

**Town of Amherst
Zoning Board of Adjustment
Tuesday March 21, 2017**

ATTENDEES: D. Kirkwood- Chair, C. Vars, K. Shea, J. Ramsay, R. Panasiti (Alt), Staff G. Leedy

The Chair called the meeting to order at 7:04pm, explained the ZBA process and introduced the board members.

NEW BUSINESS:

CASE #: PZ8393-021717– Variance Migrela Realty Trust II (Owner); 153, 155 & 169 Hollis Street, PIN #s: 001-008-002; 001-008-000, 002-007-000 – Request for a variance from Article IV, Section 4.16 & 4.20 of the Zoning Ordinance to construct 45 elderly housing units. Zoned Residential Rural.

Attorney Prunier represented the applicant. He explained the property is located 153, 155 and 169 Hollis Rd in Amherst. He showed the plan he brought and a google earth map. Zoning in the area is Residential Rural which allows for elderly housing. The site is 26 acres and there is public water to the site. The applicant is seeking a variance for 45 elderly housing units. The use is permitted and the number of units is what the variance is for. The area has two other elderly housing communities nearby.

He is proposing a project called Carlson Manor which will be 45 units on 26 acres. This plan is not innovative or integrated. It is only elderly housing. Elderly housing is usually built on small lots because the units are also small. There is no need for 2 acres per unit in these communities.

Elderly housing is needed in NH. He brought some highlighted documents for the board's review that support this statement. The population is getting more elderly and most people are downsizing. Most want to stay in their home and not go to nursing homes so they prefer smaller homes. They prefer two-bedroom homes on small lots.

Literal enforcement of the ordinance causes a hardship on the property. The site is zoned for elderly housing. Fair and substantial relationship between the public good of having elderly housing to take care of the elderly population is a reasonable proposal for this property.

This project will not diminish surrounding values. The buildings will be new. The units will be away from surrounding properties and away from Hollis Rd.

Attorney Prunier addressed the tests as follows:

1. The Variance will not be contrary to the public interest.

The general population of the State of New Hampshire and Amherst are reaching retirement age in great numbers. These people will need living accommodations of a lesser size than the younger generations. By providing housing for the elderly, the applicant will be doing a service to the public. The ordinance allows for the elderly housing in this zone and there is a conflict between the interpretations of the zoning ordinances of the Town of Amherst. The variance will not threaten the public health, safety or welfare as there are other larger housing communities for the elderly in the area.

2. The Variance is consistent with the spirit and intent of the Ordinance.

The ordinance allows for housing for the elderly so the request is not in conflict with the spirit of the ordinance. The density is the same or less than other projects in the area. The density has just been reduced, but it makes no sense to have housing for elderly on two-acre lots.

3. Substantial justice is done.

When the applicant purchased this real estate, the section for the elderly housing density was clear in the ordinance. However, with the passage of another ordinance (Integrated Innovative Housing Ordinance) a conflict as to density developed between two sections of the zoning ordinance. The granting of the variance will allow justice to be accomplished.

4. The values of the surrounding properties will not be diminished.

The proposed housing will be all new units that will be in character with the surrounding housing. The area has two elderly housing developments.

5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship because The real estate is a large tract of land with surrounding housing for the elderly developments. Based on the elderly ordinance and previously constructed housing in the area, the variance to increase density would not be contrary to the general public purposes, namely elderly housing, and the application of the ordinance, whichever ordinance you choose. The purpose of the ordinance is to allow elderly housing and increased density.

Questions from the board

C. Vars noticed on the plan there is a note for a 2-family. Attorney Prunier explained there are 2 existing residences on the property that will remain. That note is an engineering error.

K. Shea commented that Attorney Prunier stated the proposed density is the same or less than other communities in the area. However, when K. Shea does the math, both of the other communities are .75 acres per unit. The proposed community is slightly denser. Attorney Prunier agreed the other 2 communities are 1.3 acres per unit in and this one is 1.7 acres per unit.

