed the hungry, shelter the homeless, lift and teach the poor. He runs a program called Shelter from the Storm concert which pulls local performers from every high school on Cape Cod, which has twice, picked HnH to help raise money for. He is in support of this project.

Annetta Olsen has been homeless for a couple of years and is a self-employed carpenter. She wants to show support and never thought that she would end up homeless She indicates that things happen to people who are not drug addicts and it can happen to a lot of people. What has helped her navigate is an organization called CORD but what homeless does to you is a horrible thing. She is in favor of this project.

Richard Perry was one of those guys that came from a very abusive household that caused him to get into trouble. He has done about 10 halfway houses and knows that Billy gave him a chance. Being in the house is better than a halfway house which he never got anything out of. If it wasn't for Billy and without a place like HnH he would be homeless and supports this project.

Bob, who is the house manager at Cooks House on Baxter Road, indicates that the previous speaker who had concerns can come by anytime to tour his facility to ease their concerns. He has been the house manager for 1.5 ears and hasn't seen anything disruptive and there hasn't been a need for police for any other disturbances and supports this project. .

Kathy, also a house manager, lives with five woman of which four will be attending college this fall. She indicates that previous to that, these women have had to learn the basics. She indicates that this summer there were 28 homeless people which is a record and is in support of this project.

Councilor Jan Barton speaks and indicates that if this many residents, who are dedicated, have earned the presence of at least one councilor to voice support, works because of the educational component and asks the ZBA for their support.

Caroline Kotoski, a former teacher of the year and homeless, lives at St. Claries. She indicates that circumstances led her to the program at St. Claire's which she says has saved her life. She indicates that it not only teaches the basics and educates individuals but also teaches how not to be in abusive relationship again. Today she is back in college, taking courses to make her marketable on Cape Cod and believes this program has given her a second chance.

Ken Malloy of Cotuit is a member of Federated Church and believes that some of the women they have seen here are candidates for this house. He is not quite sure why the Building Commissioner hasn't approved this project as other projects like this have been approved and urges the board to approve it.

Bill Simmons, self employed carpenter, was sick and had nowhere to go. He indicates that Billy Bishop gave him a chance and takes ride in where he lives on Ocean Street. Duffy is a great facility and thinks this program is great.

Raymond lives at one of the houses, was hopeless but supports this as he believes that the program works.

Jill Scolesse works for Cape Cod Council or Churches, is a social worker and has been working with over 30 individuals at HnH. She has seen the educational program at these facilities and indicates that it is exceptional. She wants to add that they do an excellent job of partnering to bring in personalized support and would like to add her support as it has been a pleasure to work with them.

Patrick Jewlick (sp) asks about the solvency of the organization as they have expanded with the purchasing of other properties. He also comments that this organization does not contribute to the tax base but gets services from the Town of Barnstable. He asks if the Town of Barnstable has a plan for the expansion of this industry or could they have houses like this scattered throughout the village. He also wants to know if there is a guarantee that the purpose of this home would never change or do they know if a year from now it could be servicing meth patients? Also, regarding police calls, from December 29th of last year there was a police call made in reference to a larceny at 119 Baxter Road as reported on the Barnstable Patch.

Peter White owns La Plaza del Sol motel in Mashpee and indicates that he also works with housing transitional people. He indicates that that this organization teaches people hope. They are also teaching loving and helping their neighbors which is the most important thing. He thinks it would be great for the Town of Barnstable to help their neighbors and hopes that the board approves it.

Hillary Green of 18 Valley Brook Road, Centerville, was a volunteer and noticed women in the overnight program who didn't have a place to go. She supports this request before the board and that time is of the essence in getting another house.

Collette runs Common Ground Café comments that a lot of the homeless people are from off cape and wonders if it would be better if this project was done in another location and not in Hyannis as there are numerous ones in this area.

Diane Casey Lee is the Executive Director of the Cape Cod Council of the Churches and wants to add the concern from the members across the cape. She believes it is educational and a successful project and supports the woman's home which is perfect for what they are trying to do.

Joan Duganer (sp) is from the First Lutheran Church who has spent overnights with these homeless women. She cares a lot about those women and is hopeful that those women will get a place where they can become whole.

Allen Bird, co-founder of HnH and a licensed social worker. He indicates that this program's houses are self-sufficient. The house on Ocean Street pays \$2300 per month for rent, the Baxter Road house pays a mortgage of \$800 per month and this program does not have the benefit of state funding. He believes this location is perfect because of the sewer and hospital proximity.

Laura Shufelt calls a ten minutes break.

At 9:30, Laura calls the hearing back into session.

