

Town of Wilton, New Hampshire
Zoning Board of Adjustment
Approved Minutes

DATE: August 13, 2019
TIME: 7:30 PM
PLACE: Wilton Town Hall
PRESENT: Neil Faiman, Chair; Joanna Eckstrom; Jeff Stone; Paul Levesque; Peter Howd
Absent: Andy Hoar, Bob Spear, Michele Decoteau
Staff: Jeanette Vinton, Acting Clerk
Attendees: Ashley Saari, Jessica Salisbury, John Siate, Susan Bogdan, Don Bogdan, Carl Foley, Randy King, Cheryl Bosquet, Karon Walker, Gerard Tanguay (Glendale Homes), William Polson, Carl Foley (Fieldstone Land Services), Chad Branon (Fieldstone Land Services)

PRELIMINARIES:

N. Faiman opened the meeting at 7:31 PM.

MINUTES:

The Board reviewed the minutes from the July 9, 2019 meeting.

Line 150 ... replace "breaches" with "breached"

Line 172 ... swaMp

Line 178 ... replace "lot" with "location"

Line 233 ... off

Line 271 ... CAldwell

Line 273 ... replace "location" with "located"

Line 274 ... Q should be Quinn

Line 329 ... Add line prior to 329 with "B. Keefe reviewed the five point criteria for a variance with the following:"

Line 360 ... delete "r" in "closer"

J. Eckstrom MOVED to approve the minutes of 07/09 with amendments. P. Levesque SECONDED. All in favor.

PUBLIC HEARINGS:

N. Faiman introduced the Board Members

Continued Case #7/9/19-1 Quinn Properties, LLC

N. Faiman informed the Board after the Quinn Properties LLC were informed there would not be a full board, they opted to continue their hearing to 9/10/19 meeting.

J. Eckstrom MOVED to continue the Quinn Properties LLC hearing to 9/10/19 meeting. P. Levesque SECONDED. All in favor. P. Howd abstained.

Continued Case 7/9/2019-3 - Demers

N. Faiman read the public notice. He indicated that there would be two public hearings on this case. The first was a site walk that was done earlier today at 6:30 pm. The second is the continued hearing on this application.

C. Foley, Fieldstone Land Services, explained that this property had been subdivided into two lots. He indicated that they are seeking a special exception to build a driveway across the wetlands. At the narrowest point they will build a culvert using 24" corrugated pipe. C. Foley said they will be building the driveway to the Towns' specifications as well as having an additional wide turnaround for emergency vehicles.

J. Eckstrom asked if this was a town road and is it going to be built by town specs. She also wanted to make sure this was for a single family residence and the driveway has enough width. C. Foley assured J. Eckstrom it was being built according to the Town specs and that is why we have a turnout.

J. Stone indicated that on the site walk the turnout was on the right hand side of the driveway as you enter and the sketch indicates it is on the left. C. Foley indicated this is just the initial engineers sketch, and the current plans will reflect it correctly.

P. Howd was asked as a Conservation Committee member if there were an issues they found on their site walk. P. Howd indicated that there were no complaints or questions on the site walk.

J. Eckstrom asked if we can request that when other Commissions or Boards weigh in, that they send us their findings.

P. Levesque MOVED to grant the special exception. J. Eckstrom SECONDED

N. Faiman asked if anything was missed from the audience. Hearing none, the Board voted on the Special Exception.

P. Howd – yes

J. Stone – yes

P. Levesque – yes

J. Eckstrom – yes

N. Faiman – yes. Motion carries. N. Faiman reviewed the appeal process.

Continued Case 7/9/19-4

N. Faiman read the public notice. N. Faiman indicated this is the first discussion in front of the Zoning Board.

N. Faiman reviewed the process of hearing a case.

C. Branon, Fieldstone Land Services, representing the applicant, Glendale Homes Inc., and the landowner, R. Chappell, indicated they are requesting a variance of Chapter 13.3. (d) To reduce the age requirement from 60 to 55.

C. Branon indicated the subject property is on eastside of Route 101, and has one single family residence, which is occupied on the north side of the Souhegan River. This parcel is D-99, is 24.1 acres, has 327' frontage on Route 101 (Gibbons Highway) and is zoned residential. C. Branon indicated the sewer line is approximately 1400 ft. down the road. He indicated they had worked on a number of concepts and believes this is the one that works well with the parcel. He indicated they would subdivide the lot containing the residence from the rest of the property, which still leaves approximately 23 acres for the elderly housing development. C. Branon indicated that state regulations state we can put 12 units per acre if there is water and sewer. The plans we are seeking have only 23 units for the elderly housing. He stated that they believe it will comply with the density calculations. This would give us significant buffering and conservation land between abutters. Their firm did 19 tests pits to determine the soil consistency. He stated there is an existing wood road that bisects the property, and with this current layout it would yield 18 acres of open space, 75% of which is along the river.

J. Eckstrom asked the Board that if we are only asked to reduce the age requirement do we need to hear a full description of the project. N. Faiman answered that he believes this is setting up the context for the request.

