

**HOOKSETT
ZONING BOARD OF ADJUSTMENT
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MINUTES
MAY 9, 2006**

HOOKSETT MUNICIPAL BUILDING

CALL TO ORDER

Chairperson, Tracy Murphy-Roche called the meeting to order at 7:00 pm.

INTRODUCE MEMBERS OF THE BOARD

Chairperson, Tracy Murphy Roche, Alan Rozwadowski, Chris Pearson, David Boutin, Larry Abruzzesa, Ron Savoie
Building Inspector, Michelle Bonsteel

CONTINUED PUBLIC HEARINGS

DTR HOOKSETT PROPERTIES

1631 Hooksett Road, Map 14, Lot 32

Variance from Article 22 to permit a 60 dwelling unit where 12 is permitted. Request for appeal of administrative decision on 2/14/06

Tracy Murphy Roche recused herself

Alexander Buchannon, attorney

The matter concerns a proposal to build a 60 unit elderly housing unit with 3 stories. It was previously approved on May 10, 2005. It was a result of a joint meeting with the Planning Board to grant a special exception for elderly housing under article 7.

As a result, the applicant continued with a site plan to the planning board and meeting with staff. In January, article 22, dwelling, multi-family applied? The article 22 definition states an apartment house, building with no more than 12. This 60 unit doesn't fall into this. The Building Inspector said this does apply and needs a variance. The applicant asked for an appeal in Feb. and the board denied the appeal at that meeting.

The board wanted to consult with town counsel for the area vs. use variance was applicable in this case. An application for rehearing came in March and April both with not sufficient board membership.

There are two issues, the request for rehearing and the variance. The only issue tonight is the rehearing. It is important to take into consideration that this was approved. It required findings under article 24, special findings and article 7 special findings.

The Planning Board voted to recommend this use and the zba voted to approve it. Nothing has changed since that time.

For the rehearing, the first issue is in regards to attorney Mayer's comments.

I think, in a public forum, when an attorney is rendering an opinion, it falls outside the attorney client confidence. By not allowing access to the letter, it denies the applicant due process and it is fundamental under the right to know law. We can't argue with this unless we know what it says.

Mr. Buchannon referenced the minutes of the meeting where Mr. Belanger brought forward the letter from the attorney and subsequently the board denied the rehearing.

Mr. Buchannon: I asked, at that meeting, for the letter be made public.
I stand, that the letter be made public and be allowed to make comments.

D. Boutin: Have you made a request to anyone in the town for a copy of that letter.

Mr. Buchannon: Only in my request for rehearing.

D. Boutin: I presume the letter is in the file. It is a public file, and you could get access.

Mr. Buchannon: At the end of the meeting, I asked, and no one offered it for release. I should have made that call. If the board states it is privileged, I assume it's not in a public file. If it is a public record, why wasn't it made public at the meeting. We want the ability to address that.

D. Boutin: I want to understand, can you explain what it is you want, you don't want a variance if you don't have to.

Mr. Buchannon: We want the board to say that the multi-family doesn't apply and reverse the code enforcement officer's decision to require us to be here. I believe you should grant a rehearing and then uphold our appeal and disagree with code enforcement officer.

Mr. Buchannon: With regard to the variance, if you do not grant the rehearing, the variance is to allow the building of a 60 units for elderly housing. At the Feb 14th meeting tabled The hearing was tabled t the Feb. 14th meeting to see if it was a use or area variance. We meet the criteria for all.

Read the criteria:

This board has ruled on the first 4 factors through the granting of the special exception, those criteria are met.

The 5th is that there is no evidence that land value is diminished.

The town gets affordable housing. The spirit and intent of the ordinance because it is being built under the special exceptions of Article 7.

The hardship:

Mr. Keach will explain the uniqueness of the land

S. Keach:

This property contains under 8 acres, situated north of Granite Hill and South of the former college site. The proposal is substantially unchanged since the 2005 approval. The plans have been advanced (all the embellishments, lighting, etc) It is still a 60 units, 3 stories, and garage. The architect has embellished the building with its design. Denis Mires, architect, designed it similar to a large hotel in the North Country.

In the middle of the building, Denis has come up with a design for a common area with amenities targeted at the age of the tenants. The basic dimensions are within inches of the original plan.

R. Savoie: This board has to look at several things. We have precedence in the town with elderly units with more than 60 units. We are dealing with something that should have been a variance.

If this board chooses to uphold the administrative decision, I think the letter was more inclined to go along with this, it pertain to our ordinance rather than this particular issue. We have 2 or 3 buildings in town that meet this criterion.

