



Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887

ZONING BOARD OF ADJUSTMENT MINUTES

April 16, 2024

Middleton Old Town Hall
200 Kings Highway
Middleton, NH 03887

*Board
approved
corrected
minutes at
2024-10-15
ZBA
meeting*

Correction made on page 7 after initial approval

These minutes serve as the legal record of the meeting and are in the form of an overview of the Zoning Board of Adjustment meeting. It is neither intended nor is it represented that this is a full transcription. A recording of the meeting is available online at <https://www.youtube.com/@townofmiddleton9741/streams> for a limited time for reference purposes.

Members present: Charles Therriault (Chair), Jim Keegan (Vice Chair), Lorri Gunnison, Linda Adamo, Joe Varga (Alternate), Tim Cremmen (BOS Liaison)

Dan Saliga – attending via telephone as he was out of state

Members absent: None

Also present

Joseph Driscoll, Esquire, Mitchell Municipal Group, for the Town of Middleton
Robert Best, Esquire, Sulloway & Hollis, for Middleton Workforce Housing LLC and
Manager of Middleton Workforce Housing LLC
Patrick Grene, Esquire, Sulloway & Hollis for Middleton Workforce Housing

Attachments

Public sign in sheet
Application for Appeal 2024-01
Page from 2006 Ballot Result re: Minimum Lot Size
Meeting Sign In Sheet
ZBA Case #2024-02 Application
Letter from Circa 72, Inc.
Plan design
Photo showing building prototype
"Middleton Workforce Housing" Pamphlet
NHHFA Financing App 37 Units
NHHFA Financing App 38 Units

Meeting Called to Order by Chair Therriault at 6:34 PM

Pledge of Allegiance

Invocation

Roll Call

Case 2024-01

Middleton Workforce Housing, LLC seeks the variances listed below for a proposed 5.7-acre lot owned by Therriault's Landing, LLC located in the Middleton 4 Corners District.

Location: 47 Kings Highway, (Tax Map 17, Lot 23)

A variance from Article 5(D)(1) to allow multi-family housing in the Middleton 4 Corners District.

A variance from Article 25(D) to allow workforce housing in the Middleton 4 Corners District.

A variance from Article 25(F)(1)(c) to allow 38 residential units of workforce housing in one building where 8 units are permitted.

C. Therriault recused himself from the board as he is the landowner in this case and turned the meeting over to **Jim Keegan**, Vice Chair.

J. Keegan explained there was a voting member (**Dan Saliga**) on the phone and it was imperative that he be able to hear everyone. He explained that Attorney Best would present Middleton Workforce Housing's application, then the board would ask questions and after that residents would have an opportunity to ask questions.

J. Keegan confirmed the public notice was advertised in The Portsmouth Herald and Fosters, posted at the Municipal Offices, at the Old Town Hall and on the town website. All abutters were notified by certified mail.

J. Keegan read the first five pages of the application up to "Facts supporting this request."

R. Best passed out copies of a handout "Middleton Workforce Housing", and a basic site plan and illustration of the proposed building.

R. Best explained the handouts. He talked about what workforce housing is and why it is necessary and desirable in Middleton. He presented data from a study on school enrollments and how it relates to this project. He talked about the effect recently constructed Workforce Housing Developments in other New Hampshire towns have had on the value of nearby properties. He then handed out information on this project and what the projected financing, expense and income would be. He detailed the data behind those projections. He presented data about the effect workforce housing has on the school system, taxes and property values.

R. Best went over how the variance criteria relates to Middleton Workforce Housing's application.

The board recessed from 7:32 PM until 7:49 PM

J. Keegan again explained there was a voting member (**Dan Saliga**) on the phone and it was imperative that he be able to hear everyone.

J. Keegan asked **Attorney Best** for authorization from Therriault's Landing, LLC for Middleton Workforce Housing, LLC to apply for this variance. He noted that this had been previously requested.

J. Keegan asked if the 5.7 acres mentioned in the presentation was a separate lot.

Attorney Best said it is intended to become a separate lot and the Planning Board can advise them once the variance is approved.

J. Keegan asked what restrictions there will be on developing the rest of the land in that lot.

C. Therriault said the plan is to follow the intent of the law. The ordinance would allow this number of units on five, five acre lots. Four more lots would be 20 more acres. The intent of the ordinance is to reduce density and by restricting the use of 20 acres that intent would be satisfied. There would be no more residential or commercial housing allowed forever on those 20 acres.

