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CAMDEN PLANNING BOARD
MINUTES OF MEETING
September 19, 2013

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PRESENT: Acting Chair Lowrie Sargent; Members Richard Householder, Jan MacKinnon, and John Scholz; Alternate Members Richard Bernhard and Kim Tuttle; Don White, Select Board Liaison; Town Attorney Bill Kelly; and CEO Steve Wilson
ABSENT: Chair Chris MacLean

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The meeting of the Planning Board was convened at 5:00 pm.

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1. Public Input on Non-agenda Items:

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Mr. Sargent: The Camden Fire Chief has informed the Board that they need to limit attendance at their meetings to the fire-rated occupancy of the room - the number of chairs in the room is the indicator of capacity. When the chairs are full no one else will be allowed to enter the meeting room until someone leaves. Depending on availability, and with advance notice, the Board can try to accommodate larger crowds in the Opera House.

Steve Pixley: On August 6, the Pixleys received notice from the CEO that they are in violation of the Ordinance as it applies to rental properties. On September 2, Ann Pixley wrote to the Town regarding the hardship a 2009 Zoning Ordinance amendment will impose if they have to comply. They learned that the amendment added a seven-day minimum for rentals that applies to the properties they have been renting for two and three day stays. They want to know why this provision was added; they have concerns about compliance with the Comprehensive Plan; and they would like the Board to reconsider this provision so they can continue to rent out their cottages for short stays.

Mr. Scholz stated that he has properties coming on line that he will be renting, and he is interested in learning more about the reason the change was made as well.

Mr. Wilson informed the Board that the restrictions apply Town-wide. His reports show there are over 300 people in Town who rent out properties, and many of them are in violation regarding length of stay. He also needs to research whether this use triggers the new building code or raises other use issues.

Mr. Sargent informed Mr. Pixley that the Board will discuss the request and the CEO will let them know when the item will be on the agenda. Mr. Sargent asked Mr. Wilson to inform the B & B Association of the situation as well. He knows these businesses have been impacted by individuals renting properties through the internet, and believes they will be interested in this issue.

2. Minutes:

The Minutes of August 29, 2013 will be reviewed at the next meeting.

1 Ms. MacKinnon learned that a friend's husband is one of the investors in FHRE. She has
2 spoken with the Acting Chair, and for the sake of transparency she is letting everyone know of
3 this situation. No members of the Board expressed concerns. After questioning Ms. MacKinnon,
4 and inquiring of Matt Manahan as abutters' representative, and Paul Gibbons and Cliff Goodall
5 as Applicants' representatives, Mr. Kelly asked that the Record indicate there are no objections
6 to Ms. MacKinnon's participation.
7

8 **3. Request for a Zoning Ordinance Amendment to the Coastal Residential District:**
9 **Continued Discussion of Proposed Language**

10
11 Dr. Philip Levendusky, and Attorneys Gibbons and Goodall, came forward to present the
12 most recent version of the proposal that would add a Residential Treatment Facility as a use
13 approved by Special Exception in the Coastal Residential District.
14

15 *Compliance with the Comprehensive Plan*

16
17 Mr. Householder asked Mr. Gibbons to explain any differences between his memo dated
18 September 16, 2013, and the memo on the same subject distributed for the August 29 meeting.
19 Mr. Gibbons noted that the first memo presented cases in support of his argument that their
20 proposal is in compliance with the Comprehensive Plan; the second memo outlined those
21 arguments in more detail and he began explaining the new information. Mr. Manahan
22 interrupted Mr. Gibbons asking, as a Point of Order, if he would be given an opportunity to
23 respond and present his legal argument as well. Mr. Kelly had asked each side to prepare
24 detailed arguments regarding Comp Plan compliance, and he informed the Board that at some
25 point it is important they hear both arguments on an issue that is an important component of their
26 review of this proposal.
27

