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CAMDEN ZONING BOARD OF APPEALS
MINUTES of MEETINGS
December 19, 2013

PRESENT and VOTING: Chair: Frank Toole: Members: Jean Belair, Tom Laurent, Linda Norton and Sam Smith

ALSO PRESENT: Alternate Member Ed Libby and CEO Steve Wilson

The Meeting was called to Order at 5:00 pm in the Washington Street Conference Room.

Mr. Toole informed Mr. Libby that when there is a full Board Alternates do not vote on Applications, and he will not be able to participate once the Board begins deliberation.

APPLICATION for a SPECIAL EXCEPTION to Operate a Quasi-Public Facility

P.A.W.S. Animal Adoption Center

123 John Street: Traditional Village District (V): Map 230 Lot 1

PUBLIC HEARING

Mr. Toole read the Board's newly adopted procedure for public hearings: In order to encourage more citizen participation, the Board adopted a process which eliminates categorizing speakers as either proponents or opponents. Now, everyone is in the category of "those wishing to speak".

Declaration of Conflict

Members were asked to declare any possible conflicts of interest they might have regarding the application before them; there were none.

Code Enforcement Officer's Summary

Mr. Wilson noted that this application required no action on his part but to review the request and determine if the use qualified as a Quasi-public Facility; he agreed with the Applicant that it did.

Standing

The Chair accepted the Applicant's statement that there was a Purchase and Sales Agreement between P.A.W.S. and the Camden First Aid Association (CFAA) to purchase the John Street property. This agreement gives the Applicant legal status to make an application to the Board.

According to written testimony, P.A.W.S. is a 501(c) (3) non-profit corporation with active status.

→ A copy of the IRS letter granting non-profit status is needed for the file.

1 The Chair noted for the record that the Garden Institute, along with Merry Gardens
2 Housing Associates, authored a letter dated December 18. Some of the Board members saw the
3 letter yesterday; some received a copy just before the meeting and have not had time to review it.
4 Just before the meeting the Applicant submitted a letter dated December 19 in response to the
5 earlier letter; the Board has not had an opportunity to review that letter. Both of the letters were
6 accepted as part of the record.¹

7
8 In addition, the Chair noted that Recording Secretary, Jeanne Hollingsworth, had
9 disclosed to him before the meeting that she had an affiliation with the Garden Institute: Ms
10 Hollingsworth will not be participating in discussions, deliberations or voting. Her only role is
11 to take minutes.

12
13 *Applicant's Presentation, Questions from the Board and Comments from the public*

14
15 Appearing on behalf of the Applicant was John Scholz, 1st Vice President, P.A.W.S.
16 Animal Adoption Agency. Mr. Scholz informed the Board that the P.A.W.S. shelter is planning
17 to move from its current location on Camden Street in Rockport to the building on John Street
18 formerly occupied by the Camden First Aid Association.

19
20 Their plans for the building include: Removing a portion of the paved parking on the
21 easterly side of the building facing Merry Gardens Estates and building nine dog runs on the
22 cleared area; eliminating additional pavement further down the same eastern face of the building
23 and creating a fenced-in dog pen; and eliminating the garage doors facing John Street, installing
24 windows on that wall, and removing pavement and installing landscaping in that area. The
25 garage will be modified to become the dog kennel. The purpose of the runs and the pen is to let
26 the dogs out of the building when the indoor areas are being cleaned. Mr. Scholz added that is
27 the only time the dogs are let out except when they are exercised during the day by volunteers
28 who will walk the dogs along John Street, Simonton Road and Mechanic Streets.

29
30 They are no complaints of noise or other problems on file with either the Rockport Police
31 Department or at the shelter. The new dog park that the shelter operates in Rockport will stay
32 there, and will still be under the shelter's management.

33
34 Mr. Scholz then addressed five of the Ordinance Standards for a Special Exception Permit
35 referring to the organizations written submissions. P.A.W.S. provided information comparing the
36 anticipated impact from a use as a shelter against the use by CFAA when it was in operation.
37 Julia Libby, former Chief of Emergency Management Services at CFAA, was present to answer
38 any questions the Board might have in this regard. As discussion of these various standards
39 occurred during the public portion of the meeting, that discussion has been entered below:

40
41 **Article VII Section 6 Special Exceptions:** (3) Standards for a Special Exception Permit
42 "A special exception may be granted by the Zoning Board of Appeals only in the event that the
43 applicant has established to the satisfaction of the Board that:

44

¹ Both letters are attached here as Attachment 1 (Garden Institute/Merry Gardens Housing Associates) & 2 (PAWS)

1 (a) Neither the proposed use nor the proposed site upon which the use will be located is of such
2 a character that the use will have significant adverse impact upon the value or quiet possession of
3 surrounding properties greater than would normally occur from such a use in the zoning district.
4 In reaching a determination on this standard, the Board shall consider:"

5
6 (i) *"the size of the proposed use compared with surrounding uses;"*
7

8 P.A.W.S. written statement says: "No size changes to the existing building are anticipated. It is
9 anticipated that exterior "dog runs" will be added to the easterly Rt. 1 side of the present garage
10 area."

11
12 Mr. Smith: Referencing the Applicant's intent to make changes to area in front of the garage, he
13 asked if that would change the parking layout. Mr. Scholz stated that this area was not used for
14 parking, and one benefit from the change is that that the confusion over where the actual access
15 to the shelter entrance will be is eliminated.
16

17 Mr. Smith asked if there would be any parking on the easterly side of the building, or if the entire
18 area is to be turned into dog runs. Mr. Scholz replied that the plan the Board has shows parking
19 on that side still, but that is where they have elected to put the dog pen. They chose this side
20 because the topography behind the building is too steep, and they could not protect the area
21 along the Simonton Road side of the building sufficiently from noise if runs and pen were
22 located there.
23

24 (ii) *"the intensity of the proposed use, including amount and type of traffic to be generated,*
25 *hours of operation, expanse of pavement, and similar measures of intensity of use, compared*
26 *with surrounding uses;"*
27

28 P.A.W.S. written statement says: "Generated traffic will be less than produced by the CFAA as
29 hours of operation will be generally 8:00am – 5:00pm or "normal business hours" with the
30 exception of occasional animal health related emergencies. No expansion of the existing
31 pavement areas is anticipated. The number of personnel working at the facility will be no more
32 than was the case with CFAA."
33

34 Discussion:

35 **Traffic:**

36 *From Staff:* Mr. Scholz said that there will be three paid staff: An Administrative Director, a
37 Development Director and the Shelter Manager.
38

39 Julia Libby, testifying during the Public Hearing, said that she believes they had more traffic
40 than can be expected here. They would sometimes hold training classes for up to 30 people
41 twice a week – she thinks there will be less traffic.
42

43 *From Volunteers:* Mr. Scholz noted that they have a large number of volunteers, but the number
44 of volunteers at the shelter at any one time will fluctuate: At the Rockport shelter, the Shelter
45 Manager estimates that there are 8 cars in the lot including those of staff and volunteers at any
46 one time.

