Town of Amherst, New Hampshire
Zoning Board of Adjustment
Minutes
May 17, 2016

The Zoning Board of Adjustment met on **May 17, 2016 at 7:00 pm** in the Barbara Landry Meeting Room, 2nd floor, Amherst Town Hall, 2 Main Street, Amherst, NH 03031.

In attendance were Doug Kirkwood, *Chairman*; Robert Rowe, *Vice Chairman*; Jamie Ramsay, *Secretary/Treasurer*; Kevin Shea, *Member*; Charlies Vars, *Member*; Reed Panasiti, *Alternate Member*

Call to Order:

Chairman Kirkwood called the meeting to order at 7:00 pm and introduced each member of the Zoning Board of Adjustment to the audience. Chairman Kirkwood explained how the meeting process would be followed and requested that the meeting be conducted in a civil and responsible manner.

NEW BUSINESS:

CASE #: PZ7330-041216 – Appeal of an Administrative Decision
Migrela Realty Trust II (Owner) – Requesting an Appeal of an Administrative Decision made by the Zoning Administrator on March 18, 2016 regarding the determination of elderly density per Article V, Sections 4.16 & 4.20 of the Zoning Ordinance located at 153, 55 & 169 Hollis Road, PIN #s: 001-008-002, 001-008-000, 002-007-000 in the Rural Residential District.

Present: Gerald Prunier, Esq., Prunier & Prolman; Patrick Colburn, P.E.; Keach Nordstrom Associates

Attorney Prunier stated that his client hired an engineering firm to plan elderly development on approximately 30 acres on this site. He said when the concept plan was designed, it showed 68 units of elderly housing and the property was then purchased by his client. He stated that in discussions with Ms. Mailloux, she made a determination that Section 4.16 “Integrated Innovative Housing Ordinance” controlled any development of housing for the elderly. He stated that it is his opinion that Section 4.20 controls elderly housing and has never been repealed.

Mr. Colburn began his discussion by stating that they received a letter from former Community Development Director Colleen Mailloux in response to their inquiry regarding the application of the Elderly Housing Ordinance and the permitted density allowed through the ordinance. He stated that the property on Hollis Road was in the Rural Residential District and consists of approximately of 27 acres (+/-). Mr. Colburn stated that they were present tonight to dispute the Administrative Decision made by Ms. Mailloux, advance their plans for elderly housing and overturn Ms. Mailloux’s decision.

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Mr. Colburn referenced the Zoning Ordinance and stated that her decision was in regard to Section 4.20 in the list of permitted uses where Elderly Housing is allowed. He referenced Item 3 in the ordinance where it provided the density calculations for lots with available municipal water with 6 bedrooms per acre. He referenced the March 2015 Zoning Ordinance and read Section 4.20 into the record. He stated that his project is allowed by right with a Conditional Use Permit from the Planning Board.

Mr. Colburn stated that there is no comparison between the Elderly Ordinance and the Integrated Innovative Housing Ordinance and that they feel that the elderly project falls under the density criteria in IIHO and stated the following reasons why:

1. The Rural Residential zone lists elderly as a permitted use and referenced Section 4.20. That section offers density requirements for elderly projects and makes no mention of IIHO as an overruling mechanism.
2. IIHO fails to establish a minimum track area for elderly projects.
3. IIHO fails to offer any incentive to developers to extend municipal water.
4. The wording of the elderly ordinance density calculations match the requirements of the NHDES and is obvious that the original drafting of the elderly ordinance was in keeping with the spirit of the lot sizing calculations which offer a density bonus with access to municipal water.

Mr. Colburn stated that if IIHO "trumps" Section 4.20, there would be no reason to have this section particularly if the ZBA is going to ignore the town water incentive.

K. Shea questioned whether a revision had been filed after the letter was sent. The applicant stated "no".

R. Rowe stated that the plan shows 68 units and questioned the number of bedrooms. Mr. Colburn stated that there would be two per unit.

