

**Ashland Zoning Board of Adjustment
Draft Meeting Minutes**

Thursday, February 8, 2024

CALL TO ORDER: Charlie Bozzello, Chair, called the meeting to order at 6:30 PM

MEMBERS PRESENT: Mardean Badger, Charlie Bozzello, Tim Peters, Asa Ammarin, Meghan Semiao

OTHERS PRESENT: Sal Steven-Hubbard, Lakes Region Community Developers
Bryanna Devonshire, Attorney for Lakes Region Community Developers

DISPOSITION OF MINUTES

The Board decided to table the minutes from the Thursday, January 4, 2024 for this meeting. The Board will review the minutes from both the Thursday, January 4, 2024 meeting as well as the Thursday, February 8, 2024 meeting minutes at their Thursday, March 14, 2024 meeting.

Sal Steven-Hubbard, representing Lakes Region Community Developers and Bryanna Devonshire, Attorney for Lakes Region Community Developers came before the Ashland Zoning Board of Adjustment to request a variance. The variance is requested so that Lakes Region Community Developers can construct a 26 1-bedroom unit senior housing development for residents 62+. Each unit will measure 620 square feet instead of the 750 square foot minimum square feet written in the Ashland Zoning Ordinance. The development would be constructed on the Mill Pond property adjacent to the ballpark and out of sight of the public.

As research for the discussion of the variance, Asa Ammarin visited two developments in Wolfeboro and Laconia; and Asa Ammarin and Meghan Semiao visited a senior complex in Gilford, NH. The Gilford senior complex was supposed to be what the would-be development in Ashland would be based on as proposed by Lakes Region Community Developers.

Asa visited the Harriman Hill complex in Wolfeboro, the following observations were made:

- Very clean; had amenities; community development; solar power; thick windows;
- Due to the absence of the occupant, Asa met with the maintenance manager and site manager who oversee day-to-day operations. They were asked what the best/worst things about the living situation were with some follow up questions related to that.
- Square footage was not the same on what was going to be voted on (larger unit) but gave him the opportunity to see the style of living arrangements and concept that LRCD are pursuing.
- The managers claim residents who have disabilities would find a 620 square foot unit easier to keep clean and be more manageable to live in.

Asa also visited the River's Edge in Laconia. The following observations were made:

- The units in Laconia River Edge were small (620 square feet or less, also the smallest Asa saw)
- Not everyone followed the rules
- The units were not as neat

- The complex contained noticeable odors and cigarette smoke

Asa Ammarin and Meghan Semiao visited a Gilford senior complex. The following observations were made:

- One unit measured 750 square feet and was being rented at market value (called market rate unit)
- The other three units measured 620 square feet and contained a kitchen with cupboards, hall closets, 2-bedroom unit that could fit a king size bed comfortably
- The complex had a community room where tenants could gather and private functions by tenant families could take place. The community room was very clean
- The Gilford property was very similar to the proposed development in Ashland
- The occupants were near town amenities such as the library
- There was not a great sense of community even though there was the space for community building activities
- Individual units had very large closets
- Tenants tended to gather to do activities but there were no dedicated activities at the complex
- There is a cleaning lady on staff at the Gilford complex
- One resident who had disabilities claimed she found 620 square feet easier to keep clean and was more manageable to live in; she specifically wanted (and waited) a smaller unit.
- These units would have a problem accommodating a significant other or visitors

CRITERIA

Criteria 1: *THE VARIANCE WILL NOT BE CONTRARY TO THE PUBLIC INTEREST.*

LRCO Response:

The New Hampshire Supreme Court has held that "to be contrary to the public interest... the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives.'" The Court has also noted that "[m]ere conflict with the terms of the ordinance is insufficient." Applying these principles, the Court has established that a variance may be deemed to violate an ordinance's basic zoning objectives and thus be contrary to the public interest under two circumstances: (1) where "granting the variance would 'alter the essential character of the neighborhood'"; or (2) where "granting the variance would threaten the public health, safety, or welfare."