S. Keach: We have seen high-end elderly development in town. This is the only way for the elderly to find affordable, age appropriate living under 200,000 dollars.

C. Pearson: Were you able to implement outdoor walking space.

S. Keach: Yes, that was a stipulation I believe. We extended the walkway around the perimeter and goes to a gazebo.

R. Savoie: Is there suppose to be a commercial development on the side of the building.

S. Keach: Yes, there is one proposed and we committed to a path if that happened.

I need to address the configuration of the land for Article 7. The configuration of the land, there's a slope that this design fits well with. Because the physical configuration of the land, this fits nicely and you can bring this to the market for under 200,000 dollars. There is no way to get this type of density to bring elderly housing to market without building this type of building, not to mention the amenities.

The planning board adopted the master plan in 2005 and the housing plan speaks volumes about the need for affordable elderly housing.

It wouldn't be cost effective to do 3 building blocks and offer the amenities and the parking, etc.

M. Bonsteel: It's in definition, not in the body of the ordinance. More than 2 but less than 12 historically came out of a fire that resulted in number of dwelling units. Since that we have access requirements and sprinkler requirements.

A. Rozwadowski: We must rule on what the ordinances are today and the hardship.

S. Keach: What is its uniqueness.

Why couldn't you take this land and have 5 buildings of 12 units each. The reality is you can't. The property slopes dramatically. There are significant wetlands and this design doesn't impact them.

The voters approved the density for the elderly because the town saw the need. We can deliver 60 units of affordable elderly housing for half of the others in the area. Regardless if this is a use variance or an area variance.

S. Keach distributed the criteria for the use variance in writing and read from it.

R. Savoie: First thing to act on is the request for appeal on administrative decision rehearing.

D. Boutin motioned to deny the request for administrative appeal rehearing. Seconded by R. Savoie. Voted unanimously in the affirmative.

D. Boutin: I would like you to know what is it; the particulars of this site that you believe deserve to have a hardship attached to it?

S. Keach: Steep grades exist on this site. If you look at the grades on the site, there is one in excess of 360 and one at 290. 50% of the land is off limits due to dry or wetlands. That takes an 8-acre site and makes it a 4-acre site.

D. Boutin: What is the zoning of the parcel?

S. Keach: This is MDR district.

Mr. Buchannon: Steve Keach addressed the physical characteristics of the land whether it is an area variance or a use variance. Steve Keach has shown the uniqueness of this property. It is also unique to the reasonable use. The board found this a reasonable use a year ago and it is a reasonable use now.

Mr. Buchannon distributed a written summation of what was said.

Abutters:
Public:

Close Public hearing.

R. Savoie motioned to grant the variance to construct 60 units where a maximum of 12 is permitted. Seconded by C. Pearson. Voted unanimously in the affirmative.

MIACOMET DEVELOPMENT

1794 Hooksett Rd, Map 6, Lot 114

Variance from Article 10, Section A to allow for a 62 and older occupancy restriction to be reduced to 55 and older.

Variance from Article 10, Section A, to permit a housing development for 55 and older in the commercial zone on the back portion of lot 114 where 62 and older has already been permitted on the front portion of the lot.

J. Ratigan, Attorney for the applicant

We previously presented a use variance and the board requested more information.

I have submitted two new pieces of information for M. Fougere, planner, and from M. McKeon an appraiser.

(L.Abruzzesa is not voting)

Phil Lochiatto, project manager for Webster Woods.

I want to address neighbors concerns with the phase II. We have had three meetings with the abutters on Bert, Otterson, Bernice. We support limited access with gates to Bernice.

The proposal is to build similar housing to what is upfront (duplex elderly housing with today's zoning regulations for 55 or over. We are placing connections where we think they will be wanted.

A. Rozwadowski: You come with a conceptual plan that you want us to vote on. I would see any access as a nuisance.

T. Murphy-Roche: The PB will not allow only one access to that area.

R. Savoie: This is conceptual but will these streets remain private

Phil: Private

R. Savoie: This is the 3rd or 4th drawing and they are not complete by the engineer. There is not sewer easement and that is criteria for this board.

A. Rozwadowski: We are looking at a conceptual plan and we might get into other exceptions.

M. Bonsteel: You need to start at TRC so that all departments can have input.

J. Ratigan: We are asking for a use variance. Only if you grant relief will we start the planning process.

T. Murphy-Roche: Why change from 62 older to 55 older.

Phil: There are two requests one is for the back lot and one for 62 to 55 change.