1 *From Visitors:* Mr. Scholz reported that the Shelter Manager estimates that there are perhaps as
2 many as 10 visitors arriving by car in Rockport on a normal day; they anticipate a large increase
3 in visitor traffic at this shelter. Rockland’s shelter currently receives between 40 and 50 visitors
4 per day - they do not anticipate they will see that level of traffic in Camden. The shelter serves 8
5 towns, and there will be fluctuating levels of traffic from those towns as members of the public
6 and/or town officials bring lost or abandoned animals to the shelter.

7
8 **Pedestrian Safety:**

9 Mr. Laurent: He asked Mr. Scholz if there were sidewalks on Camden Street in Rockport where
10 volunteers walk dogs and if there had been any incidents involving volunteers walking there.

11 Mr. Scholz replied that there are no sidewalks and, that as far as he knows, there have been no
12 incidents.

13
14 Mr. Laurent wondered what the Applicant means when they say that there will be an increase in
15 the pedestrian traffic on John Street: Are they saying it will be more pedestrian traffic than there
16 is on Camden Street because there will be more dogs and more volunteers at the John Street
17 shelter; or, that there will be more pedestrian traffic than there is on John Street at this time. Mr.
18 Scholz replied that it can be deduced that there will be more pedestrian traffic in the area than
19 there is now. He added that not just anyone can come to the shelter and ask to walk a dog. The
20 people walking the dogs are trained volunteer staff and the dogs will be under the control of the
21 shelter at all times. Mr. Wilson clarified that volunteers will also walk the dogs on other streets
22 in the area including Simonton Road and Mechanic Street.

23
24 **Hours of Operation:**

25
26 Mr. Libby: He asked if the shelter would be open on Sundays. Mr. Scholz replied that they
27 would – it is one of their busiest days for visitors; the only day of the week they will be closed to
28 the public is Monday.

29
30 Sharon Gilbert, testifying during the Public Hearing, asked what hours the shelter was open to
31 the public. Amy Hutchinson, Shelter Executive Director, said the current hours are 11 – 4 the six
32 of the days they are open. In Camden they would like to expand these hours to 9 at the earliest
33 and 6 at the latest. Because they will have the room, they want to run training classes at this site
34 and host other activities as well.

35
36 (iii) *“the potential generation of noise, dust, odor, vibration, glare, smoke, litter, and other*
37 *nuisances;”*

38
39 P.A.W.S. written statement says: “The generation of noise should be far less than produced by
40 CFAA with their round the clock operation and sirens blaring as the exited for runs. The
41 potential generation of noise will be from occasional barking of dogs. This will vary depending
42 on the character of the dogs moving through the adoption center. There is no expectation of
43 dust, odor, vibration, glare, smoke, litter, or other nuisances. Any exterior building “safety”
44 lights will be properly shielded per Ordinance requirements should they be used.”

1 **Noise:**

2 Mr. Libby: He asked if there was a different routine for cleaning on week-end days. Amy
3 Hutchinson replied that cleaning is the first thing they do every morning and the dogs are let
4 outside while this is happening. She added that all the dogs will also have another outside time
5 each day.

6
7 Mrs. Wilcox, a Trustee at John Street Methodist Church: They are concerned about the noises
8 and the traffic. They had no problems with the CFAA when they were there – they were good
9 members of the community. But, this shelter will be open on Sundays and they have services on
10 Sunday mornings. They also have a lot of different users at the church all the time, and that
11 creates a problem too. She does not think it is an appropriate place for all these dogs across the
12 street from their Church. They have worked very hard on their property, and now they are afraid
13 they are going to have difficulties across the street although Mr. Scholz has said the dogs are
14 kept inside all the time.

15
16 Julia Libby, testifying during the Public Hearing, informed the Board that CFAA was very
17 careful to *never* (her emphasis) run their sirens unless they had to – they *never once* ran them
18 leaving the building on John Street in all the time she was there.

19
20 Jon Kuhl: He, along with four other members, represent the Board of the Garden Institute, an
21 abutter to the Applicant’s proposed property. The Board members oversee the operations of the
22 property and are concerned about noise. The Applicant has said that there have been no
23 complaints about noise in the current environment that they are in. But, given the possibility that
24 there could be noise, this could be a very critical issue. He finds the Applicant’s offering is
25 insufficient as to what level of noise *might* be. They need to look at the environment and the
26 proximity of potential complainants in the existing area, and compare that to what we might have
27 in the new area. We might find that they are comparing apples to oranges. From what he has
28 heard this evening there hasn’t been a good hard look at this issue.

29
30 Mr. Wilson: He informed the Board that he did research the area around the Rockport location:
31 There is a vacant lot across the street; a veterinarian abuts the rear of the property; two residences
32 across the street; two more residences down the street, and a church right next to the dog park.

33
34 Mr. Smith: He asked if he understood correctly that the Rockport shelter had no issues with the
35 Church next door. Mr. Scholz answered that was so. The dog park, which is set right up against
36 the property line setback, was the perfect opportunity for problems because there are often 10 –
37 15 dogs at a time in the park; still, there have been no complaints.

38
39 Mr. Scholz went on to say that when the lights are off at night the dogs won’t bark unless
40 someone is there. In addition, he believes removing the garage doors and installing a brick wall
41 will help cut down on noise. The dog runs on the easterly side will face John Street; they would
42 consider putting in a 5' landscape hedge to keep the dogs from seeing people and cars that might
43 set them to barking.

