

**Middleton Zoning Board of Adjustment  
September 22, 2021  
Minutes**

Members Present:

Lorri Gunnison  
Victoria Croteau  
James Keegan  
Joe Varga (Selectmen's Representative)  
Ken Anderson (Chair)

Public Present and Speaking:

Charles Therriault, Applicant  
Fire Chief Jake Bordeau  
Dave Dufrane  
Linda Adamo  
Ann Donahue  
Martha McGlaughlin  
Tammy  
Jason Prugh  
Dave Mayer

6:20—Ken opened the public meeting

Vicky made a motion to accept Jim Keegan (alternate) as a voting member this evening; Lorri seconded the motion—motion passed 5-0

Vicky moved to accept the minutes of the August 6, 2021 meeting; Jim seconded the motion—motion passed 5-0

Vicky moved to accept the minutes of the August 26, 2021 meeting; Jim seconded the motion—motion passed 5-0

**6:30—Public Hearing on Variances requested by CSNH Development, LLC for a proposed 5.9 acre lot located on Kings Highway (Tax Map 17, Lot 23), owned by Therriault's Landing, LLC, located in the Middleton 4 Corners District**

Lorri made a motion to reopen the public hearing; Vicky seconded the motion—motion passed 5-0

Ken said this hearing was continued from August 26 at which we had gone through 5 of 7 variances requested by CSNH. Ken noted that the Applicant is not present and needs to be here to make a presentation. He said he would like to give him a call to see if can figure out where he is and then we'll go from there

## Pledge of Allegiance

Ken tried to call Chuck Therriault—got voicemail

Counsel suggests we continue to give him a chance to appear

Dave Dufrane raised a question about the notice of the public hearing. While the answer was being discussed, Mr. Therriault arrived at 6:27.

Ken said the procedure would be that the board will ask the Applicant to give his reasoning for why the variances should be approved, the board will ask questions, then the board will open the meeting to the public for people to speak for and against the variance. He asked those who spoke to please go to the podium and sign in.

Ken asked if Fire Chief Jake Bordeau was present. He was and Ken stated that the board and audience would like to hear his input on the two height variances.

Chief Bordeau stated that he had no fire issues with the water tower height variance. In fact, he stated that it would be a good thing because he would have a hydrant available

The Chief noted that he has not seen an actual plan to see what the access around building is. As far as the height, the Chief noted that the town doesn't have an aerial apparatus; it relies on surrounding towns who don't have large devices (77-79 feet).

The Chief is concerned about access to the building. A big part of firefighting is venting so he needs to get to the roof. The Middleton FD cannot get on the roof without the mutual aid, so that's concerning, because you would normally have a team to go put out the fire and a team to go on the roof to vent.

The Chief also noted that Middleton usually only gets 2 responders during the day—Wolfeboro, Milton, New Durham, Rochester may have to be called.

If the Middleton FD does show up to a fire at the building and people hang out of the window, he would need ladder truck to get to them, which he does not have. He would need to see the plans as well.

There are no rooftop HVAC systems to be concerned about. The Chief is not concerned about Gambrel roof and says it is good to know that the building would be sprinklered.

The Applicant stated that the top living space ceiling is 26 ½ feet, so the window sill is 20 feet. A regular ladder (24 feet) would reach it, but there would still be many residents to rescue in a fire.

The Chief noted that Milton, Farmington, Wakefield don't have buildings like this and they're much more equipped to handle it.

The Chief stated that he is mostly concerned about access around the building because if there is a major incident they're going to have several trucks responding. Ken asked for public comments about Chief's testimony. There were none.

Lorri had questions for the Applicant based on his statements in response to the Chief's questions—if the ceiling at 26 feet with 3 foot attic, how is the roof 43 feet high? The Applicant responded that the building is not really going to be 43 feet high; it's more like 33 feet now, but he is still requesting a variance to allow the building to be 43 feet tall.

### **Variance from Article 25(F)(1)(a) to allow 34 residential units on one lot where 2 units are permitted**

Ken asked the Applicant to address the variance criteria. As to the public interest/spirit of the ordinance, the Applicant stated that the request is because 34 units is the minimum amount that needs to be done for workforce housing to be financially feasible as required by the state (the Applicant confirmed that his references to the "state" were in fact references to New Hampshire Housing Finance Authority). He stated that the project was structured with 34 units so they would do the project. NHHFA's point system makes 34 the minimum number of units to qualify for workforce housing.

The Applicant stated that the substantial justice is that the project wouldn't be built if he was only permitted to have 2 units.

The Applicant stated that he is not an appraiser so he's not sure how he would answer the question of whether the variance would diminish surrounding property values. He hasn't done any analysis so he doesn't know the answer to that.