28 Mr. Gibbons addressed Mr. Householder's original question by saying the second memo
29 was written in response to Mr. Kelly's request for information and contains much more detail.
30 Discussion regarding scheduling the hearing of arguments regarding compliance with the Plan
31 occurred later in the meeting.
32

33 *Special Exception – See Attachment #1 to these Minutes*

34 *Definitions - See Attachment #2 to these Minutes*

35
36 *Compliance with the ADA:*

37 Mr. Kelly reminded the Board to continue to question how the ADA would apply to
38 this proposal. Specifically, consider the following language from the Definition:
39

40 "Alcohol and other substance abuse disorders": A client does not have to have an alcohol
41 problem to be accepted at the facility. The language could be open to a challenge of
42 discrimination if that were the case because other facilities treating other substance abuse
43 problems must be able to apply for the Special Exception. The decision to approve any
44 facility will be based on meeting all the criteria, including consideration of the impact to

1 neighbors' peace and quiet enjoyment or to the character of the neighborhood. Because the
2 criteria here are specific to a facility treating substance abuse, facilities providing treatment
3 for other types of addictions could probably not make a claim.

4
5 "The facility shall not accept clients that have been mandated to attend rehabilitation
6 treatment by any Court or other institution. All clients residing at the facility must be there
7 on a voluntary basis..." The Applicants' were asked to address enforceability and the
8 ADA regarding this language: Dr. Levendusky responded that in a high-end facility, the
9 notoriety that can go along with certain court-mandated treatment can affect the privacy of
10 that client, and of other clients, and disrupt the program. It is well-held in the field of
11 addiction treatment that privacy is a very important component in the healing and recovery
12 process. This requirement in the language can be supported on that medical basis.

13
14 In addition, when treatment is court-ordered it is not voluntary, and the client is
15 probably not appropriate for their program. The program is for adults, and the facility is
16 not meant to accommodate people who do not want to be there, especially court-ordered
17 clients. This language can be defended on several points including safety to other patients
18 and to neighbors, and on the suitability of treatment. In addition, the presence of some
19 court-ordered clients can attract "paparazzi"; there can be an impact on the neighbors'
20 peace and quiet enjoyment of their properties, and on the character of the neighborhood.
21 Avoiding these situations is the purpose of including these standards in the definition.

22
23 → The Applicants were asked to include the fact that the program was limited to clients
24 eighteen and over somewhere within the proposal.

25
26 *Questions from the Site Walk:*

27
28 Mr. Householder: Where is the staff over-seeing the facility during the overnight shift
29 "stationed"?

30 Dr. Levendusky: Staff moves throughout the facility during their shifts, and do client-checks
31 every hour - depending on the client's condition, they may check more often. They have a very
32 strong staffing model for this treatment program which encourages interacting with patients - not
33 staying isolated in a nursing station or office.

34
35 Does the patient have 24-hour freedom to the facility?

36 Dr. Levendusky: There is a curfew when clients must be in the facility and ready to go to bed.
37 Before that they don't have the run of the property, however. They may have the freedom to go
38 for a walk – accompanied if there are concerns. If they want to leave the grounds they need
39 permission and staff to accompany them – leaving the campus is an extremely rare situation.

40
41 Ms. MacKinnon: Is smoking allowed?

42 Dr. Levendusky: Only in the gazebo, but not elsewhere on the grounds.

43
44 Mr. Bernhard: He is interested in the history of how Borden Cottage went from what it was
45 when he knew it years ago to what it is now; he believes that what is there now isn't strictly what

1 most people would feel is a residence. Mr. Bernhard learned that 63 building permits were issued
2 to a previous owner, and he wants to know why none of the 63 permits did not trigger Planning
3 Board review or cause anybody else in the Town to say “Wait a minute; this isn’t a residence
4 anymore.”