R. Panasiti questioned how they came up with the number of 68 units. Mr. Colburn stated that there is approximately 27 acres and when you apply the factor of 6 bedrooms per acre and deduct wetlands, steep slopes, etc., the net tract density equals 68 units.

Roger Mello of 6 Peacock Brook Road stated that wetlands surround that property and questioned how they would place any units there. Attorney Prunier stated that those issues will be discussed with the Planning Board.

Theodore Drotleff of 10 Ponemah Hill Road had questions about the net tract area. Chairman Kirkwood referred him to the Planning Board and stated that the only issue before the ZBA tonight was whether Ms. Mailloux was incorrect in her determination as written in her March 18, 2016 letter.

Peter Leone of 4 Ponemah Hill Road stated that he was not formerly notified of the hearing tonight and he is an abutter of this proposal. Chairman Kirkwood referenced the file and stated that his name was on the abutter's list.

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Nancy Mello of 6 Peacock Brook Road asked about pricing of the units. She was told that this was not a ZBA matter.

Christian Rand of 164 Hollis Road stated that there is an elderly housing development down the street and asked if this was part of the decision in conjunction with that. Chairman Kirkwood stated "no".

Discussion followed regarding the differences of the two sections of the ordinance. C. Vars suggested that there may be a conflict between the two sections. Vice Chairman Rowe stated that he "doesn't see a conflict between the two sections and felt that Ms. Mailloux's had it right".

K. Shea referenced the 2016 Town Warrant and read the articles into the record and stated that the town approved the warrant as written.

Hearing no other comments or concerns, Chairman Kirkwood called for a motion to close the public hearing. K. Shea motioned to close the public hearing, Reed 2nd. *VOTE: All in favor.*

R. Rowe made a motion that there is no regional impact and to move into deliberations, C. Vars 2nd. *VOTE: All in favor.*

Chairman Kirkwood suggested that the Board may want to table their decision until he has had a chance to consult with Town Counsel. Vice Chairman Rowe stated that this would slow down the process and felt the process would move faster if the Board voted tonight. K. Shea stated that he was not in support of tabling discussion either. C. Vars stated that he was inclined to support the former Zoning Administrator's decision.

Chairman Kirkwood stated that he would entertain a motion for Case #: PZ7330. J. Ramsay stated that Ms. Mailloux did not make an error in her determination and motioned that the Zoning Board of Adjustment deny the Appeal of an Administrative Decision, R. Rowe 2nd. *VOTE: All in favor.*

Chairman Kirkwood stated that he still plans on reviewing this case with Town Counsel. Board members agreed. Vice Chair Rowe stated that the Planning Board would benefit from Town Counsel's decision.

C. Vars motioned to move out of deliberations, Kevin 2nd. *VOTE: All in favor.* J. Ramsay stated that the application stays at 11 units.

<u>MINUTES</u>:

K. Shea motioned to approve the minutes of April 1, 2016 as written, Reed 2nd. VOTE: Those voting in favor were Chairman Kirkwood, Vice Chairman Rowe, J. Ramsay, K. Shea & R. Panasiti. C. Vars abstained. The motion passed and the minutes were approved.

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REORGANIZATION OF THE ZONING BOARD OF ADJUSTMENT:

Chairman Kirkwood stated that since there were five regular members of the ZBA present, the Board could take action on a reorganization of the Board. He asked Alternate member Reed Panasiti to conduct the process.

Chairman: Vice Chairman Rowe motioned to have Doug Kirkwood continue as Chairman, C. Vars 2nd. *VOTE: All in favor.*

Vice Chairman: C. Vars motioned to have Robert Rowe continue as Vice Chairman; K. Shea 2nd. *VOTE: All in favor.*

Secretary/Treasurer: C. Vars motioned to have Jamie Ramsay continue as Secretary/Treasurer, Bob 2nd. *VOTE: All in favor.*

ADJOURNMENT:

J. Ramsay motioned to adjourn at 8:50 pm, K. Shea 2nd. *VOTE: All in favor.*

NEXT MEETING: *Thursday, June 21, 2016 at 7:00 pm.*

Respectfully Submitted,
Debra A. Butcher

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