

Present: John Deleire, Chairman; Frank Perry, Vice Chairman; Steve Bryant, Larry Job, David French, Members; Peter Robart, Patricia Young, Alternates; Mark Sikorski, Building Inspector; Susan Ayer, Secretary

CONTINUATION FROM JUNE 25, 2015

REHEARING of Case #15-03: Application from Avesta Housing for variance to the terms of the following:

Article III, Section 11.4.1 to allow 72 where 42 units are allowed; for the construction of 3 buildings as part of one senior housing development at property located at Brown Road, Map 5 Lot 57.

The Chairman called the meeting to order at 7:01 PM.

As all five members of the Board were present, J. Deleire said that alternates P. Robart and P. Young would participate in discussion but not vote.

F. Perry introduced for the record correspondence from a resident who could not be present to comment.

There was a question whether the public comment was allowed, as that portion of the meeting has been closed on June 25th. Minutes were read, reflecting that the public comment for that evening was closed, but the Public Hearing of the case remained open; comment and correspondence were allowed.

Highlights of correspondence from Alexander Dittami outlining reasons to deny the application were read by F. Perry.

An email from Jeffrey Gove stating that he remains firmly in favor of the project was read by J. Deleire.

The Chairman said that during a meeting with Counsel, questions arose about real estate tax structure and what adjustments would be applied to the property proposed. He introduced Town Assessor Todd Haywood and asked for his input on the subject.

The Assessor gave a brief overview of low income tax credits, and how assessment is based on income. This can be computed in two ways, including such factors as gross income, rental income, and vacancy allowance, using methodology in RSA 75:1a. He said that it is difficult to be specific at this stage, not knowing all the details.

J. Deleire asked if there is any way to know what percentage of property taxes received under a reduced tax scheme would be available for Town services. He asked if income projections can be provided.

Attorney for the applicant, Sharon Cuddy Somers, questioned the relevance of the discussion of tax income. She said she is wary of getting into specific numbers that might bind the applicant going forward, and said the Board should be considering only the impact of the 30 units for which relief is being sought.

F. Perry asked what the tax rate would be if this was a conventional rental property. T. Haywood said that if the market value was agreed to be 15 million (without having done the due diligence he said he could not assign a value), the substantive assessment would be \$20 per \$1,000.

J. Deleire said he knows there would be a reduction, but does not know what it would be. He said he wants to know if allowing 30 more units is in the public interest when Town infrastructure is impacted. As an example, he said that if there was an 80% reduction in tax income, 30 units would not be worthwhile.

T. Haywood noted again that this is not easy to answer, but that the building owners would pay roughly one third the property taxes that a conventional apartment building's owner would pay, or a 67% reduction in taxes based on a statutory scheme. There was a discussion of market rentals versus low income rentals. Shreya Shah of Avesta said that the land in question can only be used for low income and that there will never be a market based property on it.

S. Bryant said that with regard to the public interest, it is known that there will be an increased use of Town resources. The question is whether this will cause a heavier burden on taxpayers, or if the taxation of the property will help the overall tax rate.

P. Robart noted that the school is a large portion of the budget, and there would be no burden placed on the school by this project.

J. Deleire asked Town's attorney Mark Beliveau if the property could be resold in the future for a use other than low income housing. Atty. Beliveau answered that the applicant has said that this property is surplus owned by the state, and was given by the Executive Council to the New Hampshire Housing Finance Authority to be dedicated to low income housing uses. He said he has not independently verified this.

S. Somers said that this is covered specifically by RSA 204. Once a property goes to NHHFA, it can't be transferred out. The inability to transfer the property is governed by statute and goes beyond ownership by the Housing Authority.

J. Deleire asked would happen to the land if a viable use was not found. Atty. Somers said it would likely just sit there, as its intended use as low income housing has been specifically set up by a scheme of statutes that work together. Transfer would require a lengthy process ending with the Governor and is highly unlikely, after all that was gone through to set this up.