J. Eckstrom indicated that Chapter 13.3(d) is about the age and not the number of units. N. Faiman indicated that it was his opinion that given this is an application for elderly housing with modifications, it is appropriate to describe the project in its entirety.

Conversation went back and forth between the Board members if that required the whole project or just the information regarding the age limit. P. Howd said there is a court case that indicated whether or not an elderly housing development is 15 or 150 units it would not be relevant to the issue of whether we ought to lower the age difference.

J. Stone asked if there was a relevance in the remainder of the description of the project to change the minimum age. C. Branon indicated they were requested to submit a plan of the project. He also indicated they received calls from abutters, and as we go through the criteria, it is important that we give them a picture of what to carry forward.

J. Eckstrom indicated this case was only about the age issue and the next stage is to Planning Board.

N. Faiman indicated we should only be discussing the age requirement. He also said that too much information regarding the project can lead to other discussion that can create the impression of a decision which really needs to go in front of the Planning Board first.

C. Branon then read their reasoning to grant the variance. (See attached document for details). In summary, their reasoning is that based on State and Federal laws, the age requirement for elderly housing is 55. He also indicated that several neighboring communities are using 55 as their threshold. We are trying to move into this type of development, and open it up to those 55 year old and make this a positive project. C. Branon indicated that the diversity of housing for people of that age is a more of a marketable to appeal to the project.

C. Branon indicated that they are promoting elderly housing and just the age requirement is being requested and no other changes to the project are expected. He believes this will increase the value as we are preserving land and these units do sell for a good market rate. He does not believe there will be a negative value. There will be no burden on the municipal services and will have a positive tax effect. We are just trying to go along with the other towns in the area that following the federal guidelines.

J. Stone asked what the typical age mix of such the development is. C. Branon responded that assuming there are no other restrictions to the project, there will be at least one occupant that is 55 or older and no one under the age of 18 is permitted. There is actually statutes that protect the town and we plan on doing affidavits from the owners as well as put it in the deed.

G. Tanguay, Glendale Homes, reiterated that one occupant has to be 55 and that no one under 18 is permitted. He indicated from his previous projects that the age of occupants if from 55 to 83.

J. Eckstrom asked if they could do the project if the age limit stayed at 60. G. Tanguay indicated he was not sure they would go ahead with the project if there was a restriction.

P. Howd asked if the recording requirements to federal government are different from age 55 to 60. G. Tanguay indicated that there is a 20% buffer protection from the guideline. This means that if a couple were to buy a unit where one is 55 and the other is younger, and the person who is 55 dies, the other individual will not be kicked out. They are protected. This is where the 20% buffer comes in.

P. Howd indicated he has done some research and according to the HOPA Act, it requires that 80% of the residents of federally qualifying development be 55 or older, the rest can be lower than 55.

C. Branon could not answer if the buffer goes over the 20%. He indicated there are a lot of legalities that are reviewed by the Town's Counsel. He indicated it gets very complex in the background to make sure all the requirements are met.

The question was asked about boyfriends and partners. C. Branon indicated that it states resident in the rules, therefore it does not matter if they are a partners or girlfriends or boyfriends.

G. Tanguay indicated that a good part of the residents purchasing are between 56 and 60. C. Branon indicated that if the complex were for 60 or older it would not work. He indicated this is a condominium association and they are usually stronger with a blend. If you shorten the age requirement you can change the dynamics on the project. The reality, C. Branon stated, is he could not find a reason for the 60 threshold in the Town ordinance. He said the state and federal threshold is 55 and he wants it to be consistent with that. He indicated there are more positives to lowering to 55 then negatives. He indicated there are no children so there is no impact on schools and a minimal impact on the town.

At this time with no further discussion N. Faiman opened it up to the audience.

W. Polson stated this is in his backyard and did not believe them when they said there would be no property value impact.

N. Faiman interrupted Mr. Polson and reminded the audience that the question before us was only about the age requirement. Everything else will be addressed by the Planning Board.

W. Polson then indicated he would take his questions to the Planning Board. He did indicate that most of the abutters were upset because this is the first they are hearing about this project.

J. Eckstrom indicated to the audience that this is the first step, as they are asking for a variance on the age. This is standard procedure.

R. King, of 70 Proctor Road, asked "Isn't elderly defined as 60 in NH?" C. Branon indicated that State law and Federal law actually breaks it into three categories ranging from 55, 62 and then to assisted living. He also indicated that most towns and municipalities call it elderly housing in their ordinances.

N. Faiman indicated the Town of Wilton has an elderly ordinance, and it defines all the requirements for an elderly project.

K. Walker asked "If development is geared towards to 60 years – what are you required to follow, is it 55 or 62?" C. Branon answered that we would follow the requirements for 55. There is confusion as what requirements to follow because we do not rise to that threshold we do not have to meet those criteria. That is why our request is to start at the 55 age.

C. Bosquet asked for clarification on why they want it to be 55 and not 60. C. Branon responded that it was for marketability. He indicated that if try to sell for 60 years old, it cuts off our viability. There is a greater population of 55 to 59 looking for units, then those just over 60.

S. Bogdan asked what the reasoning for the Town was to choice 60. N. Faiman responded by saying it was voted in over 30 years ago and he was not sure of the reasoning. This was adopted prior to the existing universal standards.

