

ASHLAND ZONING BOARD OF ADJUSTMENT
MINUTES
OCTOBER 9, 2013

Call to Order

The meeting [continuation of September 26, 2013] was called to order by Chairman Allard at 6:30 PM.

Members Present – Michelle Fistek, Don Latulippe, Ellison Badger, Robert Boyle, Elaine Allard

Others Present – Atty. Mark Puffer, Clerk Patricia Tucker, members of the public

Case 2013-02 Ralph Lyford/Agent Richard Uchida for Soldier On

Continuation of request for variance of Article 2, Section 2.2d to allow more than six (6) units per multi family structure.

Atty. Uchida offered the following to defend that “Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because, owing to special conditions of the property that distinguish it from other properties in the area:

- Limitation of 6 units is unique to rural residential zone
- The property is more like the Village Residential zone because it can be serviced by water and sewer
- The property is surrounded on three sides by Village Residential property
- Located 60 feet above road grade is good for development
- Has the proper buffering and setbacks
- More than 6 units per multi family structure makes project affordable
- If property was entirely in VR zone more units could be built
- Units are sized between 455-520 square feet; 2 buildings with 11 units and 2 buildings with 14 units
- Not a crowded parcel, away from the road and neighboring properties

Member Latulippe asked about height; Civil Engineer Scalese stated that less than 30 feet total; buildings would be stepped in the ground

Open to Abutters

Abutter Gordon McCormack Sr. expressed concern about the wetlands and the extreme runoff; Civil Engineer Scalese stated that they will do a geo technical relief and ground water would be diverted.

Abutter Hans Jorgensen expressed concern about putting 50 units on 2 acres

Abutter Debra Jorgensen asked if all units were residential; answer was yes

Open to Public

Willis Holland asked how the drainage will be addresses; Ms. McCourt discharge would be per RSA regulations and an All Terrain Permit would have to be completed and approved.

[The following is from the application – no distinction was made as to which variance request it referred to] -

a. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

The property is unique because it is a relatively large tract of land in the Village Residential and rural Residential zoning districts. The northern portion of the property contains steep slopes and wetland areas. The eastern portion of the property is located within the Shoreland Protection Zone. Thus, there is somewhat limited building envelope available on the lot. As such, it is not practicable to increase the number of buildings in order to reduce the number of units per building. The use of the property is also unique in that each unit will be occupied by one resident, and that many residents will be disabled and will not own or operate automobiles.

These unique factors justify the increase unit density and reduced number of parking spaces. Strictly complying with the terms of the ordinance would only allow 6 units to be built on the Rural Residential portion of the property. Although up to 27 units would be allowed in the Village Residential portion of the property, the steep slopes and Shoreland Protection zone make such construction infeasible. Therefore, strict application of the density and parking requirements would serve no general public purpose.

b. The proposed use is reasonable.

The proposed use is reasonable because it would allow an invaluable and much needed service to our veterans. The increased unit density is reasonable, given that the units are specially designed to serve the unique veteran populations participating in Soldier ON and are only occupied by a single male resident. And, it is reasonable to place more than six units in each building, given the small size and physical constraints of the property. The reduced parking is reasonable because parking demand will be minimal, Soldier On's other projects have demonstrated that the proposed parking will be adequate.

Variance #2 Request variance from Article 2, 2.3e to allow 50 dwelling units in the Rural Residential Zone where 6 would otherwise be allowed:

Atty. Uchida offered the following in defense of this request:

- Looking not to build more than needed
- All Rural Residential zone requirements are met
- Having 50 units help in the cost of the project
- Zoning limits are to prevent overcrowding
- Has access sewer and water
- Single occupancy units
- Ashland's Master Plan encourages growth, infill development and having various housing options
- Mr. Scalese stated that the because of the cost of the project 50 units are most important; more units can divide the cost of maintenance costs; there are 2 on sight managers for every 25 residents who will operate shuttles for the residents

Board Member Fistek asked if there were any studies from the other projects that would address the issue of the diminished value of surrounding properties; answer was that they have no study addressing that issue.

Board Member Latulippe asked if the other projects that they have done required variances; answer was yes

Open to Abutters

- Jerome Landroche – too many units, too much wetlands

Open to Public

- Phil Preston – testimony is attached- **(Attachment 1)**
- Scalese clarified that the driveway grade is approximately 8%
Scalese stated that “this is a \$7.5 million dollar construction project [not including acquisition and soft costs] so if you divide that cost by 50 it equals \$150,000 cost per unit
- Mark Scarano – housing in Ashland is dense, this is smart growth
- Taylor Caswell found data that indicated subsidized housing has a benign or even positive impact

Atty. Uchida presented a map of area properties showing a greater density than the proposed project.