5 Mr. Wilson replied: In general CEO’s react to what building permits are for and take the
6 information at face value until there is some reason to ask questions. There is no way to
7 determine how the places are actually used unless there is a complaint.
8

9 Mr. Sargent: There are some things that were permitted here – a four-seat beauty salon and a
10 commercial kitchen - that should have raised red flags as not being residential in nature. When
11 all the tour buses showed up didn’t that raise any questions? Didn’t the neighbors complain?
12

13 Mr. Bernhard: Why weren’t there any life-safety inspections – the commercial kitchen should
14 have had sprinklers, but it doesn’t? There are life-safety issues everywhere that should have
15 been looked at by someone.
16

17 Mr. Wilson: Many of those building standards were held by another entity, and didn’t apply to
18 residential properties. Many high-end homes have commercial kitchens, so that wouldn’t have
19 been unusual. People with the means may want to add a four-lane bowling alley or a theater.
20 CEOs don’t question how they are going to use it.
21

22 Mr. Kelly: He understands that Mr. Bernhard is looking for the history of the development on
23 the property with regard to this proposal, and that he would like to see copies of the permits to
24 gain some understanding. Mr. Wilson will gather them.
25

26 *Process of Review:*
27

28 Before the proposal is finalized for the hearings, formatting needs to be done to show
29 how the proposal fits within the Ordinance, and research done to make sure that all affected
30 sections of the Ordinance have been addressed including: the Definitions section, the use needs
31 to be added as a permitted use in the District, the Special Exceptions section, and perhaps the
32 Performance Standards section. The Applicant also needs to make sure that there is a trigger
33 requiring Site Plan Review.
34

35 Before the next meeting the proposal needs to be finalized with regard to the proposed
36 language, and the Applicant needs to have copies of this language in the format he has been
37 using as well as a version showing all the specific Ordinance changes. The Attorneys had been
38 asked to prepare written arguments for their arguments regarding the Comprehensive Plan. All
39 this needs to be circulated at least one week before the meeting on 10/17.
40

41 10/17: Opera House: The Applicants are preparing an economic analysis and will bring a
42 speaker to this meeting to address this issue; they will be providing additional new information
43 as well, including the final revised proposal. This will be an opportunity for the public to learn
44 more, and to have the opportunity to ask questions.
45

46 Attorneys for the Applicant and the abutters will each be given 30 minutes to explain
47 their position regarding the proposal as it applies to the Comprehensive Plan, and to address

1 other issues but only as they relate to the language of the proposal and zoning issues - not to
2 permitting or other issues. Each will be given an opportunity to reply to the other's comments as
3 long as there is no repeating of arguments, no filibustering, and no back and forth discussion.
4

5 The Board may not know at the end of this 10/17 meeting whether or not they will go on
6 to hold public hearings, but they will reserve the Opera House for the purpose just in case.
7

8 11/07: Opera House: Possible 1st Public Hearing
9

10 12/12: Opera House: Possible 2nd Public Hearing
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12 The Fox Hill portion of the meeting was closed at 7:50 pm.
13

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15 **DISCUSSION:**
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- 17 1. Minor Field Adjustments: There were none.
18
- 19 2. 10/03/2013 Meeting:
20 Preliminary Discussion – Pixley request
21 Mr. Sargent asked Mr. Scholz about his rental properties and asked him to think
22 about whether or not he should participate in the discussions.
23 Minor Subdivision – Pre-application Meeting
24

25 The meeting of 11/21 is open as of now for business, and 12/19 is the Christmas meeting
26

- 27 3. Pending Applications: There are piers coming before the Board but no date yet
28

29 There being no further business before the Board they adjourned at 8 pm.
30

31 Respectfully submitted,
32

33
34 Jeanne Hollingsworth, Recording Secretary
35

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3 **Special Exception**

4 **Private Residential Treatment Facility**

5 Alcohol addiction is an acknowledged public health issue and a disability that poses significant
6 problems for individuals and families. It is a complex health problem that requires
7 comprehensive treatment to address the multiple components of this disease. A Private
8 Residential Treatment Facility provides specialized treatment methods designed to help clients
9 recover from their alcohol addiction and any associated mental health issues.