D. Kirkwood had an issue with the phrasing 'because there is conflict between interpretations' in the argument. The Town recently voted to eliminate zoning section 4.6 which took care of that conflict.

G. Leedy clarified the language was modified to refer to the IIHO language.

D. Kirkwood confirmed the ZBA will look at this case under the IIHO regulations.

D. Kirkwood asked, what is the justice you refer to in test three? The conflict that existed before with the ordinances which is now cleared up.

D. Kirkwood stated the literal enforcement test has two parts and asked for further clarification.

Attorney Prunier stated one is reasonableness and the other is based on the rationale that elderly housing conforms to the character of the neighborhood.

D. Kirkwood asked if he was using that argument for no fair and substantial relationship should exist between the general public purposes of the ordinance provision and the specific application of that provision to the property.

Attorney Prunier said yes, that and the density because elderly housing doesn't need 2 acres per unit because they are smaller units than single family homes. The purpose is to keep the cost of the units at an affordable rate.

D. Kirkwood clarified he is asking them to not follow the density requirements in the ordinance, but to create their own. Attorney Prunier said if he was following the ordinance he wouldn't be before the ZBA.

D. Kirkwood stated the other two communities were put into place under a different zoning ordinance.

97 K. Shea asked for clarification on the hardship argument.
 98 Attorney Prunier stated elderly housing is an allowed use. The density should allow for more units per
 99 acre for elderly housing and it's a benefit to the community.
 100
 101 C. Vars asked if this plan has been seen by the Planning Board.
 102 No, they haven't seen it or altered it yet.
 103 C. Vars asked if this is meant to circumvent the ordinance.
 104 The plan hasn't gone to the Planning Board yet to get a density number.
 105
 106 Public Comment
 107 1. Chris Rand- 164 Hollis Rd
 108 He asked to please repeat the hardship argument
 109 Attorney Prunier said housing for elderly is allowed and by ordinance allows 2 acres per unit. Elderly
 110 housing is smaller units and less land to manage. So developing elderly housing is a hardship.
 111
 112 2. Steven Forte 14 Ponemah Hill Rd
 113 The hardship was created by the owner. He bought the land as a gamble to get the elderly housing built.
 114 Also, it's low-income housing disguised as elderly. Affordable housing will affect him greatly. He is an
 115 abutter. It will decrease his property value. He bought his property because it was surrounded by land or
 116 would potentially be only a few homes.
 117
 118 Attorney Prunier clarified the proposal is not low-income. It is for age 55 and over.
 119
 120 J. Ramsay is understanding the argument as: density as permitted under the ordinance is the hardship.
 121 D. Kirkwood agreed that was the stated argument.
 122
 123 3. Barbara Webster- 2 Ponemah Hill Rd
 124 She asked if the land over there has running water/ wetlands and if there have been studies there yet.
 125 D. Kirkwood said there must have been studies because the plan is stamped. The ordinances protect
 126 waterways with setback requirements. Those will not be disturbed.
 127
 128 4. Ted Drotleff- 10 Ponemah Hill Rd
 129 Does density factor into the number of bedrooms that are allowed? Does the total number of bedrooms
 130 for the project factor into the density number?
 131 D. Kirkwood mentioned that's a good question. The planning board takes that up. The ZBA does not.
 132
 133 Attorney Prunier clarified they are proposing all 2-bedroom units.
 134
 135 G. Leedy clarified the Peacock community across the street was adopted as workforce housing- not
 136 elderly. Elderly housing is classified as innovative housing under the ordinance.
 137
 138 C. Vars pointed out on the map, map 1 lot 8-3 has an ownership issue on the plan.
 139 D. Kirkwood asked where the attorney got his copy of the application. The website. (Old staff names)
 140
 141 **K. Shea moved and J. Ramsay seconded to enter deliberations. All in favor**
 142 **J. Ramsay moved and C. Vars seconded no regional impact. All in favor**
 143 Discussion