J. Varga asked if there would be some sort of conservation easement along the backside of the property.

C. Therriault said yes there would be restrictive covenants with the deed like what is now in place on the back side of the runway. They are permanent.

L. Adamo asked if the restrictive covenants would allow development other than housing, for example a golf course. She said it's not housing, but it's something you could generate revenue from and not beneficial to the people who live in the apartment building.

C. Therriault said building on 5 acre lots would not be beneficial either.

Attorney Best said housing that abuts a golf course is some of the most desirable real estate there is.

L. Adamo said the point is this is not going to be undeveloped property. It is property that could be developed as a revenue source for the property owner and cause more traffic for the people living in the apartments. She said saying you are going to save twenty acres is not doing the community or the people living in this building any good.

C. Therriault said the spirit of the law is to have eight units per lot and this covers that.

Attorney Best said this idea is similar to subdivisions all over where they are using vacant land for things like walking trails.

L. Adamo said that's true, but that land in a cluster development is used for the benefit of the people that live there. She said that's a common area and a golf course is not a common area for the people who abut or for the rest of the community.

L. Gunnison asked if there was a possibility for an easement that would not have income revenue.

C. Therriault said no.

L. Gunnison said she would like to know more about workforce housing. She asked if there are restrictions or guidelines for things like occupancy limits and security and who monitors that.

Attorney Best said the numbers he quoted about traffic and school children come from professionals who do this for a living and have proven to be accurate. He said things like how workforce housing is monitored is governed by 20- and 30-year covenants where every detail about things like occupancy, quality, functioning of utilities, health and safety is addressed. He said, for example, if someone in workforce housing is arrested for a drug violation, by federal law, they are evicted. There are audits and massive penalties for non-compliance.

J. Keegan asked to be provided with that information. He said he understands that the workforce housing developers enter into an agreement with the government that governs things like requirements and rents. He would like to know how long they are bound to that agreement.

Attorney Best said he would follow up with an answer.

J. Keegan opened the floor to the public and asked each person who wanted to speak to come to the microphone, state their name and whether they are an abutter. He asked them to direct questions and comments to the board.

David Dufrense, 38 Pinkham Road, referenced the ZBA Public Hearing on April 9, 2024. He said Chair Therriault told the applicant the variance request would change the zoning ordinance and the board cannot do that; the applicant would need to get a warrant article voted in to get it changed. D. Dufrense said this is the same situation because the applicant is trying to put in 38 apartments when the ordinance limit is 8. D. Dufrense said granting this variance would go against the community's desire to keep the area rural. He talked about the variance criteria and that one "no" means the variance is denied. He said he does not believe this application satisfies them.

L. Adamo explained any resident can apply for a variance or petition for a warrant. The applicant last week decided to withdraw his application because it was incomplete and did not provide enough information.

Roxanne Tufts-Keegan, 314 NH Route 153, abutter, talked about the Master Plan. She read the list of most important visions for the town, noting the least important was to facilitate housing type and cost for all income levels. She also talked about the variance criteria and why she thinks they are not being met in this request.

Jon Hotchkiss, 109 NH Route 153, disagreed with the applicant that there is no workforce housing in Middleton. He also thinks it is incorrect to compare Middleton to

Salem and Londonderry. He said when comparing statistics there is a difference between median and average.

Kelly Benedetti, 20 Pinkham Road, said she wants to know how many apartments must be reserved for low-income residents. She is concerned that the town does not have services to support them. For example, there is no public transportation for people to get to work. She believes the applicant is here as the first step in a legal battle. She said they came here to explain why Middleton needs workforce housing because it's the first requirement in the law. She said if the variance is denied, the ZBA will have to prove why the town does not need it and that it is not reasonable nor realistic. She said if the board makes even one minor mistake in the process, the applicant can be awarded builder's remedy which means the project can go forward with no further input from the town.

Dan Cremmens, 7 Ridge Road said that most of the houses sold in town are estate sales or sold by people who cannot pay their taxes. He said there are not sufficient emergency nor community resources to support this project. He said taxes are high enough now and there is not enough business to help the tax base as it is.

Janet Hotchkiss, NH 109 Route 153, talked about workforce housing that already exists in Middleton. She said she and her husband operate Hotchkiss Property Management and have several rentals. She said Middleton already has enough workforce housing, including Habitat for Humanity projects. She thinks local Realtors would have a more accurate view of what impact workforce housing would have on properties in Middleton rather than someone from Concord.