Variance #3 Request for variance from Article 3, Section 3.2b to allow 40 parking space where 100 would otherwise be required –

Mr. Scalese offered the following statistics:

- Transportation engineers are used
- Used San Francisco and San Diego studies
- 20% of the residents drive
- Shuttle is provided; 4 mini vans at this site
- Standard is .4 - .6 per unit; proposing .8 per unit
- Project does not need all that is required
- There would be ample parking [40 spaces] for the population that this project would serve
- More pavement causes more runoff problems
- Space is available to add more parking in the future if needed.

Atty. Uchida unique use of property; major objective of the zoning ordinance is to insure ample parking and to get it off the street. We meet this objective by showing we have enough on site parking for the population being served. Trying to preserve open space.

Open to Abutters

- Mr. McCormack express concern about only 40 spaces
- Hans Jorgensen feels that there should be 100+ spaces; one for resident; one for guest, medical personal slots, slots for shuttles
- Jerome Landroche agreed with Mr. Jorgensen

Open to Public

- Mr. Holland asked if there was enough access for emergency vehicles; answer was that the plan is adequate
- Phil Preston – testimony attached **(Attachment 1)**
- Mark Scarano – consider the usage
- Sandra Coleman – statistics show that the majority of residents would not drive or have a car

- Mr. Scalse stated that the residents police themselves; they sign a contract; cooperative structure with
- ownership rights
- Deb Jorgensen feels that it is short sighted to use Pittsfield as a norm [being open for a short period of time]
- Barry Gaw feels the project follows the smart growth objectives and the master plan
- Cathy Bentwood stated that the veterans are use to walking

Public Hearing was closed at 7:55 PM.

Deliberation and vote on Administrative Appeal of Building Regulations 7.2 requiring 750 square feet per family dwelling unit –

- Bob Boyle not certain
- Eli Badger feels intent of the regulation at 750 square feet is for single family; the 450 square feet for the purpose of this project fits the intent of the regulation
- Michelle Fistek agreed with Eli, small units are becoming the norm, they have kitchenette, living room
- Don Latulippe - living space for single person is adequate
- Elaine Allard – the spirit of the ordinance is met and is adequate

Motion to grant the administrative appeal to allow a minimum of 450 square feet with no overnight guests, limited to single person occupancy – Badger; second – Latulippe;

Vote – Fistek – yes; Latulippe – yes; Badger – yes; Boyle – yes; Allard – yes

Result of vote – administrative appeal granted with conditions – no overnight guests, single occupancy only, and minimum of 450 square feet

Deliberation and vote on:

Variance Request #1 – variance from Article 2, Section 2.2d to allow more than six (6) units per multi-family structure

1. **T F** The variance will not be contrary to the public interest.
Discussion – Boyle finds true; Badger – public interest is that each unit has livable space and this has been found to be true; Fistek – agrees with Badger; Latulippe – finds the project to dense

Vote – Fistek – true; Latulippe – false; Badger – true; Boyle – true; Allard - true

2. **T F** The spirit of the ordinance is observed;
Discussion – Fistek – ordinance is observed by limiting occupancy per unit

Vote – Fistek – true; Latulippe – false; Badger – true; Boyle – true; Allard - true

3. **T F** Substantial justice is done;
Discussion – Boyle agrees by helping people who need it

Vote – Fistek – true; Latulippe – false; Badger – false; Boyle – true; Allard - true

4. **T F** The values of surrounding properties are not diminished;
Discussion – Badger stated that the project would be an asset [referencing Mr. Caswell's findings on the internet]; Latulippe does not see that values would be diminished

Vote – Fistek – true; Latulippe – true; Badger – true; Boyle – true; Allard - true

5. **T F** Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

a. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area;

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

- (ii) The proposed use is a reasonable one.

Discussion – Badger – dual zoning is an issue, if the property were entirely in the village residential zone there would be no issue, there would be no increase in density per building; Latulippe feels that drainage is an issue and the project could be built elsewhere; Fistek feels that the use is reasonable as it is a residential project

Vote – Fistek – true; Latulippe – false; Badger – true; Boyle – true; Allard - true

Deliberation and vote on:

Variance request #2 Request variance from Article 2, 2.3e to allow 50 dwelling units in the Rural Residential Zone where 6 would otherwise be allowed:

1. **T F** The variance will not be contrary to the public interest.
Discussion- Fistek-this project limits population density; Allard- availability of water and sewer is new to the rural residential zone; Latulippe – it is too many units in a small area even though the build out would be cost effective

Vote – Fistek – true; Latulippe – false; Badger – true; Boyle – true; Allard - true

2. **T F** The spirit of the ordinance is observed;
Discussion – Fistek the project goes with the Master Plan; Badger questioned as to why the zones are defined as they are; Latulippe feels that the project should be scaled down

Vote – Fistek – true; Latulippe – false; Badger – true; Boyle – true; Allard - true

3. **T F** Substantial justice is done;
Discussion –

Vote – Fistek – true; Latulippe – false; Badger – true; Boyle – true; Allard - true

4. **T F** The values of surrounding properties are not diminished;
Discussion – previously discussed

Vote – Fistek – true; Latulippe – true; Badger – true; Boyle – true; Allard - true

5. **T F** Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

b. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area;

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

Discussion – Fistek-the project can not be done if the variance is not granted and as it was pointed out they could put a large number of units in the lower section of the property without a variance

Vote – Fistek – true; Latulippe – true; Badger – true; Boyle – true; Allard - true

Deliberation and vote on:

Variance request #3 Request for variance from Article 3, Section 3.2b to allow 40 parking space where 100 would otherwise be required –

*Motion to require the review of parking within 12 months after occupancy by the building inspector, fire chief, police chief for safety issues - Fistek
No second*

Discussion – Badger does not want to limit the planning board’s process of how many parking spaces this project gets. Badger would approve 50.