10 **(New paragraph)** An additional purpose of this special exception is to recognize that there are
11 very large residential estates on large lots of land that are no longer viable as single family
12 dwellings due to their size and expense of upkeep. Private Residential Treatment Facilities as an
13 alternative use of these large residential estates under restrictive circumstances will help
14 preserve these structures and will help to maintain as much as possible their residential character
15 and open space. In the Coastal Residential Zone, Private Residential Treatment Facility must
16 meet the following criteria.

17 *Applicant's Comments:*

- 18 • It is most important to include the purpose of this kind of treatment facility, and to
19 address the significant public health problem of alcoholism, as well as the public
20 policy aspect of providing a place for the treatment of this addiction
- 21 • There is a benefit to preserving places like Fox Hill's Borden Cottage and the open
22 space on the property without visible changes to the neighborhood - without this
23 Special Exception they may not survive as they are
- 24 • The last sentence clarifies that this Special Exception must meet criteria beyond
25 those of other Special Exceptions

26

- 27 1. The facility must be located on a single parcel of land created before the enactment of this
28 ordinance amendment that is at least 10 acres in size and containing at least one building
29 with at least 5 bedrooms that were in existence before the enactment of this ordinance
30 amendment. The existing building shall be preserved by using the building as a Private
31 Residential Treatment Facility.

32 *Applicant's Comments:*

- 33 • Requiring an existing single parcel of land prevents someone from creating a ten-
34 acre parcel after-the-fact by combining smaller lots
- 35 • Requiring five bedrooms means that the building is a significant building that is large
36 enough to house the facility. Changes may be required to the interior to
37 accommodate all the requirements of the Special Exception, but the intent is to
38 preserve the character of the property

1 *Questions from the Board:*

- 2 • Mr. Sargent asked Mr. Wilson if he had gathered information on how many parcels
3 may actually be affected by this change. Mr. Wilson replied that he found seven
4 properties in the District that met the 10-acre requirement, which are built upon,
5 and are not encumbered by easements or other conditions which would prevent this
6 kind of change in use; he has not searched to see how many of those buildings
7 would meet the other requirements. Mr. Sargent replied that this is an important
8 piece of information for the Board to have. Mr. Gibbons said their research shows
9 there is one other property in the District that would qualify.

- 10
11 2. The Private Residential Treatment Facility shall contain at least 8 beds single-occupancy
12 bedrooms and a maximum of 14 beds single-occupancy bedrooms under one roof.

13 *Applicant's Comments:*

- 14 • They feel the 8 and 14 bed requirements are the correct range to ensure a quality
15 facility will operate here – smaller facilities tend to be of lesser quality
16 • The requirement for at least eight bedrooms in an existing residence that is required
17 to have only five bedrooms does imply that interior renovations would be required.
18 They wanted to capture large, existing buildings where there would be room for
19 this renovation, but did not want to exclude others just because they didn't have the
20 eight bedrooms they believe is the right minimum

21
22 *Questions from the Board:*

- 23 • How will you differentiate what constitute the actual facility and grounds? There
24 are other buildings on the property that will be used by clients, and there are other
25 residences that will not. Some way needs to be found to clarify what the actual
26 campus will consist of, how Borden Cottage fits into the picture. , where the clients
27 will actually reside and where they will be conducting other activities. They have
28 said clients are to have private bedrooms with baths. It is the clients who must use
29 the 8 – 12 bedrooms exclusively if they are to meet this part of the standard.

30
31 Mr. Gibbon's responded that the specifics of the actual division of the property
32 between land for a campus and land that will be retained by FHRE and not leased
33 to McLean, have not been settled. They may remove the part of the property that
34 has already been developed because they may want to retain the option to sell one
35 of the residences if they have to. That will all be resolved by the time they take
36 their Special Exception to the ZBA, and submit their Site Plan to the Planning
37 Board. How the Special Exception will affect the adjacent properties will be
38 reviewed at that time.