Here, a decision to grant the variance would not alter the essential character of the neighborhood. As noted above, the Applicant proposes apartment-style housing which is permitted as a matter of right in the Commercial Zone. The fact that some units contain less than the requisite 750 square feet of floor space will not be visible from the outside, and therefore will not have any impact on the essential character of the neighborhood.

Likewise, a decision to grant the variance would not threaten the public health, safety, or welfare. Quite to the contrary, a decision to grant the variance will enhance the public health safety, and welfare by allowing for the creation of a greater number of housing units than what would be possible absent the

variance-a fact which is of great significance given New Hampshire's ongoing **housing crisis -- and by** the creation of smaller units which are more appropriate for elderly persons who, due to mobility difficulties or otherwise, are better served by a smaller living space.

Mardean Badger:

The Zoning Ordinance has been developed in an orderly fashion. This creates community and is a safe livable environment. The units we look at provide an orderly development. Older people with disabilities having a smaller space is appropriate and manageable and all necessary things are safe. It fits in with the Zoning Ordinance and is not contrary.

The units will not satisfy everyone over 65. It will work for some. It will not work for others. However, it is an option. I do not agree that 620 square feet can be appropriate due to circumstances.

Charlie Bozzello:

I am concerned that granting this variance would change the character of the neighborhood. The 750 square foot minimum establishes a standard of living that we want to promulgate in the town. I think the difference (between 620 sq. ft. and 750 sq. ft.) is significant. Comments from the public meeting suggested that the 620 sq. ft. minimum would relegate tenants to a more solitary lifestyle. It would be hard to have visitors visit or accommodate a significant other. While I understand that there is a financial incentive (for smaller accommodations), I feel uncomfortable encouraging this type of lifestyle. Particularly for older individuals who have generally lived with a spouse or raised a family and previously enjoyed a more dignified way of life.

Comments were made in the public hearing that the 620 square foot units would make it difficult to provide EMS services to the residents because of inability to get emergency equipment into and around the unit. The smaller living area would make it more difficult to participate in a hobby or similar activity requiring dedicated space. There would be a problem with storage of necessary items as well as sentimental items. It is a standard of living issue.

Tim Peters:

The 620 square foot unit would be smaller and create a mobility issue and a feeling of being crowded. Due to the size of the unit visitors could not come and visit easily. The resident may have a problem moving a wheelchair throughout the unit. Older people have sentimental items from their past and no room to store them. Older people live a solitary life in their apartments. 750 square feet is a livable space. Older people do not use the community space provided at the complex. Older people would live better in a larger space.

Asa Ammarin:

I broke it down into three points:

The request violates the basic objectives of the zoning ordinance, which is set at 750sq.ft.. It is my understanding that the town created this ordinance as a way to protect the public from inadequate or disproportionate living conditions. In a 620 sq. ft. apartment, where can one have hobbies and be happy, have guests spend the night comfortably, or have machines that assist them in living? There was apparently some public outcry following the completion of the Highland Apartments project related to my questions and those units were 650sq.ft.. So, to go down to 620sq ft., I just can't support that based off the history [in town] and based off my observations.

The request has nothing to do with the essential character of the neighborhood, so I have no comment to that end. If we were talking about the project in its entirety, I would have more to say on this. In terms of room size, I don't see that getting in the way of public interest.

If I were to grant the variance, I believe it would threaten the public welfare so I couldn't agree to the first question. I have to say that while we may be discussing room sizes and for only one of the buildings of this massive proposal, to have 26 single bed units would mean an increase in traffic, an increase in electricity use, an increase in water/sewer use, an increase in the use of emergency services (most notably), and also alter the town's 4th of July celebration, which is the biggest in the area and I would argue is very important to the Town of Ashland. Those are my views and my analysis. So, I would say no.

Meghan Semiao:

I view the proposed senior housing apartments as beneficial to the eventual occupants.