Mark Worth, 305 Pinkham Road, said the cost of housing in every town in New Hampshire has increased dramatically in the past few years so using that information to show the effect of workforce housing on property values is not valid.

Kelly Bisson, 57 Partridge Drive, also said property values have increased dramatically regardless of the presence of workforce housing. She said she is concerned about the need for more services and does not see the value of this project.

Steve Rawlinson, 74 Eastman Lane said he lives and works in town and believes he is part of workforce housing as are many people at the meeting. He said according to Zillow the median house value in New Hampshire is \$465,000 and there are four houses in Middleton for sale for less than that. He is concerned about where the gray water from this project would go. He said other workforce housing projects are in places where there is city water and sewerage. He talked about reserve for replacement. He is concerned there will not be enough money generated by the apartments to cover the cost of necessary repairs to the building in the future.

Joe Bailey, 24 Silver Street, said he does not understand the motivation for the applicant to do this project if it is not going to produce any revenue for several years.

Jon Sindorf, 323 Kings Highway, asked if the current workforce housing ordinance indicates how long a property must stay as workforce housing. He said there are already many affordable rental properties in Middleton and limiting the number of units in a building to eight is reasonable.

Attorney Best responded to the public comments. He said the law doesn't say you can't have a variance because it changes the zoning. That's what a variance is designed to do. It provides relief from town ordinances in certain situations.

He said the need for workforce housing is clearly highlighted in the Master Plan.

The data he previously presented about services for fire, police and school were facts based on research and not speculation about how workforce housing impacts these throughout the state. He said the existing housing in town does not necessarily meet the requirements of workforce housing. The definition of workforce housing is set out in the statute. He addressed the comment about the term cost burdened by housing and said an additional fire truck would not be needed because of this proposed building. He said he was not comparing Middleton to Londonderry or Salem. The pictures of the buildings in those towns were meant to show people what the building would look like architecturally.

He said the standard for variance criteria does not say the building must increase property values, just that it should not diminish them.

He said added value comes from having housing in Middleton that the average person can afford on 30% of their income.

He talked about the meaning of the interest of the public. He said deciding variances is not a popularity contest. Instead, the board must apply the statute criteria. The public interest in this case is the state of New Hampshire has *said* it is in the public interest to create reasonable and realistic housing and there should be opportunities to develop workforce housing in the town.

He said workforce housing exists in small and large towns; more often in smaller towns because the real estate cost is prohibitive in some of the larger ones.

He talked about Reserve for Replacement. The situations mentioned would be covered by insurance. In addition, the building owner would be required by federal law to maintain quality and standards. If there were no other funding, the owner would have to invest more money.

He said even if Middleton doesn't have a workforce housing ordinance that includes timeframes, they would not be necessary for this project because the regulations are governed and enforced by federal law as part of the financing.

He said builder's remedy does exist. However, it is not automatic if a board makes a mistake. It is quite complicated to get, is usually at the supreme court level and is not a common occurrence.

He said when he talked about the percentages of units at different income levels earlier, it was for a study he cited, not for this project.

He said rental rates are known, but not the occupancy rates for people at each income level. He believes the target audience for the people that are qualifying are those making 100% of average market income. He said he will get more specific information, however people who are in need of financial or community assistance are not the target audience for this project.

L. Gunnison said she would like more information from Workforce Housing.

J. Keenan said Attorney Best is sending it to them.

Attorney Best confirmed he has a list of what was requested. He said it was possible to have a representative from NH Workforce Housing come, but the board would have to invite them.

J. Keegan said the board now has information that wasn't submitted with the application and they need time to review it. He said that Middleton Workforce Housing is going to supply the board with the additional information they asked for at this hearing.

There was some discussion about continuing the hearing to May 21, 2024 at 6:30 PM

Attorney Best went over his list of items the board requested:

Authorization from the owner of the property

List of 20- and 30-year covenants, including the amount of time required to stay at the defined rent limits.

Attorney Driscoll added they asked for income ranges for renters in the target audience.

D. Saliga asked if the town would be responsible for welfare if any of the renters needed financial assistance.

Attorney Best said they would apply for welfare like anyone else. They still have obligations to pay their rent. There are numerous requirements the federal government has for tenants to live up to.

~~Craig Moody 112 Pine Ridge Road~~ **Harold Bennett**, 274 Route 153, said it's been said that we need to have workforce housing and it's been said we already have workforce housing. He would like to know what numbers they need to have to be in compliance.

J. Keegan said they would check into it. He said he would also try to get some numbers as to how many rentals there are in town now and what the rental fees are.