39
40 → To address all their concerns regarding occupancy issues at Fox Hill, the Planning Board
41 requested the following changes to Item #2:

- 1 ✓ Clarify that all client bedrooms will be private rooms with private baths
- 2 ✓ Include the condition that all the client bedrooms are in the same building
- 3 ✓ Combine items #2 and #12
- 4 ✓ Clarify that the 225SF referenced in Item #12 applies to the minimum size of a combined
- 5 bedroom and bath
- 6 ✓ Specify that the numbers of required bedrooms are for clients only and that they are all
- 7 contained in one building
- 8 ✓ Clarify that the clients will not be residing in any other buildings on the property
- 9 ✓ Specify that staff will not be residing in the 8 - 14 bedrooms designated for clients
- 10
- 11 3. All buildings occupied in part or in whole for residential dwelling purposes within the
- 12 facility shall be set back from the road a minimum of 100 feet and set back from side lines a
- 13 minimum of 50 feet.
- 14
- 15 4. All accessory structures built after the enactment of this amendment of the ordinance shall
- 16 be set back a minimum of 100 feet from the road and 25 feet from the side lines except for
- 17 grandfathered structures.
- 18
- 19 5. Any expansion, demolition, or substantial exterior alteration, or replacement of any structure
- 20 will retain the appearance of and reflect the existing residential character of the district and
- 21 require additional Planning Board Site Plan Approval.
- 22
- 23 6. Traffic Flow in and out of the facility shall have a daily maximum trip generation passenger
- 24 car equivalent per bedroom. With the exception of heating oil and gas, all commercial
- 25 deliveries must be made during normal business hours.

26 *Applicant's Comments:*

27 The traffic analysis being prepared by traffic engineers is nearly complete, and they will
28 be able to include actual figures in the next revision. The initial estimate is that there will
29 be about 55 trips in and out the facility during the course of a 24 hour day: 75% of work
30 shifts have four or more employees working; employees do not leave the campus during
31 their shift – they are required to be on site even during breaks or lunch; and deliveries
32 will be planned so they don't disturb neighbors. (The staffing figures, which include the
33 maximum number of employees that will work at Fox Hill, is the number that was used
34 in these calculations.) These trips they can count; unanticipated trips are not included.
35 Mr. Lane clarified that the number includes each trip in and each trip out of the facility.
36 Mr. Wilson asked that the final figures be presented as "trip ends" – round trips - to
37 conform to the rest of the Ordinance.

38 → The Applicants were asked to include their policy of no cars for clients in this item.

39

- 40 7. The Private Residential Treatment Facility must meet the standards for Site Plan review set
- 41 forth in this Ordinance as determined by the Planning Board,

- 1 8. The Private Residential Treatment Facility must meet the requirement of a
2 Special Exception as determined by the Zoning Board of Appeals.
3
4 9. Any new operator will be required to complete a new application and to receive
5 approval from the Planning Board before commencing to operate the facility. The
6 Planning Board must find that all of the above requirements have been met and that
7 the facility and operator meet the definition of Private Residential Treatment Facility
8 set forth in this Ordinance.
9
10 10. The operator of this facility must be licensed by the State of Maine solely as a
11 residential treatment facility. The operator of this facility must also be accredited by
12 the Joint Commission of Hospital Accreditation, ~~and demonstrate, to the satisfaction~~
13 ~~of the Planning Board, a five-year history of successfully operating a residential~~
14 ~~facility.~~¹
15

16 → Mr. Sargent requested that the Applicants prepare a definition of “Operator” which references
17 the licensing requirements – then this language can be removed from this criterion.