Criteria 1 Vote:

Badger – Yes Bozzello – No Peters – No Ammarin – No Semiao – Yes

Criteria 2: *THE SPIRIT OF THE ORDINANCE IS OBSERVED.*

LRCO Response:

The New Hampshire Supreme Court has stated, "With respect to the first and second criteria, we have recognized that '[the requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance.'" As set forth above, granting the variance will not be contrary to the public interest because it will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare. For the same reasons, the requested variance would be consistent with the spirit and intent of the Ordinance.

Additionally, on information and belief, the purpose of Section 7.2 of the Building Code is to prevent landlords from dividing existing structures into numerous small units and to ensure that housing units are appropriately sized for their intended use. Again, Section 7.2 contemplates 750 square feet of floor space for "[e]very dwelling unit to be used by a single family,]" as opposed to the individuals for whom the Elderly Housing Units are intended. As noted above, the Applicant does not propose to divide a large existing structure into multiple units. Where the Elderly Housing Units will all be one-bedroom units occupied by single individuals who—due to difficulty with mobility or otherwise—will be safer and better served by units containing less floor area to navigate and maintain, the purpose of Section 7.2 of the Building Code will be both preserved and furthered by a decision to grant the requested variance.

As set forth above, other elderly housing developments in Ashland, which contain less than 750 square feet per unit, reflect that elderly housing units of less than 750 square feet are appropriate and consistent with the spirit and intent of the Ordinance.

Mardean Badger:

The application preserves the ordinance and is not contrary. The granting of the variance will not change the neighborhood. RSA 7.2 prevents landlords from cutting up apartments. The 750 square feet

refers to the space needed for a family. In a 620 square foot apartment would mean less area to navigate for the elderly occupant. The recognition in the ordinance can be applied to a variety of sizes of apartments in buildings 750 square feet being the minimum square footage for an apartment. There can be large apartments. 620 square feet gives another variety of small apartments. The 620 square feet offers another element in variety. This is an option that could be provided and would be needed by an elderly segment of the population.

Charlie Bozzello:

This ordinance that established a limit of 750 sq. ft. was not just intended to control the proliferation of housing units that were dividing into smaller units, but was also intended to preserve the existing character of the community. This is in effect the spirit of the ordinance.

There are in fact a number of existing residential units within the town of Ashland which are less than the established 750 sq. ft. minimum. From a community perspective, we are probably at the limit of what we can realistically sustain. The town of Ashland is currently rated as the poorest town in NH and needs to enforce housing standards that better support the over-all welfare of the community. I believe that this is the spirit and intent of the ordinance and should not be disregarded.

Tim Peters:

The 620 square feet makes the space too small. There are other residential apartment units in Ashland that are available for people who prefer less than 750 square feet minimum. A 750 square foot apartment would allow space for a spouse or significant other or a potential caregiver on premises as the resident ages.

Asa Ammarin:

To remain consistent with my answer to Criteria 1 the spirit of the ordinance is not observed.

Meghan Semiao:

The spirit of the ordinance is violated for reasons beyond the issue of dividing houses.

Criteria 2 Vote:

Badger – Yes Bozzello – No Peters – No Ammarin – No Semiao – No

Criteria 3: *SUBSTANTIAL JUSTICE IS DONE.*

LRCD Response:

The standard for determining whether substantial justice will be done requires weighing the benefit to an individual against a gain to the general public: any loss to the individual that is not outweighed by a gain to the general public is an injustice. With regard to this factor, it is also appropriate to consider whether the proposed use is consistent with present use.

Here, a decision to deny the Applicant's requested variance would result in a significant loss not only to the Applicant but also to the intended residents of the Property, whose need for housing is particularly acute given the ongoing housing crisis. The Applicant, as noted above, is a nonprofit organization. It has invested in the concept of providing housing through the proposed Project, and it intends to devote

further funds toward the creation of high-quality affordable housing for residents of the Town. Denial of the variance would result in the frustration of the Applicant's purpose and would undermine the charitable purposes and social benefits of the Project. Denial of the requested variance would also result in significant loss to the intended residents of the Property, and particularly the intended residents of the Elderly Housing Units— individuals over the age of 62 who are in need of housing and whose ability to find suitable housing will be negatively impacted if the Project cannot proceed or if it is required to proceed in a manner that provides for fewer Elderly Housing Units.