Questioned by F. Perry about the fact that it is not impossible, just unlikely, Atty. Somers said that she is unaware of any other examples, and also pointed out that the property has been in State hands for a long time.

F. Perry asked Atty. Somers to clarify if she is saying that it is impossible to comply with Zoning law and build affordable housing. Atty. Somers said yes, for financial reasons.

A discussion followed about need to stay under the cost per unit cap of \$235,000, imposed by regulations. If that cannot be met, the applicant cannot get financing for the project.

Atty. Somers shared information about a similar project in Exeter, saying that a restrictive covenant was placed on the land there for 99 years. She said a similar commitment would be placed on the Hampton Falls land, ensuring its use as elderly low-income housing for the duration.

Atty. Somers addressed the questions regarding the differences between conventional apartment housing and low income housing, and property tax income. She said the questions are appropriate, but that the Board should take into account that the project will go before the Planning Board, where studies will be required, such as a traffic study, to show the impact on the

Town. If it is determined that contingencies need to be made to the Town to lessen the burden, the Planning Board has the jurisdiction to impose them.

She added that while hard numbers are not available at this point, she feels it is fair to say that there is some balance between lack of negative impact to the Town versus negative impact on the elderly.

P. Young asked why the plan is for 3 buildings, which led to a discussion of trying to meet the Zoning Ordinance requirements and also stay within cost restrictions. Mike Garrepy of Tuck Realty said that Avesta has revised its plans to avoid all but one variance request, and also that from the beginning meeting with the Planning Board they were encouraged to look at 3 buildings.

There was lengthy discussion of the unique financing aspects of the case, and whether they constitute hardship. Attorney Somers said that the project requires financing from New Hampshire Housing Finance Authority, the builders cannot go to a conventional bank. She said one thing this Board can do when considering hardship is look at the issue of whether or not financing is feasible on the part of the property owner. J. Deleire said it seems that the State decided to create a building scheme, then went further and created a borrowing scheme unless relief is granted to build affordably. This creates a snowball effect the Board is being asked to overcome.

M. Garrepy informed the Board that the Housing Authority has not set up its own hardship; it is not their money but federal funds that are used, administered by the NHHFA.

P. Robart asked where the extra rental income goes if the project comes in under \$235,000 per unit to build. S. Shah answered that financing is set up to cover only what is needed; it is basically a line of credit. If less is used than anticipated on one project, the money goes back in the pot for the next project.

D. French asked what determines how affordable the apartments are and what constitutes income. S. Shah answered that in this case, low income is considered 50% of the area's median income. Income includes gross annual income and dividends, but not assets. Rent is based on 30% of annual household income.

L. Job addressed criteria #5, hardship, with regard to wetlands. He noted that the property has wetlands on it, and therefore the only way to build on it is to get a variance. He said most of the empty lots left in the town are on wetlands, and therefore others will come in for variances as well.

M. Garrepy noted that the applicant is not asking for a wetlands variance, only for a variance on the number of units. However, as the wetlands present on the property dictate the configuration of the buildings, and the property is also owned by a state agency with financing criteria, there is a unique, two piece hardship. He added that this is not going to come up again, as there are no other NHHFA properties in town. Also, as the agency would like to have low income housing state wide, it would not make sense for them to "double down" on Hampton Falls.

F. Perry and J. Deleire expressed concern that if the financial scheme for building low income housing is considered a hardship, a scenario is created whereby state ownership of land becomes a basis to get a variance. M. Garrepy and S. Shah repeated that there are two components to the hardship, and that it is a unique property.

P. Robart asked what rights the NHHFA will have after the project is built. Atty. Somers answered that the agency will no longer own the land. It will be set up for affordable housing use for 99 years.

Building Inspector Mark Sikorski asked if a breakout of the difference in improvement costs between 42 units and 72 units could be offered.

S. Shah said that Avesta has factored in a buffer, which is considered part of the budget. M. Sikorski asked what effect that has on total cost per unit, but Atty. Somers said that is premature, as there has been no traffic study done yet. S. Shah said she is aware that at the Planning Board level there will have to be a discussion of offsite improvements.

