

Residents, Planning Board hear new arguments on Fox Hill

By Sarah E. Reynolds | Oct 22, 2013

Around 100 people turn out for the Planning Board meeting at the Camden Opera House Oct. 17.

CAMDEN — The Camden Planning Board heard new information at its Oct. 17 meeting for and against an amendment to the coastal residential zone proposed by Fox Hill Real Estate LLC.

The amendment would make possible a 12-bed luxury residential alcohol and substance abuse treatment facility at 235 Bay View St., also known as Fox Hill, to be built by Fox Hill investors and run by McLean Hospital.

The four-hour meeting took place at Camden Opera House, with approximately 100 people in the audience. Along with lengthy presentations by lawyers for the developers and opponents of the proposal, 14 people addressed the board. Of those, seven spoke in favor of the project, three opposed it and three were neutral.

Residents weigh-in

Several residents said they supported the proposal for Fox Hill, either because they had worked in the field of addiction or because they had personal experience with the disease.

Des Fitzgerald, a resident of Chestnut Street, said he has lived in town for 21 years and is now trying to sell his house. He said he favored the proposal and had called the town of Princeton, Mass., where McLean has a facility called Fernside that is similar to what is proposed for Fox Hill. He said the town administrator described Fernside as “a wonderful community member.” Fitzgerald urged Planning Board members and residents to speak to Princeton town officials for themselves.

Opponents included Carla Ferguson, who said she wanted the town’s historic character to be preserved and said she feared a rehab facility would change that character, drawing employees from out of state.

She added she did not want Camden to be “another small town that sold out.”

Felicity Farrell also spoke against the proposal, saying she would like the Fox Hill property to be subdivided into “six beautiful dwellings.”

Farrell added she did not believe the proposed rehab facility could be successful and she did not think lead investor H. Thompson Rodman had the right to “destroy a beautiful neighborhood.”

Public hearing set

The next step will be a public hearing to be held at 5 p.m. Wednesday, Nov. 20, in the opera house. At that time, the final language of the amendment will be presented, along with comments from an attorney representing those opposed to the project and the public. Additional public hearings will be determined at that time.

Opponents’ lawyer states case

Pierce Atwood attorney Matthew Manahan, representing some of the opponents, noted the question before the Planning Board was the impact of the proposed zoning change, rather than the merits of a specific project.

“A commercial use does not belong in a residential area,” he said, adding the type of facility proposed for Fox Hill is already permitted in the B-2 and B-3 zones. Fox Hill is located in the Coastal-Residential zone.

Manahan said he believed “this is conditional zoning in sheep’s clothing,” referring to a type of zoning that involves an agreement between a municipality and a property owner focused on a specific use. Also known as “contract zoning,” the concept was considered by the Planning Board at its Aug. 15 meeting, and Camden Town Attorney William Kelly has subsequently said he did not think the town would pursue it.

Manahan contended the proposed zoning amendment was “a sham,” intended to get around state laws governing conditional zoning, because the language of the amendment would apply only to Fox Hill and one other property in the Coastal-Residential zone.

He cited several passages in the amendment he said contained language specifically describing Fox Hill.

“No other properties comply with this,” Manahan said.

For that reason, he said, the amendment is really conditional zoning, which he called “bad planning.”

Manahan also argued the amendment was not consistent with the town’s comprehensive plan, which focuses on protecting residential neighborhoods. He said a residential substance abuse treatment facility threatens, rather than protects, the residential character of the neighborhood. Further, he said it would not be compatible with permitted light commercial uses in the zone, such as nursery schools and daycare centers.

Another of Manahan’s arguments against the zoning amendment was Fox Hill Real Estate LLC did not have standing to propose an amendment, because the company is not a registered voter. The amendment would have to be proposed by one or more investors, he said.

On the question of standing, Kelly said regardless of whether the amendment was proposed by a voter, the Planning Board could entertain applicants at its discretion.

“I’m not concerned with the standing issue,” he said.

Manahan also raised the specter of an unlimited number of substance abuse treatment centers – which do not adhere to the standards proposed by Fox Hill – coming into town. Once Camden allows one such facility, he said, federal non-discrimination laws would force it to permit any others that apply.

“The solution is to deny this rezoning request,” Manahan concluded.

Investors’ attorneys respond

Responding to Manahan’s remarks on behalf of the developers was longtime land-use attorney Cliff Goodall. He asserted that Maine’s courts have said rezoning is a legislative act, with the town meeting as the legislature.