44
45 Sharon Gilbert, testifying during the Public Hearing, stated that she was familiar with both the
46 Garden Institute property – she was once on the Board there – and the property between CFAA

1 and Merry Garden Estates: There is dense vegetation on the Garden Institute property and dense
2 vegetation between Merry Gardens Estates and CFAA where the dog runs and pen will be
3 located as well. She believes this vegetation creates a buffer that will help with the issue of
4 noise.

5
6 Paula Marshall, 120 Mechanic Street: They are very concerned about the noise. In the
7 summertime they have their windows open and like to sit outside in the evenings. She realizes
8 that the Town does have a Barking Dog Ordinance and hopes the shelter will keep this in mind.

9
10 *(iv) “unusual physical characteristics of the site, including size of the lot, shape of the lot,
11 topography, and soils, which tend to aggravate adverse impacts upon surrounding properties;”*

12
13 P.A.W.S. written statement says: “No change from property use by CFAA.”

14
15 *(v) “the degree to which landscaping, fencing, and other design elements have been
16 incorporated to mitigate impacts on surrounding properties.”*

17
18 P.A.W.S. written statement says: “No additional landscaping is proposed.”

19
20 Mr. Scholz concluded his testimony, and the Public Hearing was closed when no one else came
21 forward to speak.

22
23 **MOTION by Mr. Toole seconded by Ms. Norton** to close the Public Hearing.

24 **VOTE: 5-0-0**

25
26 At this point the Chair informed Mr. Libby that he would no longer be able to participate in
27 the review.

28
29 Mr. Belair asked the CEO to clarify that there had been only two submissions received – the
30 two letters – and asked if anything been received from the Church. The CEO replied that he had
31 nothing from the Church. He has Department Head sign-offs from the all of the Departments in
32 Toewn; they see no issues.

33
34 The Board proceeded to establish the facts:

- 35 ♦ The property is in the Traditional Village District
- 36 ♦ Uses permitted in the V District are found at Article VIII District Regulations:
37 Section 7: Traditional Village District (V):

38 “C. Uses Permitted as Special Exceptions: The following uses may be permitted only
39 upon approval as special exceptions in accordance with the appropriate
40 provisions of this Ordinance:

41 The following municipal and institutional uses:

42 (6) Community buildings

43 (7) Municipal uses

44 (8) Nursery schools and day care centers

45 (9) Public schools

46 (10) Quasi-public facilities”

1 Mr. Toole suggests that the shelter is not described by any of the first four uses; this
2 leaves one possibility as the only use it could fit within – a Quasi-public facility. This is the use
3 the CEO found it met, but the Board must also make a determination:
4

5 “Article III: Definitions: QUASI-PUBLIC FACILITY: A facility for a recognized public
6 purpose, such as an auditorium, library, park, or museum, which is operated by a non-profit
7 organization or by a public agency other than the municipality.”
8

9 Mr. Belair noted that to obtain non-profit status from the IRS, an organization must have
10 demonstrated that there is a public benefit to be derived. *If* the shelter has their non-profit status,
11 then that determination has already been made.
12

13 **MOTION by Mr. Toole seconded by Mr. Smith**, that the Board find as a fact that the
14 Applicant, P.A.W.S., is a non-profit corporation to which IRS has granted non-profit status; and
15 they are a party to a Purchase and Sales Agreement to purchase the facility on John Street.

16 **VOTE: 5-0-0**
17

18 Article VII Section 4: Special Exceptions (3) Standards:

19 “(a) Neither the proposed use nor the proposed site upon which the use will be located is of
20 such a character that the use will have significant adverse impact upon the value or quiet
21 possession of surrounding properties greater than would normally occur from such a use in
22 the zoning district.

23 In reaching a determination on this standard, the Board shall consider:”

24 (i) “The size of the proposed use compared with surrounding uses;”
25

26 Discussion:

27 Mr. Toole read P.A.W.S. written testimony (see above). The CEO listed the properties
28 surround this site: The Methodist Church across the street; Camden’s Public Works also across
29 the street; Merry Gardens assisted living center next door; Jackson Landscaping on the other
30 side; diagonally across the street is a single family house; and the Garden Institute is to the rear.

31 **MOTION by Mr. Laurent seconded by Mr. Belair** to find as a fact that the proposed use, in
32 scale, is very similar in size to other uses existing on the street.

33 **VOTE: 5-0-0**
34

35 (ii) “The intensity of the proposed use, including amount and type of traffic to be
36 generated, hours of operation, expanse of pavement, and similar measures of intensity
37 of use, compared with surrounding uses;”
38

39 Discussion:

40 Mr. Smith noted that Mr. Scholz stated that there will be less pavement that there is now;
41 and, the type of traffic is predicted to be less than what was there.
42

43 Mr. Laurent suggested that other businesses – Public Works and Jackson Landscaping –
44 would probably be keeping normal business hours during the week with Jackson working
45 perhaps part days on Saturdays. In addition to Sunday services, the Church has other functions –
46 meetings, wedding and funerals. The shelter will be open during normal business hours and on
week-ends; these hours are similar to those in the area.

1 **MOTION by Mr. Laurent seconded by Mr. Smith** that the intensity of the proposed use is
2 similar to other uses in the area.

3 **VOTE: 5-0-0**

4
5 (iii) “The potential generation of noise, dust, odor, vibration, glare, smoke, litter, and other
6 nuisances;”

7
8 Discussion:

9
10 Ms. Norton suggested that out of all the nuisances listed, it was noise that concerned
11 people the most. The level of noise is dependent upon the number of dogs and whether they are
12 inside or outside, and she does not know how many dogs they plan to have room for.

13
14 Mr. Toole asked Mr. Scholz to clarify what the estimate to be the average capacity at any
15 given time. Mr. Scholz replied that it is hard to quantify how many dogs they will have at any
16 one time, but that there is room for 20 pens in the garage. That does not mean they will all be
17 filled, but they want sufficient capacity to accept them when they do come in. Amy Hutchinson
18 added that the dogs would never all be outside at the same time.

19
20 **MOTION by Mr. Blair seconded by Mr. Smith** to find as a fact that the testimony and the
21 discussion have demonstrated that there is no significant noise that will result in a significant
22 adverse impact as a result of this use.