On the other hand, granting the variance would not harm the general public, and there is no gain to the general public from denying the variance that would outweigh the above-described harms to the Applicant and the proposed residents of the Property. Accordingly, denial of the variance would result in a substantial loss to the Applicant, a substantial loss to the intended residents of the Property, and a public harm and injustice, without any significant public benefit to outweigh these losses. As such, there is substantial justice in granting the variance.

Mardean Badger:

Granting this variance would bring no harm to the general public. The 620 square foot apartment units gives Ashland another variety of housing for the general public. It would provide for another housing option for individuals. It would also provide a benefit to the general public.

Charlie Bozzello:

The applicant argues that there is a social benefit to their proposal for 620 sq. ft. housing units. I dislike the idea of basing a zoning application decision on a social benefit argument, but since the applicant has established this justification, I would comment that it is subject to argument. The social benefit can just as easily be considered the higher standard of living represented by the 750 sq. ft. regulation.

There may be a benefit to the applicant in granting this variance, perhaps a financial benefit. We should not base our decision on the benefit to the applicant, but rather on the interests of the town.

Tim Peters:

The social issue is tough to weigh. There are local units available for seniors only in Ashland. There is financing for the available senior units.

Asa Ammarin:

No, substantial justice is not done because the applicant is asking us to also consider social policy, when this decision should be about room size. The elderly housing building can still be built for its intended occupancy with the Town's 750sq. ft. minimum.

Meghan Semiao:

I don't think the benefit to the individual is not an issue to the public.

Criteria 3 Vote:

Badger – Yes Bozzello – No Peters – No Ammarin – No Semiao – Yes

Criteria 4: *THE VALUES OF SURROUNDING PROPERTIES ARE NOT DIMINISHED.*

LRCO Response:

There is no evidence to support that a decision to grant the requested variance will have any meaningful impact on the values of the surrounding properties. As discussed above, the fact that certain units within the development contain less than the requisite 750 square feet of floor space will not be visible from the outside of the building. Under the law, the Board is entitled to base its decision as to this question its own knowledge, experience, and observations. Here, the Board should rely on its knowledge, experience, and observations and find that a decision to allow 26 units which contain less than the requisite 750 square feet of floor area, but no less than 620 feet of floor area, will not diminish the value of any surrounding property.

Mardean Badger:

Nothing that has been presented tonight diminishes the value of the surrounding properties. There is no evidence that property values are decreased.

Charlie Bozzello:

I am not aware of any way to determine the effect of this application on the future value of surrounding properties. It may be positive, negative or neither. As such, I will support the position that surrounding property values will not be diminished.

Tim Peters:

The proposed building would have no effect on the rest of the proposed project. The proposed building would be located out of sight.

Asa Ammarin:

I don't believe room size would diminish the value of surrounding properties necessarily. The project as a whole may reduce the number of buyers of surrounding properties. [I vote] Yes.

Meghan Semiao:

The granting of the variance will not diminish the value of the surrounding properties.

Criteria 4 Vote:

Badger – Yes Bozzello – Yes Peters – Yes Ammarin – Yes Semiao – Yes

Criteria 5: LITERAL ENFORCEMENT OF THE PROVISIONS OF THE ORDINANCE WOULD RESULT IN AN UNNECESSARY HARDSHIP.