In contrast to Manahan’s assertion that permitting a rehab facility at Fox Hill would open the door to many less desirable operations, Goodall said Camden’s zoning does not now permit private residential treatment facilities at all. Therefore, since all uses must be allowed somewhere in town, it is necessary to rezone to permit this type of use. If the amendment is not adopted, he said, a court could force the town to accept rehabilitation facilities under less restrictive conditions.

Goodall added towns can exercise reasonable control over the type and number of permitted facilities so they do not negatively affect the community.

Fox Hill will not be licensed as a hospital, nor does it meet the definition of a hospital, he said, and so it is not permitted in the zones where hospitals are allowed. The proposed amendment defines private residential treatment facilities, which he said are not now permitted anywhere in Camden. Outpatient facilities, he added, are allowed in other zones.

On the question of whether the amendment is consistent with the comprehensive plan, he said the term “consistent” has a special use in law, where it means, essentially, that the amendment is not prohibited by the plan. If the comprehensive plan does not bar it, the approval of a zoning amendment by town meeting voters may be judged consistent with the plan.

And “the court will not second-guess the legislative body,” he re-iterated.

Goodall went on to describe specific ways in which the amendment, and the project it is intended to make possible, were in harmony with the comprehensive plan. Among these were that the plan encourages preservation of historic properties, including 19th- and 20th-century summer cottages, calls for development in the Coastal-Residential zone that preserves open space, allows light commercial activity in that zone, aims to encourage the full range of employment from blue collar to professional and the comprehensive plan supports the use of performance standards to buffer neighborhoods from the effects of commercial development, he said.

He concluded the amendment is not tantamount to conditional zoning because it is consistent with the comprehensive plan.

Planning Board seeks clarifications

Planning Board member John Scholz asked Goodall whether, in referring to action that might be taken by town meeting, he was dismissing the authority of the Planning Board. Goodall replied the board's role was important, but the ultimate decision lay with the voters, and that was what a court would review in the event of a legal challenge. If the Planning Board sends the zoning issue forward, selectmen would then decide if it would be placed on the ballot for voter approval.

Board member Richard Bernhard asked whether Fox Hill could be sold as a single-family residence. Town Planner Steve Wilson affirmed that, to date, the property had always been treated as residential.

Leslie Tranchell of Sotheby's International Realty said she had been the listing broker for Fox Hill and showed it as a residential property. She said prospective buyers liked it but found it "too much."

Economic impacts projected

Kelly had opened the meeting by reminding the attorneys and audience the Planning Board's job was to consider a proposed zoning amendment, rather than a specific use.

Nonetheless, Paul Gibbons, the main attorney representing Fox Hill investors, opened the proponents' presentation by asking Charles Lawton, chief economist for Planning Decisions in Portland, to summarize his economic impact report on the proposed facility.

Lawton estimated the total direct impact of the project's first year at \$5 million, \$3.5 million annually once the construction is complete. Including the construction phase, he said, it would support 46 full-time-equivalent jobs, with 29 jobs after construction.

He showed graphs indicating Camden faces economic issues in four areas: the aging of its population, the availability of jobs, the seasonality of its economy and a declining tax base. Lawton argued the proposed rehab facility at Fox Hill would help to solve all four problems.

Planning Board Vice Chairman Lowrie Sargent asked Lawton how confident he was that the direct economic impact he estimated would be achieved. Lawton said he was confident in the numbers, but whether more of the benefit accrued to Camden itself or to the surrounding area would depend on where the vendors for the project are located, where the employees live and so on.

In response to a related question from resident Dennis McGuirk, Dr. Philip Levendusky, senior vice president for business development and marketing at McLean Hospital, said typically employees at McLean's facilities live nearby.

Scholz wanted to know whether Lawton's analysis would apply equally to another project. The economist said it might, but it would depend on the project, its vendors and employees.

Subsequent efforts by Scholz and Bernhard to get Lawton to say whether a residential development at Fox Hill might have a similar economic impact to the proposed rehab facility failed to elicit a direct answer. Lawton simply described how a study for a residential development might be done.

When resident David Walk asked Lawton whether it would be economically feasible to build the project elsewhere in town, the economist said, "no."

Responding to Lawton's presentation, Manahan referred to a review of the Planning Decisions study done by University of Maine Professor Todd Gabe, which took issue with the study. Manahan added any benefits Camden would derive from a residential rehab facility at Fox Hill could also be realized in parts of town where commercial development is already allowed.

At the meeting's end, Sargent thanked those who attended and summed up the meeting.

"Tonight we probably learned more new things than we have in a number of meetings."