With regard to unnecessary hardship, the Applicant stated that the hardship is that the project won't be built without the variance.

There were no board questions and no one from the public spoke in favor of the variance.

David Dufrane (not an abutter) said that increasing from two units to 34 units is not even close. He noted that the town has a master plan that's old but it has been made and the town has zoning laws and rules, and he feels the town should not make any exceptions to them at all at this time. He understands the town can work on a new master plan and address this then, but should have no exceptions now.

Mr. Dufrane said the variance is contrary to the public interest and that he doesn't know anyone who's for it. The Applicant's claims are purely financial. He believes it would be totally inappropriate to pass any of these variances.

Linda Adamo asked if the Applicant could again respond to the question of how this is not contrary to the public interest or spirit of the ordinance. Ken stated that he believed

the Applicant had given an answer but asked again—how would granting of the variance not be contrary to the spirit of the ordinance or the public interest. The Applicant responded that there's a huge need for workforce housing so it is in the best interest to provide that.

Linda stated that one of the criteria that an applicant is required to defend is that their project is not contrary to the spirit of the ordinance and expressed her opinion that she had not heard that addressed and ask that the board ask the Applicant to address that again.

The Applicant stated that the brief answer is that the ordinance is against the RSAs of the state; it needs to be straightened out and that will get worked on. When someone starts working with the new ordinance this project will be in line with what the new ordinance is. No one has challenged the ordinance to date. The spirit of the ordinance is wrong so this doesn't violate what's already not correct.

Ann Donahue (not an abutter) said that her concerns were reinforced by having FD speak tonight. The town doesn't have the resources to address a project of this size right now. FD said that none of the towns surrounding us have anything of this size so it's unusual and not consistent with the town's development plans. The way she reads the RSAs, they say that a minimum of 6 units qualifies for that and our zoning allows up to 8 so we're not in violation of the RSAs.

Ms. Donahue said that low income housing is a regional decision, not a town by town decision--no assessment has been made to determine how much available in this town or this region to see if we already meet the town's mandate. Until we know that information moving forward a project of this size is not very wise because we don't have in place the school, police or fire; we've heard from those departments in other hearings about their concern for rapid growth.

A town of Middleton's size is going to grow but that growth needs to be managed effectively so we can meet the needs of that growth with our services.

Linda Adamo—I'm sorry to keep harping on the spirit of the ordinance but I must—it's found on the first page of the ZO (Ms. Adamo read from Article 2 of ZO).

Ken stated that that analysis is spot on and that he was glad she read that.

Ken closed consideration of this variance and move on to the final request.

**A variance from Article 25(F)(1)(c) to allow 34 residential units of workforce housing in one building where 8 units are permitted**

Ken asked the Applicant to address the variance criteria. The Applicant stated that with regard to the public interest and spirit of the ordinance, NHHFA has approved three projects with 8 units per acre in non-city, nonconfined areas. This project is at at 5 ½

units per acre; so the spirit of the ordinance of 8 units total for the project is a lot lower than what the NHHFA has now allowed and deemed for a standard. He understands what Ms. Adamo read but he doesn't believe it's not in the best interest of the general welfare.

The Applicant stated that substantial justice is done because the project will be able to be built—that's the justice.

With regard to diminution of surrounding property values, the Applicant stated that he doesn't believe there would be any, but he is not an appraiser and has no expertise. He stated that studies will be done soon.

As to unnecessary hardship, the Applicant stated that for the project to be financially feasible for NHHFA it needs to be at that minimum number of units, so that's the hardship—the land couldn't be built upon without the variance

There were no board questions and no comments in favor of the variance.

David Dufrane—am I understanding that 34 units not allowed in one building but would be allowed if split up into 4 buildings? If he had individual buildings that were spaced out and one story it would be easier for fire, easier ADA access—the Applicant is asking for a variance to put all these people in danger and why? Because of cost? Do it the right way, the way it is already set up in the master plan. The town should stick to the master plan and split it up into 4 buildings. The variance is contrary to the public interest.

Ann Donahue—would like to respectfully say even if the project is in 4 buildings town still doesn't have the resources to handle 32 families coming in in one lump sum. She didn't bring the RSAs, but the Applicant has been saying the state says we have to do this, the state says we have to do that. The state says it's up to the town to set its zoning laws and the state has encouraged towns to ensure that zoning laws allow growth conducive to the town.

Ann stated that she just didn't think the town is in a place at this moment in time that it can adequately service a project of this size—maybe down the line, but just don't see it today.

Martha McGlaughlin—Shore Road—stated that she does not feel that the existing resources in this town are capable of supporting what this type of housing would bring into this town. She said that the town has such a high tax rate already and if something like this housing comes in will only make tax rate go higher and there's a lot of people who can't afford what they're paying now.