23
24 Discussion: Mr. Laurent asked how far the abutting properties are from this building: The
25 Church sits quite a bit from the street, and the noise from the dog runs on their side should be
26 blocked by the building; there has been testimony that there is heavy vegetation between the
27 shelter and other abutters, but he is not clear on distances and direction of those properties. Mr.
28 Toole noted that both Pokoski and Jackson are located on the far side of the building from the
29 dog runs; Coastal Affordable Housing (Merry Gardens Estates) will face the dog runs and pen;
30 and the Garden Institute is behind.

31
32 Mr. Laurent asked what kind of activities go on at the Garden Institute. Jon Kuhl
33 responded by saying people do gardening; work in the greenhouse and tend to plants; do
34 beekeeping; and work with schools that participate in joint programs.

35
36 **VOTE: 5-0-0**

37
38 (iv) “unusual physical characteristics of the site, including size of the lot, shape of the
39 lot, topography, and soils, which tend to aggravate adverse impacts upon surrounding
40 properties;”

41
42 **MOTION by Mr. Toole seconded by Mr. Laurent** to find as a fact that there are no unusual
43 characteristics of the site which would tend to aggravate adverse impacts upon surrounding
44 properties.

45 **VOTE: 5-0-0**

1 (v) “the degree to which landscaping, fencing, and other design elements have been
2 incorporated to mitigate impacts on surrounding properties.”
3

4 Discussion:

5 Ms. Norton noted that the Applicant had stated that they would be willing to install
6 landscaping and that would help overcome the impact of the dog runs. They had said they
7 wanted to create a visual barrier to the cars on John Street, but the Board discussed adding
8 landscaping sufficient to act as a sound barrier as well. The CEO recommended a double hedge
9 of two staggered rows with trees planted 5’ apart to serve that purpose.
10

11 The Chair suggested that the Board can, and should, impose conditions that reasonable to
12 the granting of this application. He suggested that a condition of approval requiring the
13 Applicant to submit a detailed plan to the Code Enforcement Officer that will provide a visual
14 and acoustic barrier, and leave it to the CEO to determine the adequacy of the design. The CEO
15 suggested that he and the Police Department work together to monitor the effectiveness of the
16 buffer, because the Police would be the enforcement arm if there are problems.
17

18 **MOTION by Mr. Belair seconded by Ms. Norton** to find as a fact that the Board has heard
19 testimony demonstrating that the landscaping, fencing, and other design elements have been
20 incorporated to mitigate impacts on surrounding properties.
21

22 Discussion:

23 Mr. Laurent questioned the wording of the Motion – should it say “will be met” instead of
24 “have been met”. Mr. Belair suggested that by locating the dog runs in the brushy wooded area
25 on the back of the building, and by removing the garage doors to help mitigate noise the
26 Applicant has met this standard.
27

28 **VOTE: 5-0-0**
29

30 **MOTION by Mr. Laurent seconded by Mr. Smith** that as a condition of approval the
31 Applicant is required to prepare a plan for adding additional shrubbery with the design to be
32 reviewed by the Code Enforcement Officer in consultation with the Police Chief.
33

34 **VOTE: 5-0-0**
35

36 (a) “Neither the proposed use nor the proposed site upon which the use will be located is of
37 such a character that the use will have significant adverse impact upon the value or quiet
38 possession of surrounding properties greater than would normally occur from such a use in the
39 zoning district.”
40

41 Discussion:

42 Mr. Laurent suggested that “than would normally occur” means that the barking of dogs will
43 not occur more than it would ordinarily; the occasional barking of a dog is not unusual in any
44 neighborhood in Town. He believes the Applicant is taking steps to ensure that barking dogs do
45 not have an impact, and wondered if there could there a condition of approval that addressed
46 limiting the possibility of impacts. The CEO suggested that perhaps the Board could require a
different cleaning schedule on Sundays to accommodate the Church’s schedule of services. Steve

1 Daily, from the Board of Trustees of John Street Methodist Church, spoke from the audience
2 saying they would be glad to work with the shelter to work this out.
3

4 The Chair suggested that before making this finding, the Board should discuss whether or
5 not this facility is, or is not, a Quasi-public facility; he returned to that definition:
6 “QUASI-PUBLIC FACILITY: A facility for a recognized public purpose, such as an
7 auditorium, library, park, or museum, which is operated by a non-profit organization or by
8 a public agency other than the municipality.”
9

10 Mr. Toole suggested that there seems to be a two-part test within the definition: The first
11 is that the organization must be a non-profit – and that test has been met; the second test is
12 whether this use is a “recognized public purpose”. He read the definition and suggested that the
13 words “such as” give the Board latitude in determining what uses qualify for this designation
14 beyond those mentioned as examples.
15

16 Discussion:

17 Mr. Belair asked where the dogs at the shelter come from. Mr. Scholz replied that they
18 do accept stray dogs, but most come from the communities they have contracts with to take care
19 of their stray or lost dogs and cats. Ms. Hutchinson added that they accept these animals from
20 Animal Control Officers, from citizens and from the Police. Members agreed that by providing
21 this kind of public service the shelter does pass the “recognized public purpose” test.
22

23 **MOTION by Mr. Belair seconded by Mr. Toole** that P.A.W.S. Adoption Center is a Quasi-
24 public facility as defined by the Ordinance.

25 **VOTE: 5-0-0**
26

27 **MOTION by Mr. Toole seconded by Mr. Smith** that this proposed use will not have a
28 significant adverse impact upon the value or quiet possession of surrounding properties greater
29 than would normally occur from such a use in the zoning district.

30 **VOTE: 5-0-0**
31

32 **MOTION by Mr. Toole seconded by Mr. Belair** that a Special Exception for P.A.W.S. Animal
33 Adoption Center is granted subject to two conditions: 1) The submission of an IRS letter
34 granting non-profit status; and 2) The creation of a landscaping plan, working with the CEO and
35 the Police Chief, that will provide the buffer discussed.

36 **VOTE: 5-0-0**
37

38 **2. APPLICATION to EXPAND A NON-CONFORMING USE**

39 **Stephen C. Laite: Map 119 Lot 182: Business 1 District (B-1)**
40

41 PUBLIC HEARING

42 *Declaration of Conflict*

43

44 Members were asked to declare any possible conflicts of interest they might have
45 regarding the application before them. Mr. Toole and Ms. Norton discussed the fact that they
46 were, or had been, customers of Mr. Laite; no one felt this created a conflict.

