Town of Amherst
Zoning Board of Adjustment
Tuesday October 18, 2016

ATTENDEES: D. Kirkwood- Chair, R. Rowe, C. Vars, R. Panasiti (Alt), J. Ramsay
Staff: G. Leedy- Community Development Director

The chair called the meeting to order at 7:06pm, explained the ZBA process and introduced the board members and staff present.
He further explained that tonight's meeting consists of two requests for rehearing. This is an administrative process for the board. In a procedure similar to a deliberative session, the board will not take input from anyone.

Old Business:
Request for Rehearing: CASE #: PZ7330-041216; Migrela Realty Trust II (Owner); 153, 155 & 169 Hollis Street; PIN #s: 001-008-002, 001-008-000, 002-007-000 is requesting a rehearing of an appeal of an administrative decision that was denied by the Board. Continued from August 16, 2016.
Discussion
D. Kirkwood said the board needs to determine whether Colleen made a correct determination on allowing the density for the project. In the interim, has the applicant had some discussions with the Planning Board? G. Leedy said no, the applicant hasn't met with the Planning Board because it's up to the ZBA to decide to uphold the administrative decision or not.
D. Kirkwood clarified that it wasn't the intention of the ZBA to have the Planning Board make this decision for the ZBA, but if there were other issues that would come up with the plan to try to have them dealt with first.
The Chair asked for thoughts from the board regarding the decision which had to do with how the ordinance specified where elderly housing fell: was it standing alone in the ordinance, or was it part of the overall innovative housing ordinance?

R. Rowe said Colleen made the right decision. Is there ambiguity between the two sections? He sees it as a legal issue and at this point it might be best if the matter is taken up by the court. He would vote no for a rehearing for that reason.

C. Vars said we are faced with interpretation of the ordinance. He thought that by suggesting they go to the Planning Board they would get more definition on where they stood but that hasn't occurred. The request is exploiting a mistake in the ordinance as it relates to the density.

R. Panasiti said Colleen understood the innovative housing ordinance. He thinks there was an oversite by not deleting that particular paragraph. He could see voting in favor or not in favor of the rehearing. Either way it will be heard by the ZBA or the court.

D. Kirkwood said when he read the ordinance, it seemed clear to him that the elderly housing was meant to come under one of the forms of the innovative housing structure. But there could be an ambiguity in the interpretation. Should the courts decide or should the ZBA give them another shot before this board? We can make note of this so that this ambiguity can be cleared up with the next town meeting. That is five months away and it's not fair to ask the applicant to agree to that. He is ok with giving the applicant another hearing and they can choose to wait for the next ZBA meeting or go straight to the court if they choose.

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C. Vars moved to grant a rehearing for case # PZ7330-041216. J. Ramsay seconded.
Vote: 3 in favor with R. Rowe opposed and R. Panasiti abstaining thereby granting the motion

Request for Rehearing: CASE #: PZ7677-071516; Arboleda Realty, LLC (dba LaBelle Winery), 340 NH Route 101, PIN #: 008-052-000 in the Northern Transitional Zone. Request for a rehearing of the decision approved by the Zoning Board of Adjustment on August 30, 2016 & September 20, 2016 for a variance from Article IV, Section 4.4,B to allow the following uses that are not permitted in the Zone: a distillery with tasting room/small function room, event center, office building, and an inn with a spa and restaurant.

Discussion

D. Kirkwood asked, what is the board's reaction to the reasons given in the letter? Except property values, every other part of the decision was quoted as being illegal.

R. Rowe said the ZBA made the right decision but he is impressed with the request which goes into detail. After reading the request he doesn't think he will change his opinion, but he is in favor of the fairness of granting the rehearing.

D. Kirkwood looked for any arguments that brought something new to light or were compelling, but had trouble finding any in the request. Some of the attributions were taken out of context. However, the ZBA has generally tried to grant a rehearing when requested. In the RSA if the requirements for application for rehearing aren't met, the board is not under obligation to grant it. R. Rowe said the requestor used to have to show new information, but that was changed 10 years ago. Now they just need to show good cause.

C. Vars said the board strongly vetted all five points and made the right decision. The request states the ZBA made egregious mistakes. But he also believes it's fair and prudent to grant the rehearing.

R. Panasiti said the ZBA listened and made the right decision in granting the variance. It's our job to do that and we made our decision based on the information we were given. Based on the best interest for the northern transitional zone, we made the best decision considering the allowed uses there.

R. Rowe said he agreed with Reed that we made the right decision, but it's reasonable to listen to the applicant explain why they believe we were wrong. He could see the rehearing shortening the whole process because if it were to go to court, the court may just send it back to us and it could be six months before that happens. He would vote for a rehearing.

D. Kirkwood said there's nothing in the request that is compelling for reexamination. The document doesn't seem to express knowledge of the topography of the lot. When talking about hardship the applicant brought up Harborside Hotel which is a hotel in Portsmouth which was trying to get a larger size than what was allowed along with another case from 1975. The hardship qualification has gone through several revisions since 1975 and has since then become a statute.

J. Ramsay is fine with granting the rehearing but is comfortable with the deliberations and decision that was made. It was made thoughtfully. If granted, he will be looking for specific new information that will render our decision questionable.

R. Rowe said we can't specify what we hear. If the rehearing is granted, the case will start over from the beginning. The chair was extremely generous in the first meeting by allowing all the public comment and hopefully we won't have that again.

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D. Kirkwood said the ZBA has the ability to make specifications with regard to a variance even if that stretches into planning board issues. We've never done it, but it is allowed. Police, health, fire and safety are planning board issues, but if we are looking at a new use, we must feel comfortable with the implications of that new use.

R. Rowe moved to grant a rehearing for cases #PZ7676-071516 and PZ7677-071516. C. Vars seconded. Vote: 3 in favor and 2 opposed therefore the request was granted.

Both hearings are scheduled for the next ZBA meeting on November 15th.

Other Business:
Minutes: July 19, 2016; August 16, 2016, August 30, 2016, September 20, 2016
July 19
Line 121 to read: Then the applicant appealed her interpretation and the ZBA upheld Colleen's interpretation.
R. Panasiti moved and J. Ramsay seconded to approve the minutes of July 19th as amended. All in favor

August 16
Line 636 to read: came in our packets
R. Panasiti moved and C. Vars seconded to approve the minutes of August 16th as amended. All in favor

August 30
The word <u>we</u> is to be substituted for the word <u>they</u> throughout lines 62-68.
Line 128 to read: will have a conservation easement
R. Panasiti moved and J. Ramsay seconded to approve the minutes of August 30th as amended. All in favor

September 20
R. Panasiti moved and C. Vars seconded to approve the minutes of September 20th as submitted. All in favor with D. Kirkwood abstaining.

Other
R. Rowe would like someone else to volunteer to be the Vice Chair. It has to be a full time member. They will wait for the full board to be present, but he wanted to put that thought out there.

R. Rowe moved to adjourn at 8:00pm. R. Panasiti seconded. All in favor

Respectfully submitted,
Jessica Marchant

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