Tammy Bailey said that she is totally against this. If anything is going to have to change in terms of safety rules, items, those should not be changed. It bothers her that the Applicant brings plans that aren't professional, that every question is answered "well I

think, we're going to work on that study later". All of that should have been done now so the board has the information. This is going to bust the school, FD, PD—it's going to cause a lot of people to lose their homes.

Abutter Jason Prugh said that what concerns him is that there are a lot of "I don't know." If you're going to propose a plan to the town, it would be nice to provide some accurate information. As a person who's supposed to be for the town it seems why would they burden the town when we know that infrastructure is already taxed. Don't understand the whole project other than someone will have pockets lined.

Dave Mayer (not an abutter) stated that he is very in favor of development and having places for people to live that are lower income. His wife and he have lived there—it was sort of section 8—that's all they could afford at the time. People who aren't paying fully for what they have tend to take advantage of it—dogs barking, hollering at night, diapers in the hallway. While this is workforce housing it's still subsidized housing. He appreciates that the developer wants to do this, but do we have the infrastructure? We don't have a 24 hour police department. Two people show up to a fire? Response time from other towns will not be instant.

At 34 units, which is the maximum occupancy of this building? The Applicant said that there would be 18 one bedroom (2 people) 11 two bedroom (3 people) and 5 three bedroom units (4 people)— $36+33+20=89$  people with no friends no guests and with one child per bedroom.

Mr. Prugh said those people will use a lot of water—do we have any provision that guarantees water and septic to everyone? Have there been hydro studies? No.

City water and septic is expensive to tap into.

Ken stopped Mr. Prugh and explained that the Applicant can come in with whatever he wants for an explanation in support of his variances. He can have done in depth studies on traffic, water, fire, or not. He's making his presentation and we make our decisions based on what he's presented, what the town folks have to say about it, what our ordinances and master plan have to say about it. If we feel we don't have adequate information then we can require a study to be paid for by the Applicant. If we don't have enough information when we get to deliberations, we will continue to ask for the studies.

Mr. Prugh completed his statement by saying that he is all for this project in the right area, but Middleton has no public transportation, no local jobs, and is not the place for this.

Ann Donahue said that while it may seem nitpicky, she would like to suggest that at full capacity we'd be talking about 110 people (at 2 people per bedroom) not 89 because 2 bedroom may not be limited to 3 people, and 3 bedroom might not be limited to 4 people—and of course we know there may be more than 2 people per bedroom.

Jim asked if there is a hard/fast number of how many people can be in the bedroom? The Applicant replied that NHHFA sets it in workforce housing projects.

Jim asked--If someone is not conforming, they're evicted? The Applicant said yes, and offered to provide the board with that information.

Ann Donahue noted that if someone is evicted our school district is still responsible for those children regardless of where they live for the remainder of the school year.

Linda Adamo said she had a nice big long thing planned out and she had already blown it. As of this week, Zillow has 5 large tracts of land for sale—if these variances are granted what will keep ZBA from having to grant same variances for those other properties. If these variances are granted you may as well toss the zoning ordinances out the window and kiss your small town good bye.

The Applicant stated that if NHHFA is allowing 8 units per acre then those large tracts could have way more people on it. He tried to limit what he's doing on this smaller scale. He said that anything in workforce housing is very preferred and zoning is more favorable that can't zone it out. It would be very hard to stop anyone who wants to maximize that tract of land and it's happening everywhere. He said that the state is so low in satisfying federal requirements for workforce and subsidized housing that absolutely, other developers will come in here even without this.

Dave Dufrane—developer is talking about maximizing per acre and so on and yet he's asking for 6x what is permitted—that's not maximizing, that's multiplying

Ken closed consideration of this variance. That completes the public hearings on all of these variances.

Break for consultation with counsel.

7:41—resume public hearing

The Applicant asked to comment on the setback variances. About a year and a half, almost 2 years ago, the storage units were built and they are closer to the road than he is asking for so that's something to consider when considering the setback variances that he is requesting because of the store and daycare—precedent—you can go take a look and ask the planning board of the actual dimensions.

Dave Dufrane said if you're using a storage unit someone might visit once a year is very different than every day residential, day care, store usage—how do you even compare those two?

Motion to close the public hearing and as a second motion we'll schedule a deliberative session to discuss yay or nay.

Lorri moved to close the public hearing, Jim seconded, the motion passed 5-0

Joe moved to hold a deliberative session on October 5 at 6 pm, Vicky seconded, the motion passed 5-0

Ken thanked everyone very much for coming.

Joe moved to adjourn, Jim seconded—motion passed 5-0

Adjourn—7:45