1 *Code Enforcement Officer's Summary*
2

3 Mr. Wilson noted that this application is the result of a project to amend the Ordinance to
4 permit this work well over a year ago. The change to the Ordinance was passed by the Town in
5 acknowledgement of the fact that these businesses need to make changes to succeed. The
6 property is next to the Village Variety and across from a school in the downtown B-1 District.
7

8 *Standing*
9

10 The Chair confirmed with Mr. Laite that he is the owner of the business at 1 Union
11 Street, Laite's Camden Exxon.
12

13 *Applicant's Presentation*
14

15 Mr. Laite wants to add one extra bay to his garage next to 3 Union Street; he wants to
16 change the entire roof from flat to saltbox; he wants to install a security fence next to Village
17 Variety; and he wants to install a chain link fence on the back property line. Much of the work
18 he used to do in his parking lot will now be done inside, and cars will be parked behind the fence
19 instead of stored out front. The CEO noted that Mr. Laite has gotten rid of trailer bodies which
20 he used for storage and they cannot, under the new rule, be replaced once this expansion has
21 been granted.
22

23 *Questions from the Board*
24

25 Mr. Belair: He asked if there would still be cars parked out front. Mr. Laite replied that the only
26 ones would be ones they are working on; the wrecks will all be kept out back within the fence.
27 The additional bay will also help reduce outside parking.
28

29 Mr. Smith: He asked about the security fence between the garage and Village Variety. Mr. Laite
30 replied there will be a 6' high chain link fence with one 10' wide gate. The fence facing Union
31 Street will have wooden slates to screen the impound lot from the street. In addition to
32 improving the look of the lot, the fence addresses his insurance company's requirement that the
33 cars are kept secure from theft while they are in his custody. The extra bay is where he will keep
34 drug impound cars and the belongings from other impounds. He is required to keep these items
35 secure while the car is on his lot.
36

37 Mr. Laurent: He asked about the angle of the fence behind the garage and wondered why Mr.
38 Laite didn't enclose the entire area. Mr. Laite replied that he downsized the project to avoid a
39 storm drain. The area became a problem when two businesses up Elm Street expanded and re-
40 directed the flow of water downhill to his property.
41

42 Mr. Toole: He asked if Mr. Laite has spoken to the abutters that live next to the proposed
43 addition. Mr. Laite replied that he had: In addition to the people at 3 Union Street, he has
44 spoken to Gary Fowlie at Village Variety and to the Redfields behind. The cape, which also
45 abuts, is owned by Gary Fowlie and is vacant. All of them said that they were OK with what he
46 is proposing.

1 Mr. Laite, in response to a question about impacts on traffic, responded by saying that he
2 anticipates there will be no change to the traffic patterns on the property; the level of business
3 will probably remain the same.

4
5 *Public Comments*

6 Sharon Gilbert: She congratulated Mr. Laite saying she believes this will be a big improvement
7 to the area; she is very much in favor of the project.

8
9 **MOTION by Mr. Laurent seconded by Ms. Norton** to close the Public Hearing.

10 **VOTE: 5-0-0**

11
12 Mr. Wilson confirmed that this was a non-conforming use in the B-1 District.

13 **MOTION by Mr. Toole seconded by Mr. Laurent** to find as a fact that the business owned by
14 the Applicant, Stephen C. Laite, is a non-conforming use in the B-1 District and he is proposing
15 to expand that use.

16 **VOTE: 5-0-0**

17
18 **MOTION by Mr. Belair seconded by Ms. Norton** to find as a fact that Mr. Laite is proposing
19 to add a third bay to the building; to change the roof; and to add fencing.

20 **VOTE: 5-0-0**

21
22 Article VI Section 3 Non-conforming Uses (3) Expansions of Use:

23 “A nonconforming use, including a nonconforming outdoor use of land, shall not be
24 extended or expanded in building area or building volume, expanse of area of use, or
25 hours of operation except as defined below.”

26
27 Mr. Wilson clarified that the limits of expansion are controlled by the space and bulk
28 standards for the district. The Planning Board, in writing the Ordinance, did not impose
29 percentage limits of expansion in the B-1, B-2 or B-4 District because they are mostly
30 commercial in nature.

31
32 “(d) In the B-1, B-2, & B-4, districts which are more commercial in character and contain
33 more business uses, existing nonconforming uses not in the shoreland zone, may be
34 expanded by up to the extent allowed by the district regulations following Zoning Board of
35 Appeals determination that there will be no greater adverse physical or visual impact on the
36 subject and adjacent properties and resources.”

37
38 *Visual or Physical Impact*

39
40 Mr. Belair suggested that the expanded building buildings will blend in better with the
41 neighborhood and the changes will improve the look of the property because: the building will
42 have the same roof line all along the length; there will be new siding over the entire building;
43 there will be fewer cars parked out front; and most cars will be screened behind a fence.

- 44
45 ♦ There are no greater adverse visual or physical impacts to be proved
46

1 “In determining there is no greater adverse impact, the decision is to be based on adverse impacts
2 such as changes to traffic (volume and type), noise, and dust.”

3
4 *Traffic*

- 5 ♦ Mr. Laurent suggests that according to testimony and to the Application, the Applicant has
6 shown that there will be no increase in traffic volume or type.

7
8 *Noise and Dust*

9
10 **MOTION by Mr. Laurent seconded by Mr. Belair** that according to testimony there will be less
11 noise and dust because more activities will take place inside.

12 **VOTE: 5-0-0**

13
14 “The Zoning Board of Appeals may place additional requirements to the project design to offset
15 current and possible impacts of the nonconforming use and such requirements will become part
16 of the approval once accepted by the applicant.”

17
18 *Additional Requirements*

- 19 ♦ Mr. Belair suggests that the following requirements, which are designed to offset current and
20 possible and possible impacts of the expansion of this nonconforming use, be placed on the
21 design of this project:

- 22 1) The Board takes Mr. Laite up on his offer, and requires that the fence provide a visual
23 barrier; and
24 2) The Board requires that the design of the extension of the building, and the renovation of
25 the existing building, are blended so the result is a building that looks as if it were one
26 original building

27
28 Mr. Laite agreed to accept these conditions, and said that he is attempting improve the looks
29 of the property as much as possible.