Steve Rawlinson, 74 Eastman Lane said his question about the sewerage was not answered and he is concerned about what would happen if there were a system failure.

Charles Therriault said there would be a design. It runs through his property for 8,000 feet and is about 10 feet down from the street.

Janet Hotchkiss, NH 109 Route 153, said an impact comparison should be with a town of the same size and description. She said the applicant is trying to sell them on something they are not ready to go into. Realistic and reasonable opportunities for housing already exist. She said she would share information with the board concerning the rental units and longevity of tenants for the units she operates.

Roxanne Tufts-Keegan, 314 NH Route 153, abutter, asked if the 20 acres would abut the 5.7 acres.

J. Keegan said yes.

R. Keegan suggested having the meeting on the 21st at the Middleton Elementary School since there is more room available.

Kelly Benedetti, 20 Pinkham Road, said she is concerned if this project goes through that when the rental rate limits are no longer in place the town will have to have an additional workforce housing project done to become compliant again. She said she thinks this is a plan to make money from the building when the workforce housing requirements expire and rents can increase.

Kimberly Bedard, 138 Partridge Drive, asked if any environmental studies were done.

Attorney Best said the Planning Board looks at environmental studies as part of their review so that is done at a later stage.

J. Keegan said this project depends on whether the variances are approved so that's why the ZBA is hearing it before the Planning Board. He asked if the applicant had any information on workforce housing for smaller communities, for example, under 5,000 residents.

Attorney Best said he has information on every project that was financed since 2020 at his office. He will provide a list with details.

Jon Sindorf, 323 Kings Highway, said workforce housing can include people subsidized by programs such as Section 8 or 811 or Bridge Subsidy. He said the name is a misnomer and that it's not entirely a bunch of people working.

Attorney Best said the legislature came up with the term "fair share" in 2008 and that it isn't well defined. There is no exact number or formula. The developer can say there is not enough workforce housing and the town can say there is. He said he is not sure what the case law is or how these situations were resolved. He said that even though there are rental units available already at a price point that's affordable it doesn't mean they qualify as workforce housing. He said workforce housing has to be identified as

that and there are things such as covenants that need to be in place. He said as far as he is aware there isn't anything in Middleton that is identified as workforce housing as it exists today. He said sewerage and septic plans needs to be state approved and there needs to be plans for water. There may eventually be Planning Board approval with conditions. If the conditions don't happen you can't build. Those questions need to be answered at the Planning Board level.

Attorney Best said it is true that workforce housing can include people with government subsidies. He said they will give the board the information on how this applies to this project at the next meeting.

D. Saliga asked how the water supply would be handled.

Paula Proulx, 73 Kings Highway, abutter said she is concerned that if this project goes ahead it may affect her well. She asked who would fix her well if it went dry and asked would the town help.

Tom Dooley, 252 NH Route 153, said he is concerned about the effect of the project on the town's roads, bridges and dams that are already deteriorating and dangerous because of the water situation. Water coming from a new development is going to flow downhill and make the situation worse. He said the property owner is a taxpayer and has the right to develop his property. However, he wants to know what happens if he sells it to someone from out of state in a year or two who becomes an absentee landlord.

J. Keegan said the place to discuss plans for water if the project goes forward is in front of the Planning Board. He said it has nothing to do with the variance request.

Kate Buzard, 62 Gary Road asked who enforces the covenants and how they are enforced.

Attorney Best said how, and if, the well for this property would affect others is part of the DES review. Engineers hired by the developer and approved by the town via the Planning Board would be involved in design and permitting procedures. The Planning Board can also ask for studies such as stormwater drainage, compliance, traffic and parking.

He said how the covenants are enforced depends on the covenant. For example, the reserved twenty acres is a commitment made to the town and something the Planning Board or town government could enforce. US Housing and Urban Development usually enforces covenants related to workforce housing such as how many years will it be limited by income, safety etc. If the property is sold, the covenants are still bound to the property and the buyer would be responsible.

L. Adamo made a motion that the hearing be continued until May 21, 2024 at 6:30 PM and after the board has reviewed the information the requested.

J. Varga asked to get the information a week before the next hearing so they have time to review it.

Attorney Best said he would do that.

D. Saliga seconded the motion

Motion passed unanimously by a roll call vote:

Chair Keegan – aye

L. Adamo - aye

L. Gunnison – aye

D. Saliga – aye

J. Varga – aye

Meeting adjourned at 9:15 PM

Respectfully submitted,

Robin Willis
Administrative Clerk