M. Bonsteel: The original subdivision was approved in 1988 before the 55 and older zoning existed.

C. Pearson: I agree with Alan that these are conceptual plans and we don't know what will be going in there.

Phil: In March, this was listed as 2 applications.

J. Ratigan: The front is zoned for 62 and older under an older ordinance.
The town has since adopted a 55 and over and we want to expand the market.

L. Abruzzesa: If they were granted on the lawsuit, can we override that decision.
Also this board needs to know the rationale behind the change from 62 to 55.

J. Ratigan: We are trying to respond to a market and conform to your ordinance, which sees the need to reduce to 55.

D. Boutin:

Per the court decision, the only issue was did the developer have vested rights, and they did, regardless of the age restriction, secondly, I don't know the purpose of discussing the age issue because the town has adopted 55 as older person housing. Thirdly, I agree with the specificity requirement on applications. We need specific information for wetlands etc.

It is my view that we don't need to know how the site is laid out, that's up to the PB. That is not germane to the applicant's question. Some issues are not relevant to the application before us.

T. Murphy-Roche: I disagree that we should know where the roads are, if there are sewer easements and we must make informed decisions.

J. Ratigan: In my application, I spoke of the criteria.

I want to address what is unique of this property. The rear portion is an island that is surrounded by residential housing and elderly housing. You

would never want this commercial. We have this consistent with the front portion and consistent with Country View Apartments. We think this would be a great use for the neighborhood. We, therefore, think we meet the hardship criteria. I agree with Mr. Boutin, if you give us the use variance, we will develop a plan for the PB that requires no relief.

A. Rozwadowski:

I am usually reluctant to give up commercial to residential but in this case, based on the property and the neighborhoods, anything different would be a detriment. 62 to 55 isn't seen as problem. The neighborhood will always be mixed. I would like to know what is going behind there.

Eric Nickerson, developer: We did this as conceptual to show the neighbors what we did. Somewhere in the packet, you will see the easements etc. This is just a talking tool. We have to meet all the regulations of the town to meet current standards for subdivision regulations. The politically correct term is active adult and in other towns, it is 55 and in those groups the percentage in the 80's, the only adult living was 62. The projects we are doing now are 55 and 55% of those qualify for 62.

We start at \$179,000 and we have residence in Hooksett who don't qualify due to age. I don't have the tax information.

Any concern with losing tax dollars is false.

There are 10 units built in the front and 4 other houses up and one clubhouse and 70 percent of the roads are in. We haven't sold any, we have deposits until we get a decision on the 62 to 55 relief.

We had an open house so the town could see what we were doing. We wanted the opportunity to explain the roads. We have in other communities put opticom control gates. This is the decision of the planning board.

Phil: There is no access right on that connector road now. The town paved Otterson up to our property line. It says no access.

Judy Sullivan, 42 Bert Street: I support the 55 and older because I want these to be marketable and I don't want to see commercial development there.

Al Garland:

My main concern for the neighborhood is the traffic on Bernice and the developer has agreed to gate if necessary for emergency access.

Jackie Noel: I'm an abutter, if the town wants this to be successful, they would need to be able to compete and the housing would be vacant. I don't want access to Otterson. The units are beautiful and I think they will sell.

Richard Ziemba: I would live in the first phase and I'm 63 and my wife is 63 and if she dies and I remarry, I'd have to move. We have been looking at this mess for many years.

Judy Sullivan: What would happen if you didn't approve the 55 and the units didn't sell.

T. Murphy-Roche: I don't think this developer would have invested if he didn't think it would sell at 62. Ideally he would like it at 55, which is also marketable.

Judy Sullivan: If it fails.

T. Murphy-Roche: The previous developer from Connecticut backed away from this development not because they couldn't sell.

D. Boutin: The site is approved by town for a certain use, if the project fails, it couldn't become section 8 housing or army barracks or office buildings.

Robert Caruso:

I hear they are trying to change from commercial and 62 to 55 and we are fortunate that someone is trying to do something positive. What if he sells that property as commercial, where will they get access? I don't want to miss this opportunity.

L. Abruzzesa: No one can predict the future. Even if we approve the 55, it still can go belly up. As an abutter, it means that whatever that property is approved as, can go forward. It reverts to the original zoning if sold.

Nickerson:

I disagree; I have a right of way to do whatever is allowed in the ordinance. I can subdivide the back piece by getting frontage off the 2 right of ways.

Jackie Noel: I want to see phase I completed. We would be happy if it were 55 so they can move forward.

Close public hearing

L. Abruzzesa: I recommend the board table until we can find out the basis of the lawsuit and the rationale of the 62 to 55.