30
31 **MOTION by Mr. Smith seconded by Mr. Toole** to impose these two conditions, to which the
32 Applicant has consented, on the approval of this proposal.

33 **VOTE: 5-0-0**

34
35 “As part of the approval of expansion, no additional non-conformity shall be allowed to be
36 created on the property and all district standards and applicable Site Plan Review standards
37 must be met.”

38 Testing the proposal against the space and bulks standards of Article VIII Section 8:
39 Downtown Business District (B-1), the CEO confirmed that:

- 40 ✓ The proposal meets all required setbacks
41 ✓ The new roof line will be well below the maximum allowed height of 50'
42 ✓ There is no maximum ground coverage in the B-1
43 ✓ There is no maximum building coverage in the B-1
44 ♦ There are no additional non-conformities being created

45
46 **MOTION by Mr. Toole seconded by Mr. Laurent** that if required, the Applicant will seek Site
47 Plan Review by the Planning Board.

48 **VOTE: 5-0-0**

1 **MOTION by Mr. Toole seconded by Mr. Smith** that the Board find that this addition will not
2 add to the present non-conformity at the site.

3 **VOTE: 5-0-0**

4
5 **MOTION by Mr. Laurent seconded by Ms. Norton** that this expansion of a non-
6 conforming use on Mr. Laite's property will not result in any greater adverse physical or visual
7 impact on the subject and adjacent properties and resources.

8 **VOTE: 5-0-0**

9
10 **MOTION by Mr. Toole seconded by Ms. Norton** that subject to three conditions, approval is
11 granted.

12 **VOTE: 5-0-0**

13
14 **January 9, 2014 Meeting:** The CEO informed Board members that there are two applications
15 to be heard on January 9 – Camden Harbor Inn expansion and a change Shoreland Zone issue.

16

17

18 There being no further business before the Board, they adjourned at 7:00

19

20 Respectfully Submitted,

21

22

23 Jeanne Hollingsworth, Recording Secretary

ATTACHMENT 1

Camden Zoning Board of Appeals

RE: Application for a Special Exception by P.A.W.S. to operate an Animal Adoption Agency in the Village District as a Quasi-Public Facility

December 18, 2013

Dear Chairman Toole and Members of the Board:

Please accept this letter from the undersigned property owners abutting the property at John Street and Simonton Road where P.A.W.S. is proposing to relocate their Rockport animal shelter. The request requires approval under the Special Exception standards as a Quasi-Public Facility.

We write to speak neither for nor against a proposal for an animal shelter because we realize the real public benefit such a facility provides. We also admire the time and dedication the staff and volunteers at P.A.W.S. put into their efforts on behalf of all the towns they serve. We write, instead, to ask you to consider three questions:

1st: Is the proposed use appropriately categorized as a Quasi-Public Facility?

2nd: Does Camden's Zoning Ordinance suggest that the care of animals was purposefully excluded as a permitted use in many zoning districts?

3rd: The "Keeping of Animals" is generally permitted in Camden only when it is incidental to a residential use. Is it an allowed activity in this instance?

1) A "Quasi-Public Facility" is defined by Camden's Zoning Ordinance as follows: "A facility for a recognized purpose, such as an auditorium, library, park, or museum, which is operated by a non-profit organization or by a public agency other than the municipality."

Camden's Zoning Ordinance permits Quasi-Public Facilities in each of its 14 zoning districts except one. These facilities, which are always included in the category of Municipal and Institutional Uses, are a permitted use in the business districts, and permitted as Special Exceptions in all residential districts. In each instance, the other uses within the Municipal and Institutional Uses category are of the same nature as those above and include: Churches; Community Buildings; Nursery Schools and Day Care Centers; and, Private Schools and Public Schools.

ATTACHMENT 1

We do not believe that the nature of the use at the proposed P.A.W.S. shelter is similar to any other Municipal and Institutional Use permitted by the Ordinance. This is especially obvious when an animal shelter is tested against those uses listed in the definition above. These uses are included as examples of what the Ordinance intends a Quasi-Public Facility to be - an auditorium, library, park, or museum.

P.A.W.S. is classified by the State of Maine as an Animal Shelter as defined at M.R.S.A. Title 17 §1001 5-A: "Animal shelter" means a facility that houses animals and operates for the purpose of providing stray, abandoned, abused or owner-surrendered animals with sanctuary or finding the animals temporary or permanent adoptive homes."

Camden's Ordinance does not define Animal Shelter, and except for "Agriculture", the Ordinance does not define or permit a use that refers to sheltering animals. In fact, in the entire Ordinance, only one other use refers to animals at all: A "Clinic for Animals" is defined as, "A place for the medical treatment of animals."

We would agree that P.A.W.S. is not a "Clinic for Animals" per the Ordinance definition because professional medical treatment is not provided on site. In every other respect P.A.W.S. proposal is more like a Clinic for Animals than any other use defined by the Town. P.A.W.S. may take animals in their charge to a vet for some medical treatments, but the staff and volunteers at the P.A.W. S. shelter care for the animals after they have received medical treatment. P.A.W.S. shelter could be defined as a place for the care and treatment of animals.

2) An implied exclusion argument can be made whenever there is reason to believe that if the drafters had meant to include a particular use within an ordinance, they would have referred to that use expressly. Because of this expectation, the drafters' failure to mention the thing becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied.

Camden's Zoning Ordinance permits Clinics for Animals in only four of its 14 zoning districts: In the B-2, B-R and I Districts Clinics are a permitted commercial use; and, in the RU-2 District Clinics are permitted as a commercial use requiring a Special Exception; nowhere are Clinics permitted as a Quasi-Public Facility.