M. Sikorski asked if there has been a recent case where Avesta has had to improve a road. S. Shah said that every project and every town is different. In Portland, they rebuilt the entrance, planted trees and improved the sewer. In Gorham, Maine, they are paying impact fees. In the first phase of the Exeter project, a deceleration and turning lane had to be added. As the process continues, the numbers will become more solid.

M. Sikorski said he posed the question because he can see that they have many projects in rural areas, and may have been approached before about improvements as they try to grow into the communities. S. Shah said they know they will have to factor this in.

PUBLIC COMMENT

The Chairman opened the meeting for public comment.

Larry Smith of Old Stage Road stated that he is in favor of the project. While he was initially opposed to every variance requested in the first hearing, he said he was swayed mainly by the fact that state owned property must be used for affordable housing, and only so much rent can be charged. He said that the reason there is no affordable housing in town is that property costs are too high, and it has to be done in some manner that makes it possible.

Mr. Smith went on to say that while he was on the Planning Board the Housing Authority came before the board twice, with lightly veiled threats about putting workforce housing on the property. He said he fears at some point the state will come in and do that, and the Town will have no say in the matter. Right now there are a lot of accessory dwellings being built and the reason is the lack of affordable housing. It is hard to build anything affordable in the Seacoast area. He concluded that he thinks that senior low income housing is the best option as it will have no impact on the school.

Charlyn Brown of Exeter Road also spoke in favor, saying that she thinks this project is a better fit for the Town than workforce housing. She said she believed that is what will come in at some point if the land is left vacant.

Beverly Mutrie of Brown Road asked if there is anything in the ordinance that dictates that the project has to be totally affordable housing, or if it would be possible to make it 50% affordable. M. Garrepy answered that the property cannot be mixed use.

The Chairman closed the public comment portion of the meeting and asked the Board if they had further points of discussion. He expressed appreciation for the comments offered, but said that the Board has to consider other opinions as well, of people not present.

F. Perry said he feels more dialogue is needed, and is having difficulty thinking of the ordinance as unworkable. If the will of the people is represented in the ordinance, is the Board upholding the spirit of the ordinance?

P. Robarts commented that the Zoning Ordinance is completely untested, that it had to be put in place, but was not based on facts or history, just on the opinions of citizens on what sounded good at the time. He said he does not give as much credibility to the ordinance that Alex Dittami does in his written opinion.

J. Deleire said that after the last meeting he took the opportunity to read the case law used by Atty. Somers and also that cited by Atty Beliveau in discussion. He could not find a case that exactly matched this one, which makes it more difficult to find any black and white basis for deciding the case. He said he could see how the 5 criteria are used; they can be stretched any way you want because they are subjective. He said he took the position first of approving using the 5 criteria, then of proving a negative result.

J. Deleire said that in the end, from his standpoint, he could not get through the 5 criteria without failing at least one. The one that stood out for him was #4, values of surrounding property. Even when considering only the 30 units above the allowed number, he said he still could not see how surrounding properties would not be impacted by lights, increased traffic, etc.

The Chairman said that he made a decision to wait and hear what was said before deciding, but only one of the criteria has to fail to deny the variance.

Atty. Somers reminded the Board about the letter submitted by Bergeron Appraisers which stated that property values would not be negatively affected; M. Garrepy noted that nothing has been submitted that states the contrary. He added that he has spoken to all the neighbors and most found no issue. Those that did have concerns are not here to speak against the project.

F. Perry suggested that each Board member should be given an opportunity to speak, to see what the general sense is.

D. French said he has to agree with Larry S., as he is looking toward the future. He expressed concern about future legislation for affirmative fair housing that could take away the ability of local boards to rule on local issues. He is more inclined to take the opportunity to control the housing on this land now in order to forestall the effects of such legislation.