Consideration of “Unnecessary Hardship”:

(A) FOR PURPOSES OF CRITERIA 5, “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 BETWEEN THE GENERAL PUBLIC PURPOSES OF THE ORDINANCE PROVISION AND THE SPECIFIC APPLICATION OF THAT PROVISION TO THE PROPERTY; AND**

(ii) (ii) **THE PROPOSED USE IS A REASONABLE ONE.**

(B) IF THE CRITERIA IN SUBPARAGRAPH (A) ARE NOT ESTABLISHED, AN UNNECESSARY HARDSHIP WILL BE DEEMED TO EXIST IF, AND ONLY IF, OWING TO SPECIAL CONDITIONS OF THE PROPERTY THAT DISTINGUISH IT FROM OTHER PROPERTIES IN THE AREA, THE PROPERTY CANNOT BE REASONABLY USED IN STRICT CONFORMANCE WITH THE ORDINANCE AND A VARIANCE IS THEREFORE NECESSARY TO ENABLE A REASONABLE USE OF IT.

THE DEFINITION OF “UNNECESSARY HARDSHIP” SET FORTH IN Criteria 5 SHALL APPLY WHETHER THE PROVISION OF THE ORDINANCE FROM WHICH A VARIANCE IS SOUGHT IS A RESTRICTION ON USE, A DIMENSIONAL OR OTHER LIMITATION ON A PERMITTED USE, OR ANY OTHER REQUIREMENT OF THE ORDINANCE.

The dual references of the property being “distinguished from other properties in the area” solidifies the repeated Court statements that the “special conditions” are to be found in the property itself and not in the individual plight of the applicant. Depending upon the variance being sought, those “special conditions” can include the “as built” environment.

LRCO Response:

The hardship standard for variance applications is codified in RSA 674:33. To satisfy this requirement, the Applicant need only show that, “owing to special conditions on the property that distinguish it from other properties in the area: [n]o 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 the proposed use is a reasonable one.” RSA 674:33, I(b)(1) (internal numbering omitted). In the alternative, unnecessary hardship may be found “if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.” RSA 674:33(b)(2).

Special conditions on the property distinguish it from other properties in the area.

A number of special conditions distinguish the Property from other properties in the area. Most notably, as can be seen from an image of the relevant portion of Tax Map 110, attached hereto as Exhibit A, the Property is significantly larger than the vast majority of the other properties in the area, and is currently vacant. In addition, the site is plagued by hazardous materials as a result of **the operations of an** abandoned, and subsequently demolished, paper mill; the Applicant's proposal contemplates remediating this problem.

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 the proposed use is a reasonable one.

As previously described, the general public purpose of Section 7.2 of the Building Code is to prevent landlords from dividing large structures into small apartment units, and to ensure that housing units appropriately sized for their intended use. Owing to the special conditions set forth above, the Property is ideal for purposes of creating a secluded apartment-style living complex incorporating the Elderly Housing Units. Specifically, where the Property is currently vacant, the Applicant does not propose to

divide a large existing structure into multiple apartment units. Moreover, given its size, the Property presents abundant space for apartment-style housing, and there is sufficient room, out of sight from the road frontage, to accommodate any accessible parking or other features. Accordingly, there is no fair and substantial relationship between the general public purposes of that provision and the its specific application to this Property. Put differently, the purpose of Section 7.2 of the Building Code will be served -- and furthered -- even if it is not strictly applied to this Property.

For all of the reasons set forth above, the proposed use of the Property is a reasonable one. The Property is oversized compared to other nearby parcels, making it particularly suitable for the proposed housing development. A housing development, in general, is reasonable given the dire need for housing and particularly the need for affordable housing— in our state at this time. In addition, as stated above, the Applicant’s proposal to construct Elderly Housing Units containing 620 square feet of living space rather than the requisite 750 square feet of living space is reasonable given the particularized needs of the anticipated residents. Finally, the Applicant’s proposal is reasonable to the extent it contemplates remediating hazardous existing conditions on the site stemming from the previous mill use.