144 R. Panasiti said if we go by the ordinance without a variance, the zone is for 2 acres per unit and this
 145 proposal is almost triple that density. It's up to us to determine the amount of units.
 146 D. Kirkwood checked the ordinance and the residential rural section does not mention elderly housing,
 147 but it does mention innovative housing, so it's covered.
 148 J. Ramsay clarified under the ordinance plus or minus 25 units is allowed.
 149 K. Shea wondered along with density, should the ZBA impose a setback to keep the houses further from
 150 the abutters.
 151 D. Kirkwood said the Planning Board will look at all of it including density. They could deal with it by
 152 providing a visual buffer. That is appropriate because of the different uses.
 153
 154 C. Vars stated a base density of ½ acre per unit plus bonuses is at the discretion of the Planning Board.
 155 G. Leedy clarified the base density for residential zoning is 2 acres per unit plus bonuses- depending on
 156 what the plan includes. They could get it down to 1.1 units/acre under the IIHO-with all the bonuses.
 157
 158 K. Shea understands certain people don't want to take care of large lots. He's ok with the density. He
 159 can't get past the abutter looking out his deck at multiple other decks 20 feet from his lot.
 160 J. Ramsay said that's not for the ZBA to decide. The applicant meets the setback requirements.
 161
 162 C. Vars said the process of coming to the ZBA before going to the Planning Board is unique. The
 163 applicant should go to the Planning Board first. The setbacks are allowed by ordinance.
 164 D. Kirkwood stated neither the RSA nor the Amherst ordinances list a strict order to follow. The ZBA can
 165 put conditions on an approval that we agree are appropriate. We should leave the Planning Board issues
 166 for them to deal with.
 167 If the ZBA grants the applicant a variance for a certain density, the Planning Board must accept it. But
 168 the Planning Board can still reduce that number- but only if they find cause.
 169
 170 J. Ramsay stated the ZBA is acting on this application of 45 units. We can't reduce that number.
 171
 172 K. Shea said whether they can increase the setbacks between the property and the abutters affects his
 173 decision about the first two questions of the tests regarding public interest.
 174
 175 D. Kirkwood stated the 'conflict of interpretation of the zoning ordinance' as a reason for not being
 176 contrary to public interest is not sufficient. It was also used to justify the injustice. That goes to a
 177 different definition of justice than 'how will substantial justice be done?' Generally, the first and third
 178 tests are dealt with together.
 179 He also had a hard time matching the hardship discussion to the requirements. Unique conditions of the
 180 property were not displayed.
 181
 182 The Chair stated R. Panasiti will be voting for R. Rowe
 183
 184 **CASE # PZ8393-021717- Variance**
 185 1. The Variance will not be contrary to the public interest.
 186 R. Panasiti in his answer he left out a word- should state: 'isn't a conflict'. Concerned about the number
 187 of units and if that's in the public interest. The argument was not written to specifically address the
 188 issue. No- this wasn't demonstrated.
 189 C. Vars no. The plan is in opposition to the purpose of the ordinance
 190 J. Ramsay no for all same reasons as Charlie. The zoning ordinance is the public interest.