18 ¹. It was agreed by all that the Joint Commission’s accreditation, which sets the highest
19 accreditation bar available, and which is awarded after a thorough and objective review, is
20 sufficient in itself to offer the level of assurance of operator quality and reliability that is
21 intended by the Applicants.

- 22 11. The rehabilitation facility shall provide care and supervision with a staff on site 24
23 hours a day, all year. The facility must employ a minimum of:
- 24 a. Maine licensed psychiatrist
 - 25 b. State of Maine licensed Clinical Director
 - 26 c. State of Maine licensed Clinician
 - 27 d. One State of Maine licensed R.N.
 - 28 e. Two Counselors per eight hour shift (CRCs)
 - 29 f. One half time Occupational Therapist
- 30

31 *Discussion:*
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33 *Staffing:* This level of detail for staffing requirements is intended to guarantee high-end
34 care, but it goes beyond the baseline requirements required by licensing and accreditation.
35 Mr. Kelly suggested that a future applicant with a different approach to staffing could claim
36 the requirement was arbitrary, and asked the Applicants to rework the list to make it apply
37 more generally. The Applicants will refer to the staffing standard used in the Joint
38 Commission’s accreditation of Behavioral Health Providers and revise this criterion for the
39 Special Exception standard. But, they will continue to rely on McLean’s staffing standards
40 as their standard for Fox Hill.

1 *Financial capacity*: Dr. Levendusky suggested that it is common to require a statement
2 saying that Applicants have the capacity to open the doors. Mr. Kelly added that if the
3 statement is too complicated for the Board to understand, they can retain someone to explain
4 it to them.

5

6 → Dr. Levendusky suggested this language: “The Applicant must demonstrate financial
7 capacity and the ability to operate this facility with a staff of ... (inserting here the Joint
8 Commission’s staffing requirements).”

9

- 10 12. ~~Each resident must have a private bedroom room and bath of at least 275 square feet~~
11 ~~with access to a minimum of 3,500 square feet of common space.~~
12 (See Item #2)

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DRAFT

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DEFINITIONS

4 PRIVATE RESIDENTIAL TREATMENT FACILITY

5 A Private Residential Treatment Facility is ~~an intermediate~~ a¹ treatment facility that
6 provides a comprehensive recovery program for alcohol and other substance abuse
7 disorders along with concurrent treatment for associated mental health issues appropriate
8 for the level of care provided. The facility must be utilized for private residential
9 rehabilitation only. A Private Residential Treatment Facility will not apply for or hold any
10 State of Maine outpatient care license.

11 All clients served by the Private Residential Treatment Facility must reside full-time on site
12 at the facility for a minimum stay of 21 days. All services offered at the facility are paid for
13 privately by the client.

14 The facility shall not accept clients that have been mandated to attend rehabilitation
15 treatment by any Court or other institution. All clients residing at the facility must be there
16 on a voluntary basis, and prior to admission must agree to sign a written contract with the
17 operator of the facility that indicates the client's willingness to actively participate in the
18 rehabilitative services provided. In addition, the operator shall carefully screen and
19 evaluate all potential clients to determine that their rehabilitative needs are appropriate for
20 the services provided by the facility. A Private Residential Rehabilitation Facility shall not offer or
21 provide outpatient services.

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¹. An intermediate treatment facility is the same thing as a Residential Treatment Facility.

26 ~~OUTPATIENT SERVICES~~²

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~~The term "Outpatient Services" means providing care to clients who are not residents of the facility. A
Private Residential Rehabilitation Facility cannot shall not offer or provide outpatient services. This
facility shall not be licensed to provide any outpatient services so this level of care is forbidden. Once a
client is discharged from the facility, any further services can only be provided if he/she agrees to be
readmitted to the facility as a resident for a minimum stay period of 21 days.~~

36 ² The first sentence from this definition included in the definition for "Private
37 Residential Treatment Facility" is considered sufficient to address the concerns that Fox
38 Hill could become an outpatient facility.