In the B-2, B-R, and I Districts, Commercial Uses outweigh permitted Residential/Municipal and Institutional Uses two to one; in the single Residential District, the same ratio is one to three:

- The B-2 permits 15 Residential/ Municipal and Institutional Uses and 34 Commercial/Professional/Industrial uses
- The B-R District permits 4 Residential/Municipal and Institutional Uses and 35 Commercial/Professional/Industrial Uses
- The I District permits no Residential Use, "Municipal Uses" and 25 Commercial/Professional/Industrial Uses

ATTACHMENT 1

- There are no provisions for Special Exceptions (SE) in either the B-2 or B-R Districts; and, the I District permits only one additional Commercial Use by SE
- The Rural Residential District 2, among other categories of uses, permits 12 Residential/Municipal and Institutional Uses (4 of them by SE); 2 Commercial Uses; and a Clinic for Animals, which is the only Commercial Use permitted by Special Exception

In contrast: The Village District permits 18 Residential/Municipal and Institutional Uses (9 of them by SE); 3 Commercial Uses which were all in existence at the time the Ordinance was written; and 1 Water Dependent Use. 4 additional Commercial Uses are permitted by SE, three of which must meet additional conditions intended, according to the Ordinance language, to limit the opportunities for establishing new commercial businesses in this District. Permitted Residential/Municipal and Institutional Uses outweigh Commercial Uses more than two to one.

Applying the zoning principle of exclusion, the Ordinance implies that by limiting the locations of Clinics for Animals to only three commercial districts and only one residential district, this use was intentionally excluded in all other districts whether commercial or residential in nature.

3) There are no other uses in Camden permitting the keeping of animals except Agriculture and Clinics for Animals. Otherwise, the activity called the “Keeping of Animals”, must meet the following Performance Standard:

Camden Zoning Ordinance: Part II of Article X contains performance standards which are applicable in the Town. *“The performance standards contained in this Part shall apply to all uses and activities in the Town, unless otherwise specified, whether or not specific approval or a permit is required.”*

Part II, Section 2. Keeping of Animals: (1) Two and One-half Acres or More:

“Animals incidental to residential activities may be kept; provided, however, that animals such as horses, cattle ... shall not be kept on a premise having a lot area less than two - and one-half acres, and shall be kept no closer than 50 feet to any property line.”

- The property in question is over 2 ½ acres in size, but there is no residential use as defined by the Ordinance:

“RESIDENTIAL USE: The use of a lot with one or more dwelling units, community living uses, elderly congregate housing, nursing and convalescent homes and rooming houses. Residential use includes home occupations and homestays...”

- None of these uses describes the proposed use

ATTACHMENT 1

“ACCESSORY USE: A use that is *clearly incidental to the principal use*, that is subordinate in area, extent, or purpose to the principal use being served, and that contributes to the comfort, convenience, or necessity of the principal use, and that is located on the same lot with such principal building or use. *In a residential district, the accessory use shall not be nonresidential in character.*”

- The shelter is not an accessory (incidental) use, and it is non-residential in character

In Summary:

- We propose that the P.A.W.S. Application is inappropriately categorized as a Quasi-Public Facility: The use is significantly more similar in nature to a Clinic for Animals than any of the defined examples of Quasi-Public Uses or Municipal or Institutional Uses permitted within the Town. We ask the Board to consider the definition of a Clinic in determining whether or not this shelter is appropriately classified as a Quasi-Public Facility.
- The category of “Quasi-Public Use” is not intended as a catch-all to include any undefined use for which a non-profit or other public agency wishes to apply. When an undefined use comes before a Board for review as a Special Exception, the Board should determine if they can rely on a similar use that is already defined in the Ordinance. They then have a basis upon which to reasonably and fairly test this use against the standards that will be reviewed. Animal Shelters are so similar in use to a use that *is* defined in the Ordinance that the similarities cannot be ignored. The Board can easily reach the conclusion that the P.A.W.S. Animal Shelter should be defined, at least for the purpose of this review, as a Clinic for Animals.
- For the same reason, the obvious similarities in use, and because of the details presented above illustrating the drafters’ intent to purposefully exclude Clinics for Animals from many districts, Animal Shelters should be not be permitted in districts where Clinics for Animals are not allowed.
- There is no provision in the Ordinance, other than a use as a Clinic for Animals, which permits the keeping of animals as a principle use on a non-residential property as required by the Performance Standards of the Ordinance.

We ask that you address these concerns as you review the request by P.A.W.S. to shelter animals in the Village District on a non-residential lot.

Thank you for your consideration.

Merry Gardens Housing Associates

87 John Street

The Garden Institute at Merry Gardens Board of Directors

122 Mechanic Street

ATTACHMENT 2

Camden Zoning Board of Appeals

December 19, 2013

Dear Members of the Board:

P.A.W.S.A Animal Adoption Center is the Applicant for a Special Exception to permit it to operate an animal adoption center at 123 John Street, a property presently owned by Camden First Aid Association Emergency Ambulance Service.

It has come to our attention that the Board has received a letter purportedly from two abutters, Merry Gardens Housing Associates at 87 John Street and The Garden Institute at Merry Gardens at 122 Mechanic Street. While the letter purports to speak neither for nor against the P.A.W.S. Animal Adoption Center proposal, its summary positions are in clear opposition.

At the outset, it should be noted that while The Garden Institute at Merry Gardens is the record owner of 122 Mechanic Street, the record owner of 87 John Street is an entity called "Coastal Affordable Housing". P.A.W.S. Animal Adoption Center would respectfully submit that whomever "Merry Gardens Housing Associates" may be, it is not the record owner of property at 87 John Street and is, therefore, not an abutter to the property in question.

As depicted on the Camden Zoning Map, 123 John Street is located in the Traditional Village District. Within the Traditional Village District, certain uses are permitted upon an applicant receiving a Special Exception permit from the Zoning Board of Appeals. Among the uses permitted by special exception are the following:

The following uses may be permitted only upon approval as special exceptions in accordance with the appropriate provisions of this Ordinance: The following residential uses:

- (1) Community living uses
- (2) Elderly congregate housing
- (3) Nursing and convalescent homes
- (4) Rooming houses

The following municipal and institutional uses:

- (5) Community buildings
- (6) Municipal uses

ATTACHMENT 2

- (7) Nursery schools and day care centers
- (8) Public schools
- (9) *Quasi-public facilities*

The following commercial uses:

- (10) Low impact uses, as defined in this Ordinance and not otherwise allowed in this district, on lots that are located wholly or in part within 500 feet of a business or industrial district (B-1, B-2, B-3, B-H, B-TH, B-R, B-TR or I), and that meet the terms of Article VII, Section 4(9) (amended - 11/14/06)
- (11) Expansion of hotels or motels with ten or more rooms offered for rent, legally in existence as of March 11, 1985, within a lot of record existing as of March 11, 1985, subject to conformity with applicable space and bulk standards
- (12) Inns on lots of 2 or more acres
- (13) Funeral homes

The following utility uses:

- (14) Public utilities

1 st: Is the proposed use appropriately categorized as a Quasi-Public Facility?