J. Eckstrom believed it was created when the Edgewater development was being built.

N. Faiman said that what is asked for is reasonably clear, and what it is apply too. The details are irrelevant and it needs to be the Planning Board who would make the change in the ordinance. This Board is being specifically asked for a variance on the age requirement.

R. King commented that this was being done just for the marketability aspect.

C. Branon indicated this is an outdated ordinance and it addresses the concerns of the residents. He believes there is a lot of thigs to consider, and thinks this is a good one.

J. Stone MOVED to close the Public Hearing. P. Levesque SECONDED. All in Favor.

The Board discussed the application. P. Levesque indicated that the age limit was out of date but that is arbitrary because we have no control over changing it. It would have to go to the Planning Board.

N. Faiman could not see a telling hardship. Marketability is not a hardship. We are being asked to re-write the ordinance which we cannot do. He also indicated there is nothing special to this particular land. The decision is for the Planning Board and Town to change the age requirement.

J. Eckstrom indicated that they can develop the land and carry out the project at 60 and going down to 55 is not going to make a substantial difference. She didn't see the hardship.

N. Faiman said he is not persuaded that this point makes the case. If we turn it down, I encourage them to go to Planning Board and recommend a change in the ordinance. This is not the place to change the ordinance.

J. Stone indicated he does agree that is very clear there is a segment between 55 and 59.99 that would or would not be able to buy here and how it would decrease the market for those units. If we allow the age decrease it would then be line with federal law and any such other developments. He indicated that he could not see an unnecessary hardship to the property. He was wondering if we could accept the request and not throw it out because we could not meet number 5 on the criteria

N. Faiman indicated that we could not do it. All 5 criteria have to be applied.

P. Howd asked if we, as a Board, can petition or request the Planning Board to address this, or does this have to come from someone else.

P. Levesque said this is good for town but we are caught on a technicality.

J. Eckstrom MOVED to reopen the Public Hearing. J. Stone SECONDED. Three in Favor. One

N. Faiman asked if anything was missed from the audience.

C. Branon said the challenge is the age for this special project to the special conditions of this property. This is a special lot. There is a lot of frontage on the river, large frontage on Route 101, and direct access to the highway. These special conditions make this property best suited for elderly housing especially where it is not expanding municipal services. This sets itself apart and to make it viable at this magnitude we need a variance on the age. The density is in direct relation because we can provide buffers and trails. It is special and unique and best suited for this development in this location. The geometry that we are going to contend with the configuration along the river and this is best suited for a development which is less impactful. This is most viable if we have relief from the age.

R. King said he could see the geography of the land making a hardship, but age is only for the marketability of the project.

C. Branon indicated that we should not lose sight that this is a public road. Most developers would maximize the amount of houses or units, whereas Glendale Homes is bringing quality. This is a good proposal and the uniqueness of this property and the special conditions make this a very good project.

G. Tanguay said he would like to do the project with the 55 age limit. If the vote is negative he will decide what to do.

J. Eckstrom MOVED to reclose the public hearing. P. Levesque SECONDED. All in favor.

Discussion was further had.

P. Levesque MOVED to grant the variance. P. Howd SECONDED.

P. Levesque MOVED to reopen the Public Hearing. J. Eckstrom SECONDED. All in favor.

N. Faiman called the vote on the motion before the Board. He reminded everyone that we need 3 or more votes to pass the motion.

J. Eckstrom – No
P. Howd – Abstained
J. Stone – No
P. Levesque – Yes
N. Faiman – No

The motion to accept has failed.

J. Eckstrom MOVED to deny the variance. J. Stone SECONDED.

P. Howd - No
J. Stone - Yes
P. Levesque - No
J. Eckstrom - Yes
N. Faiman - Yes

N. Faiman – The vote is 3 to 2. The motion carries. . N. Faiman reviewed the appeal process.

N. Faiman took consensus on the reason for denying the variance. J. Eckstrom did not find the hardship was satisfied. P. Howd suggested that the uniqueness of the property should be limited to the discussion of age without the use of the variance. This is where the votes came down too. J. Stone indicated that the uniqueness criterion was not met. Although the property uniqueness was not met, we have a zoning ordinance that needs to be fixed

N. Faiman said the Boards of the town reflect the powers, the Planning Board is legislative and the ZBA is the court. Our job is to follow the rules and interpret them, where the Planning Board can change the rules. The primary rationale for the denial is that there is no hardship relating to the property.

OTHER NEW BUSINESS:

Performance Review:

Discussion was had on how to handle the performance review for Michele Decoteau.

P. Howd MOVED to have a non-public work session on 8/19/19 at 7:00 pm. P. Levesque SECONDED. All in favor.

Communications and miscellaneous:

Discuss was had on how to manage correspondence received when the case has been continued.

P. Howd MOVED to have a non-public work session on 8/19/19 at 7:00 pm. P. Levesque SECONDED. All in favor.

ADJOURN

P. Howd MOVED to adjourn at 10:30 PM. J. Stone SECONDED. All in Favor

Respectfully submitted by Jeanette Vinton

Approved 11.12.19