Board recessed at 8:55 to consult with attorney; Back at 9:05 PM

Motion that if this variance is granted it will be with the provision that the planning board approves – Fistek; second – Latulippe; voice vote 5-0 in favor

1. T F The variance will not be contrary to the public interest.

Vote – Fistek – true; Latulippe – true; Badger – true; Boyle – true; Allard - true

2. T F The spirit of the ordinance is observed;

Vote – Fistek – true; Latulippe – true; Badger – true; Boyle – true; Allard - true

3. T F Substantial justice is done;

Vote – Fistek – true; Latulippe – true; Badger – true; Boyle – true; Allard - true

4. T F The values of surrounding properties are not diminished;

Vote – Fistek – true; Latulippe – true; Badger – true; Boyle – true; Allard - true

5. T F Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

c. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area;

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(ii) The proposed use is a reasonable one.

Vote – Fistek – true; Latulippe – true; Badger – true; Boyle – true; Allard - true

Chairman Allard announced that the administrative appeal and the three variance requests have been granted [Variance for parking with condition].

Other Business

- Materials for the October 23 hearing were given to the Board.
- The Board reviewed the forms that would be given to applicants in preparation for a variance or special exception hearing. **Consensus of the Board was to approve the use of the forms.**
- Clerk Tucker advised the Board of another administrative appeal that will be heard as soon as the applicant files paperwork.

Meeting was declared adjourned at 9: 16 PM.

Taken by Patricia Tucker

ZBA Hearing for Soldier On – October 9, 2013

Building Regulations; Minimum Building Area – Article 7.2

Appeal of Administrative Decision: I don't believe the Building Inspector had any option other than to deny a permit for residential units smaller than the required 750 square feet. I don't see how a claim that his action was improper or in error can gain traction.

Rural Residential District – Article 2.2d

Population Density – Article 2.3e

The topography of this property does present some challenges, but none of them constitute a hardship because the land is suitable for the uses allowed in both the zoning districts in which it is located.

While Soldier On emphasizes its desire to provide a sense of community, there is no provision for providing space where that can take place because too many small units are proposed.

The residents will have to eat. Either food must be brought to them or they will have to leave the premises to get it. Walking to town is a poor option, especially in bad or cold weather. That probably means traffic on a fairly steep driveway. What does that tell us about the suitability of this particular property for this particular use?

Compared to many municipalities, Ashland has a disproportionately large share of low-cost or affordable housing. There may or may not be a need for more, but certainly an additional 50 units will have a significant financial impact upon the town. It may turn out to be positive, but we can't just assume that this project will be a cash cow. It is difficult to predict what the tax revenue will be, since the results of exemptions and negotiated tax agreements are not known at this time. As proposed, these buildings can have no other use, now or in the future, other than for low-cost housing. All municipalities have a responsibility to make provision for affordable housing, whether or not it is for veterans. One could argue that Ashland has more than adequately met that obligation already.

You must carefully consider the effect upon property values. This will be a large housing development by Ashland's standards. It will house individuals from a wide geographical area, many of whom will have had unfortunate experiences within the military, with substance abuse and within the criminal justice system. For some, the past will be behind them, for others the past may pop up in front of them. For the latter group, there will be no on-site trained and accredited professional available to respond to an emergency situation. Will this reality tend to diminish the value of adjacent properties? I know nothing about appraising real estate, but I'll make a wild guess that it would.

Parking Variance – Article 3.2b

Future use of the proposed buildings may be different from the plans presented. Many factors can change over a period of two to three decades, and nobody can predict what they might or might not be. If 2030 or 2040 seem too far in the future to concern us,

turn your thoughts to Main Street and decisions made (or not made) one hundred years ago (or more) before cars became a ubiquitous part of our daily lives. Lack of adequate parking space is, today, one of downtown Ashland's major problems. Adherence to the terms of this section, and for that matter all our land use regulations, is in the public interest because it reduces the likelihood that problems will arise in the future.

Land use regulations evolve over time. The process can be slow as the Planning Board proposes and the voters approve or disapprove changes. Slow as it may be, it is a deliberate and, hopefully, thoughtful process. Now, thoughtfulness is in your hands.

Thank you,

A handwritten signature in black ink that reads "Phil Preston". The signature is written in a cursive, slightly slanted style.

Phil Preston
84 Lambert Road