The letter before the Board inquires as to whether the proposed use by the applicant is appropriately categorized as a Quasi-Public Facility. The opponent seems to contend that P.A.W.S. Animal Adoption Center cannot be a "quasi-public facility" because, it contends, it is classified by the State of Maine as an "Animal Shelter".

The Camden Zoning Ordinance defines "Quasi-Public Facility" as follows:

A facility for a recognized public purpose, such as an auditorium, library, park, or museum, which is operated by a non-profit organization or by a public agency other than the municipality.

ATTACHMENT 2

P.A.W.S. Animal Adoption Center is a 501(c)(3) nonprofit organization. Its mission statement provides that:

P.A.W.S. Animal Adoption Center's mission is to provide a safe, caring environment for homeless and abandoned dogs and cats until they can be placed with loving families, and to promote humane values in our communities. In addition to caring for the animals, the adoption center also provides community outreach and humane education programs.

We currently have contracts with the towns of Camden, Rockport, Lincolnville, Belfast, Northport, Searsmont, Liberty and Islesboro. We have a full staff ready to help you in finding the perfect pet for you and your family. We invite you to visit or, better yet, volunteer. You just may find that walking a dog, petting cats or cleaning a room will give you a sense of satisfaction and peace. The animals would love to see you and so would we.

The Applicant respectfully submits that P.A.W.S. Animal Adoption Center exists for "a recognized public purpose" and "that it is "a non-profit organization". As such, a shelter operated by it at 123 John Street would clearly be a "Quasi-Public Facility" as that term is defined under the Camden Zoning Ordinance.

It is true that the facility contemplated by P.A.W.S. Animal Adoption Center is not one of the illustrative examples set forth in the ordinance. The Applicant respectfully submits that the short list of examples was intended to be illustrative and not limiting. P.A.W.S. Animal Adoption Center is not "an auditorium, library, park or museum", but neither is the Camden First Aid Association Emergency Ambulance Service, nor for that matter is The Garden Institute at Merry Gardens. Each is, however, a quasi-public facility as that term is defined under the Camden Zoning Ordinance.

2nd: Does Camden -S Zoning Ordinance suggest that the care of animals was purposefully excluded as a permitted use in many zoning districts?

The opponent appears to contend that because "Clinics for Animals" is a permitted use in only a limited number of Districts, an animal adoption center must be a prohibited use in the Traditional Village District even though it is, by definition a "Quasi-Public Facility" which is permitted by special exception in that district.

ATTACHMENT 2

"Clinics for Animals" is defined under the Camden Zoning Ordinance as being a "place for the medical treatment of animals". The opponent acknowledges that P.A.W.S. Animal Adoption Center is not involved in the medical treatment of animals. Instead the opponent appears to suggest that since animals are involved in each instance the uses must be the same. Hence there must have been an intent to exclude any use related to animals from the Traditional Village District.

Had that logic been applied when Camden First Aid Association Emergency Ambulance Service sought a special exception to build the facility at 123 John Street, the project might well have been thwarted. A hospital provides medical services, as did Camden First Aid Association Emergency Ambulance Service. Hospitals are permitted in the B-2 District but are not permitted in the Traditional Village District. Employing the apparent logic of the opponent, since Camden First Aid Association Emergency Ambulance Service provided some form of medical service its facility at 123 John Street could not be considered a "Quasi-Public Facility" eligible for a special exception in the Traditional Village District.

That argument makes no sense in the context of Camden First Aid Association Emergency Ambulance Service and is equally nonsensical in connection with the application before the Board.

3rd: The "Keeping of Animals is generally permitted in Camden only when it is incidental to a residential use. Is it an allowed activity in this instance?"

The opponent makes reference to the performance standards applicable under part X of the ordinance with respect to the keeping of animals at residences, generally, within the Town. The referenced standards are as follows:

Part II, Section 2. Keeping of Animals

(1) Two and One-half Acres or More (Amended 06/17/09) Animals incidental to residential activities may be kept; provided, however, that animals such as horses, cattle, goats, sheep, llamas, pigs, turkeys, ducks, roosters or more than a total of 9 hens and/or rabbits shall not be kept on a premise having a lot area less than two- and one-half acres, and shall be kept no closer than 50 feet to any property line.

(2) Less than Two and One-half Acres (Added 06/17/09)

ATTACHMENT 2

No more than nine small animals such as hens and/or rabbits may be kept incidental to residential activities, provided the animals are kept as pets or for personal use only. Slaughtering and the sale of meat, eggs or fertilizer for commercial purposes is prohibited. At all times, animals shall be contained in housing and pens which shall meet a minimum setback requirement of 15 feet and shall not be located in a front yard area.

From these standards, the opponent jumps to the conclusion that animals are permitted in Camden only as incidental to residential use as regulated by the performance standards.

If that were the case, then "Clinics for Animals" would not be permitted within the Town of Camden since a veterinary clinic is presumably not a residential use. Yet we know that "Clinics for Animals" are permitted uses within certain zones in the Town of Camden.

Likewise, to adopt the opponent's reading would be to conclude that commercial agriculture, if it involves animal husbandry, is a prohibited use within the Town of Camden. A reading of the Camden Zoning Ordinance clearly reflects that that is not the case.

Conclusion

The applicant, P.A.W.S. Animal Adoption Center, seeks to obtain a special exception to operate a Quasi-Public Facility within the Traditional Village District. Whether its proposal meets the criteria set forth in Article VII, Section 4 of the Camden Zoning Ordinance is the determination which you, as a Board, must make. As a preliminary matter, however, P.A.W.S. Animal Adoption Center submits that as "a facility for a recognized public purpose . . . which is which is operated by a non-profit organization"

P.A.W.S. Animal Adoption Center meets the definition of a "Quasi-Public Facility", thereby entitled to be considered for the special exception permit under review.

Respectfully submitted,
P.A.W.S. Animal Adoption Center