In the event that the Board were to find that the criteria in subparagraph (1) above are not established, an unnecessary hardship nonetheless exists because, owing to special conditions of the Property that distinguish it from other properties in the area, the Property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The Applicant relies upon the arguments set forth above that, owing to special conditions of the Property, the proposed use is reasonable, and no fair and substantial relationship exists between the purpose of the Building Code provision in question and the specific application of that provision to the Property. In the alternative, although the Property could potentially be reasonably used in strict conformance with the Building Code, strict enforcement of the 750 square feet of floor area requirement in this context would unreasonably and unjustly limit the number of housing units available to elderly individuals and needlessly prevent the Applicant from creating units that are best suited to the needs of their anticipated residents. Denying the requested variance would, therefore, result in an unnecessary hardship.

Mardean Badger:

The property is different from other properties in town. This property has been empty for years. The property as a whole will be used for this project. This proposal is a sufficient use of the property, and the property will get developed. There are some glitches in the proposal and access **to the property is** tricky but both the glitches and the issue of access to the property can each be resolved. This property is a viable place to put this proposed project.

Charlie Bozzello:

This criterion is defining for this application. When I asked the applicant during the public meeting “What would be the hardship if the variance was denied”? Their response was that the project would go forward with 750 sq. ft. units. This indicated to me that there was no hardship related to the property. There may be issues for the applicant to consider with a development effort requiring all residences to be a minimum of 750 sq. ft., but the property clearly supports this type of development.

The footprint of this development can be increased to accommodate the same number of units at the 750 sq. ft. minimum, or the number of units can be reduced and built within the currently planned

footprint. (i.e.: Instead of building 26 units the developers could build 21-22 units of 750 square feet units in the same space or expand the footprint to accommodate the originally planned 26 units.) A hardship is not apparent.

Tim Peters:

There are no special conditions on the property. There is no hardship. It means 750 square foot units vs. 620 square foot units.

Asa Ammarin:

The building can still be built under the present ordinance of 750 square feet. There is no hardship.

Meghan Semiao:

The project won't be built at 750 square feet because there would be no funding for the project. To build larger units the developers would have to charge more in rent. The characteristics of the property cause hardship. The senior housing phase of the development will not be built and be dropped from the project. The property can be developed profitably under the ordinance and would be complimentary to the town.

Criteria 5 Vote:

Badger – Yes Bozzello – No Peters – No Ammarin – No Semiao – Yes

Discussion:

Mardean Badger:

The proposed project area is small which would require little water and little development. If the property has no water or sewer access the cost of the development will rise. This property has access to both water and sewer. The 750 square feet determination is in the present ordinance. Any proposal that proposes less than 750 square feet comes before the ZBA as part of the development process. No one seems to know where 750 square feet came from and seems to be arbitrary. Who's to say that 750 square feet will be the perfect number in the future.

Asa Ammarin:

Minimum sizes of apartments vary from 350 square feet-710 square feet in the state of NH. It can be done in a closer range. It can be done at 750 square feet. There is no agreed upon number within the state. Politics seem to muddy the water.

Charlie Bozzello:

The ZBA needs to uphold the ordinances of the town. Over the last 25 years the town has been downsizing. There are more renters now than 25 years ago and there appear to be more subdivided residences in town. The town resources are poorer. Ashland is the poorest town in the state. The town income is 60% lower than in the rest of NH. The smaller units will make the town poorer. The town will be servicing more people if the units are smaller. I would like to see more developers that will work with the town.

Motion for Consideration:

Meghan Semiao made a motion to approve this application for a variance. Mardean Badger seconded the motion.

The Vote on the Motion to Approve

Badger – Yes

Bozzello – No

Peters – No

Ammarin – No

Semiao – No

Vote Tally:

Votes to Approve this Application for Variance: 1

Votes Not Approving the Application: 4

Having received less than the required three affirmative votes, the variance was NOT APPROVED.

ADJOURNMENT

Charlie Bozzello made a motion to adjourn. The motion was seconded. The motion passed. The meeting adjourned at 8:10 PM. The next meeting will be Thursday, March 14, 2024 at 6:30 PM at 6 Collins Street.

Minutes submitted by Paula Hancock with contributions by Charlie Bozzello and Asa Ammarin