191 K. Shea the answer is focused on specific public- the ones benefiting from the proposal. The current plan
 192 has too many loose ends with setbacks along with increased density. No
 193 D. Kirkwood agreed with everyone and added there was testimony from abutters with concerns for an
 194 adverse impact. Using 'conflict of interpretation of the zoning ordinance' is a valid judgement of the
 195 variance. It implies that the variance is trying to cure something that is not envisioned in the test. No
 196 5 Not True
 197
 198 2. The Variance is consistent with the spirit and intent of the Ordinance.
 199 C. Vars no the spirit of the ordinance is the criteria the planning board determines in making their
 200 approval. The applicant can come to the ZBA after the Planning Board if they don't agree with the
 201 judgement. Granting the variance hurts the spirit of the ordinance
 202 J. Ramsay the zoning ordinance is inviting of elderly housing, but it does not work on this property with
 203 the proposed density
 204 K. Shea no there is no protection of the edges of the property to the surrounding properties that
 205 observe a different density
 206 R. Panasiti read the definition of the IIHO and that is the spirit of the ordinance.
 207 D. Kirkwood the spirit of the ordinance was set by the density requirements in section 4.16. What we
 208 have here is a proposal of double what that ordinance would permit. No
 209 5 Not True
 210
 211 3. Substantial justice is done.
 212 J. Ramsay no substantial justice should include the abutters. The plan is not just without the Planning
 213 Board reviewing the setbacks and impacts to abutters
 214 K. Shea the increased density is just to the applicant, but not to the greater public. The property can still
 215 be used as proposed as it's zoned. No
 216 R. Panasiti no the innovative housing ordinance is clear
 217 C. Vars no for the same reasons mentioned
 218 D. Kirkwood justice is usually used for the public benefit being greater than the applicant. The conflict of
 219 interpretation of the zoning ordinance does not apply. This application was started before the change to
 220 the ordinance, but the ordinance has been clarified and the application didn't get updated
 221 5 Not True
 222
 223 4. The values of the surrounding properties will not be diminished.
 224 K. Shea the proposal is for smaller properties so they are easier to maintain. The proposal could
 225 potentially increase property values, but without some sort of protection to the abutters with a density
 226 increases, he is not in favor
 227 R. Panasiti agree with Kevin. The proposed units are well maintained and won't take away from the area
 228 but there are questions about the abutters and the wetlands. The applicant did not demonstrate that
 229 values wouldn't be diminished
 230 C. Vars the argument has not been demonstrated for him to make a determination no
 231 J. Ramsay testimony given was for the two similar projects in the area, but no specific information as to
 232 whether it would or would not diminish values was given. No
 233 D. Kirkwood the board was not given information as to if the project would increase or decrease values.
 234 5 Not True
 235
 236 5. Literal enforcement of the provisions of the ordinance would result an unnecessary hardship.
 237 R. Panasiti the only hardship that exists is if we don't grant the density and they can only put 26 houses
 238 on 26 acres. Don't believe the provision would result in an unnecessary hardship

239 C. Vars have to go by what the current ordinance allows. There's nothing unique about this property
240 being in that area. No

241 J. Ramsay agreed and density is the hardship being defined and requested and it's not germane. This
242 property is viable for improvement under current zoning ordinance- just not to the density requested.

243 K. Shea density is the hardship. We are holding them to the ordinance which would be 26-28 units. The
244 hardship is they can't get the density they want. True

245 D. Kirkwood there are no special conditions of the property to separate it from others in the area. The
246 use is reasonable, it just doesn't meet the standards in the RSA for hardship. Densities allowed versus
247 densities requested is basically a financial hardship which is not an appropriate reason for hardship. No
248 1 True 4 Not True

249

250 The chair stated that after not passing the tests, the variance is denied.

251

252 **K. Shea moved and R. Panasiti seconded to exit deliberations. All in favor**

253

254 OTHER BUSINESS:

255 **Minutes: January 17, 2017**

256 Line 20 "parking spaces will not be over the septic system."

257 **J. Ramsay moved and R. Panasiti seconded to approve the minutes of January 17th as amended.**

258 **All in favor**

259

260 G. Leedy reminded the ZBA they can reconstitute the board now that elections are over. There are
261 vacancies for alternates. Gordon can reach out to the people that ran, but were not elected to find out if
262 they are interested in being alternates. The ZBA appoints these alternates. He can also post in the paper
263 that the ZBA is looking for alternates. The board would like to interview some folks.

264

265 D. Kirkwood informed the board he is going to court with Town Counsel on March 29th regarding the
266 Grassett case.

267

268 The board discussed regional impact. If a case is determined to have regional impact, the case would be
269 tabled and the impacted parties notified of the case and the meeting. It gives the impacted party all the
270 rights of an abutter.

271

272 **K. Shea moved to adjourn at 9:00pm. C. Vars seconded. All in favor**

273

274 Respectfully submitted,

275 Jessica Marchant