R. Savoie: The lawsuit was for vested interest only.

M. Bonsteel: It was a lawsuit for vested and approved for 62 and over only.

I can't comment if you should be concerned with the lawsuit. It doesn't change the character of what is being built. I advise the applicant to come before the TRC before they go much further with the planning. I'm worried about sewer capacity.

D. Boutin motioned to approve the variance (part A) to allow 62 restrictions be reduced to 55. Seconded by C. Pearson Voted unanimously in the affirmative.

D. Boutin motioned to permit 55 and older on commercial variance be approved. A. Rozwadowski seconded. Voted unanimously in the affirmative.

3A DEVELOPMENT

Hooksett Road Map 14, Lot 1-2

Special Exception from Article 18, Section E to allow filling in wetlands for the development of a residential development on lot 1-12 of University Heights. Variance from Article 22 to allow 24-unit apartment buildings to be constructed within the residential development.

T. Murphy-Roche: Since we need to do a site walk on Zyacorp and we have a 10 pm cut off, we will schedule the site walk tonight and continue the hearing at which time the applicant can do a full presentation (you will still go to the PB on the 15th) and the board may render a decision at this time.

Karen O'Rourke, Brown engineering: I'm here to approve the apartment site for University Heights. We were here last time with two site plans, but we were asked to hold off for the special exception and focus on the variance. We are asking for a variance to article 22, which states that a multi-family can have no more than 12 units.

C. Pearson: Based on this plan, you need a special exception because you are impacting wetland. There is a special exception regardless of the plan.

Karen O'Rourke: We are asking for a decision just on the variance tonight. The Special Exception was for the plan with 17 buildings. We are at the conceptual stage. We need to define what the impacts will be.

D. Boutin: This will be less impact, is it the same areas?

K. O'Rourke: We are saving almost 1800 sf of wetlands with this plan. We have taken the original site, (204 units approved by master plan); the end result is the new site plan footprint is 37 % reduction in impervious area. This allowed fire lane access. In the first plan, there are significant retaining walls, (3000 linear feet) in this plan there is minimal retaining wall (300 linear feet). This plan has more green space less wetland impacts. This works better with the existing terrain. These are apartment buildings.

C. Pearson: Does the unit size change from 12 to 24.

K. O'Rourke: Not significantly. These are a mix of 1 and 2 bedroom apartments.

Alan Rozwadowski: This must be a cost savings for the developer.

K. O'Rourke: Absolutely, the walls are expensive and this will be more aesthetically pleasing.

Alan Rozwadowski: In principal, I agree, but we must work within the zoning criteria. What is so different that I should let you go forward? All buildings would have more open space if it had more units per building.

K. O'Rourke: The lay of the land plays as a big factor. It can be done as more buildings and the aesthetic committee at TRC asked us to look at this.

M. Bonsteel: I put the meeting together and this will have far more advantages to excavating and be more pleasing. This is good development and a better plan for the town.

You won't see a number of buildings peppered into the hillside. One concern was the face of the building to Hooksett Road. They have agreed that there will be architectural considerations made. This is one time when we agreed with the developer. The CC does not come to technical review.

K. O'Rourke: I did show this to CC and they liked this better for obvious reasons.

T. Murphy-Roche: I agree this appears to be a better plan, but we have zoning ordinances that must be met. We need someone at the TRC representing the zoning concerns.

M. Bonsteel: I want a member of the zba there and D. Boutin will start attending.

K. O'Rourke:

This site plan has been in the works for two years and is fully engineered and we were close to bringing this for final approval when we decided to step back after TRC and were asked to do something like this. By asking for this variance, the developer is going to redo plans. So, although there is an overall cost savings, there is a cost to replanning.

A letter of recommendation was received from the Planning Board

***R. Savoie motioned to approve to allow 24 units to be built. D. Boutin seconded
Voted unanimously in the affirmative.***

NEW PUBLIC HEARING

ZYACORP INC

Hooksett Road, Map 34, Lot 30

Special Exception from Article 18 Section E to allow for a 16 Screen Stadium Movie Theater

Site walk scheduled for Monday, May 15 at 5:30 in front of the Cantara sign.

Abutters are welcome.

APPROVAL OF MINUTES OF – April 11, 2006

***C. Pearson motioned to approve the minutes of April 11, 2006.. Seconded by D. Boutin.
Voted unanimously in the affirmative.***

ADJOURN

Chairperson declared the meeting adjourned.

Respectfully submitted,

Lee Ann B. Moynihan