Attorney Freeman rebuts and says solvency is not an issue as they have donations and a mortgage from Cape Cod Bank. Also, most people are from Cape Cod. If it were a special permit, location might be an issue but this is the perfect location and under Dover it is not an inquiry

He did draft suggested findings of fact which Elizabeth hands out.

Elizabeth Jenkins spoke with the Building Commissioner today about group homes throughout Cape Cod and the town. She then talks about the Zoning Act which falls under the congregate exemption. She indicates that the Dover Amendment considers two things as education and if education is primary.

Comments from the board

Craig indicates that this home is large and wonders if their methods will work because this structure is bigger. Mr. Murphy indicates that on Ocean Street that there are twelve people with one manager.

Billy Bishop indicates that if there were to be one house manager and that there would be no more than 10 people.

George Zevitas clarifies that there will be two house managers for the fourteen people proposed at this location.

Craig Larson informs Attorney Freeman that they would have to go to Site Plan Review. Attorney Freeman concurs.

Laura Shufelt asks Elizabeth Jenkins to talk about what would happen about the use change over time.

Ms. Jenkins indicates that the board will make a decision on the evidence on their mission and would be protected under the zoning code. She indicates that if there were ever any deviation that strayed from education purposes, that they would no longer be covered under the educational exemption.

Laura reiterates that they need four votes to overturn the Building Commissioner's decision or uphold.

Craig Larson does finding according to Peter Freeman's handout. :

Findings

After consideration of the evidence presented and testimony given by the Appellant and the public, the Board made the following findings of fact in Appeal No. 2012-052:

1. Homeless Not Hopeless, Inc is appealing the Building Commissioner's denial of a building permit to renovate the premises at 22 Main Street, Hyannis. The Appellant is proposing to create 12 bedrooms to be occupied by no more than 14 residents, plus a live-in resident manager, all of whom, except the manager, are formerly homeless persons who will be taught to live independently.
2. The Appellant seeks a permit on the basis that the proposed use is exempt from zoning requirements under M.G.L. Chapter 40A Section 3 (the "Dover Amendment") because the use is for primarily educational purposes.
3. The subject property is located at 22 Main Street, Hyannis, MA as shown on Assessor's Map 342 as parcel 028. It is in a Medical Services (MS) zoning district.
4. Homeless Not Hopeless is a Massachusetts Chapter 180 non-profit corporation organized exclusively for charitable, religious, educational, and scientific purposes.
5. Homeless Not Hopeless' proposed use of the property can reasonably be described as having an educational purpose.
6. The educationally significant goal of Homeless Not Hopeless, Inc. is the primary or dominant purposes for which the premises at 22 Main Street will be used.

Attorney Freeman indicates that that the managers could formally be homeless.

Alex Rodolakis would suggest that they also find that the property as proposed will serve educational purposes and that such educational purposes will dominate over any other residential or components of the property.

George asks about the 14 residents plus a live-in manager. He thought it was twelve with a live-in resident but the application states 14. Laura believes that in this case our determination is whether this is educational..

Vote:

AYE: George Zevitas, Brian Florence, Alex Rodolakis, Craig Larson, Laura Shufelt

NAY: None

Based on those findings, a motion is made by Craig Larson and seconded by Brian Florence to overturn the Building Commissioner's decision to issue building permits for the property.

Brian Florence wants to amend the motion to add that this is subject to lack of a certain determination and lack of citation of the Town of Barnstable's zoning ordinance.

Craig Larson accepts the amendment.

Laura Shufelt asks if they want to make it subject to Site Plan Review. Elizabeth Jenkins indicates that it would be anyway.

Vote:

AYE: George Zevitas, Brian Florence, Alex Rodolakis, Craig Larson, Laura Shufelt

NAY: None

BUILDING COMMISSIONER'S DECISION HAS BEEN OVERTUNED.

Motion is made by Brian Florence and seconded by Alex Rodolakis to approve the minutes from August 22nd, September 12th and September 26, 2012

VOTE:

All in favor

Open: Chair's Discussion

▪ Vote on the 2013 Hearing Date Schedule

Alex Rodolakis would like it to be double-checked for school vacations. Staff to double-check. Tabled to next meeting.

▪ Election of Officers

In accordance with MGL Chapter 40A Section 12, Section 240-125 of the Zoning Ordinance and the Zoning Board of Appeals, Rules and Regulations, notice is hereby given that the Zoning Board will hold its annual election from its membership for Chairman, Vice-Chairman and Clerk.

Motion is made by George Zevitas and seconded by Craig Larson to table until the next meeting.

Vote:

All in favor

Upcoming Meetings:

October	24th Meeting to be Cancelled
November	14
December	12

Motion is made by Brian Florence and seconded by Alex Rodolakis to adjourn.

Vote:

All in favor.