S. Bryant said he can see that the property is unique due to its vast size, the ownership by the state, and the fact that it is fingered with wetlands. He said it would be very difficult to find another parcel in town that is the same. He also said he shares the concerns of others about the future.

S. Bryant went on to say that the project was well presented and that he can see the reasonableness of it. There is no data to prove diminution; it can't be ruled out, but the Board has no data.

L. Job said that while he agrees with D. French and L. Smith , the Board is legally required to deal with fine print material rather than what they want. He said the key is reasonable development, but within the spirit of the ordinance. He said that if the request was for fewer units, for example 44 or 48, that would seem a reasonable number to bend to, but going up to 72 goes against the spirit of the ordinance controlling density.

S. Bryant said that L. Job's point was well said, but that he comes back to the reasonableness of needing more units for viability. He said he is reasonably convinced that the numbers are needed

for financial and economic considerations. He added that the spirit of the ordinance also includes allowing for affordable housing.

J. Deleire said that this project is a large jump from following the ordinance. The Board is being asked to grant a variance based on financial obligation rather than to build a compliant building, and 30 units over is a large departure from the rules. He also asked the board to consider that the statutes were drafted without knowledge of these parameters; this Board did not create them, but needs to follow them.

He added that the sharing of different opinions is good.

P. Robart said that the property values are not diminished, in his mind. He said that if it were a pig farm going in, or some objectionable hobby taking place there, that would diminish the surrounding properties, but he does not see how going up in the number of units, especially given that the buildings are going to be in the middle of the property, would affect the neighbors.

F. Perry said that it is significant to note that there are no abutters here to object, because this is a critical time. They know the Board is struggling with this decision, and it is the time to be here, but no one is. The only ones that have spoken are in support. With that in mind, and no further discussion forthcoming, he asked to tender a motion:

MOTION:

Case 15-03 has been revised by the Applicant upon re-hearing to a single request for variance against Zoning Ordinance, Article III, Section 11, paragraph 11.4.1 to increase the allowable number of dwelling units from 44 to 72 single-bedroom units. Accordingly, it is hereby moved to approve this request. This motion is specifically conditioned on the following:

1. The location of the buildings shall be substantially the same as indicated in the presentation to this board, while remaining in compliance with all other town code requirements subject only to minor modifications to comply with town codes and plan approval conditions.
2. Deed restrictions as outlined during the hearing by the applicant must apply to this parcel.
3. The primary entrance/exit road shall be positioned to avoid direct headlight disturbance to neighboring properties.
4. Three buildings are to be constructed over a three year period with approximately twelve months between completions of each building.

Criteria:

1. The variance will not be contrary to public interest.

The proposed project serves the public interest by establishing elderly low income housing in the town. As a population density matter, the board does not find this project contrary to public interest. The parcel is also restricted for use by the state.

2. The spirit of the ordinance is observed.

The ordinance protects the rural charm of the town and does not overload infrastructure in consideration of the property tax benefits. This development is in harmony with these objectives, hidden in the woods, and provides a safe pleasant environment for elderly low-income residents.

3. Substantial justice is done.

On balance, the town benefits from the additional socially-desirable population this development will bring without detriment to the general population.

4. The values of surrounding properties are not diminished.

Given the large 56 acre wooded parcel, more or less, and thoughtful development with due consideration of the surroundings, no diminution of values is expected to result.

5. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship.

(A)(i) Several unusual characteristics exist with this parcel, owing to the restricted use established by the state, economics of building under federal funds available, large land area, and extensive wetland restrictions. The ordinance is intended to limit the stresses on town infrastructure and rural nature of the community. With these special conditions considered, the proposed project does not conflict with general public purposes of the ordinance.

(ii) The addition of this elderly low-income housing project is reasonable.

MOTION: F. Perry

SECOND: S. Bryant

In favor: S. Bryant, F. Perry, D. French

Opposed: L. Job, J. Deleire

Motion Carried.

MOTION: To adjourn the meeting at 8:57 PM

MOTION: J. Deleire

SECOND: S. Bryant

UNANIMOUS

