



Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887

ZONING BOARD OF ADJUSTMENT MINUTES Meeting and Hearing

Middleton Old Town Hall
200 Kings Highway
Middleton, NH 03887

May 21, 2024 at 6:30 p.m.

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.

DRAFT: These minutes are strictly a draft copy and are awaiting amendment or approval at a subsequent, duly noticed public meeting. Amendments to these minutes will be noted in the minutes of said meeting. This draft is available for public review and the approved copy will be posted on the Town of Middleton website.

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

Members absent: None

Also present

Laura Spector-Morgan, 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

Meeting sign in sheet
May 15, 2024 Letter from Sulloway & Hollis

Meeting Called to Order by Chair Therriault at 6:30

Pledge of Allegiance

Invocation

Roll Call

Chair **Charles Therriault** recused himself from further proceedings and turned the meeting over to Vice Chair **Jim Keegan**.

Case 2024-01 Public Hearing Continued
Middleton Workforce Housing

J. Keegan said he and his colleagues have been asked several questions by residents about this project. He explained they cannot discuss particulars of the case with anyone, including the BOS and other board members, outside of a public meeting. They are in the process of requesting and receiving information and the public will get that information at the next public meeting or hearing. He said the Board is just as anxious to settle this matter as the residents are, but they have to go through the process and it takes time.

L. Gunnison asked why all 38 units need to be in one building.

Attorney Best talked about the projected costs and revenue of the project and said it's not feasible financially with fewer than 38 units.

J. Keegan asked for evidence of the difference in cost between one building and eight buildings.

Attorney Best said he does not have those specific numbers. He reviewed the cash flow projections for the first 10 years of the project and said one building is barely affordable so it wasn't necessary to explore options for more buildings.

Attorney Best talked about information provided to the board concerning Workforce Housing developments in towns with fewer than 5,000 residents and listed the names of towns identified by US Department of HUD.

J. Keegan said he would like more information on these projects such as the types of buildings.

Attorney Best said they are all different sizes. Sevent units is the largest one on the list.

Attorney Spector-Morgan asked if that was in the material provided last week.

Attorney Best said no, but they can provide it. He said what dates various projects were built matters because of the feasibility of the investment at the time. That information is on the website, but he can provide it to the board.

D. Saliga said there is a big difference between a population of 5,000 and 1,850. He said the board would like to see more information on Workforce Housing projects in towns with populations closer to 1,850.

Attorney Best said a significant number of towns on the list are smaller than Middleton.

Attorney Best said they did provide the authorization from the property owner for the submission of the variance application. He said the concept of covenants comes from state and federal laws, but the implementation is in the local zoning ordinances. Rent control and other terms are specified by the local land use board. Some of these are detailed in Workforce Housing, Article 25 in the Middleton town ordinances updated 2017. Attorney Best read from the ordinance which says rent control is for 30 years.

Attorney Best said there are other requirements such as quality of housing, criminal records, etc. that are not recorded as covenants and are enforced by HUD.

Attorney Spector-Morgan asked how those relate to federal financing.

Attorney Best said HUD is the impetus behind the tax-free bond financing. There are also other tax credits for things like energy efficiency and technology considerations. Government financing comes along with specific requirements to abide by for the terms of the financing which can be up to 40 years. As indicated in the town ordinance, the covenants are effectively permanent because they renew at each rental. The 30-year clock starts over with each new tenant.

Attorney Spector-Morgan Attorney asked if similar projects were possible without government involvement.

Attorney Best described typical financing options including money from investors, bonds, etc. He said it is possible without government assistance, but not common. If a project tried to collect rent to cover the costs without financial assistance the rent would be three times the amount. It's functionally not possible. That's why the federal government has the Workforce Housing program.

Attorney Best said there was a question about the income range for renters in the target audience. The equation is established by state law and published by the NH Housing Finance Authority annually and is in the town ordinance. The calculation determines the annual income to be \$72,440 and will support a rent, including utilities, of \$1,840.

Attorney Best said another question was how will the project be affected by renters receiving government subsidies. He said it's not possible to predict the future, but there may be renters depending on government assistance. Part of the qualifications for Workforce Housing are that housing is not kept away from people based on the need for assistance, those with disabilities, etc.

Attorney Best said he wanted to address the belief that existing housing in Middleton qualifies as Workforce Housing. HUD does not identify any Workforce Housing in Middleton, and none exists under the town's ordinance. Middleton and New Durham have the worst opportunity for Workforce Housing in Strafford County according to the Seacoast Regional Planning Commission 2023 study.

Attorney Best said the language of the statute needs to be considered. The variance criteria asks if the request is contrary to public interest. The statute says Workforce Housing in the best interest of the community and the State of New Hampshire and serves a vital public need. It cannot be prohibited or unreasonably discouraged by local land use boards.

Attorney Best said it's clear the existing situation doesn't have a sufficient supply Workforce Housing to meet statutory requirements for what the state calls its "fair share".

L. Gunnison asked if there was evidence that Middleton does not have Workforce Housing.

Attorney Best said to be considered Workforce Housing, housing needs to do more than meet the income requirements. Workforce Housing has a rent covenant

guaranteed enforceable by the federal government. The evidence it does not exist is the studies done with input from the town via the Strafford Regional Planning Commission Housing Needs Assessment.

Attorney Spector-Morgan asked where are you finding there has to be covenants to be Workforce Housing.

Attorney Best said that's the only place it's going to be enforceable otherwise there's no obligation to stay in that affordable range which is the definition of Workforce Housing. Without public records there's no evidence of what rent is to be enforced. Without the covenants there may be low-cost housing, but we don't even know that. It's private information.

L. Adamo asked, so you are saying, even if we had 100 houses with rents of \$1,200 they wouldn't qualify. She asked if the only way to have our fair share is to build a government funded apartment building.

There was some discussion about hypothetical situations and how to prove Middleton does have Workforce Housing in a court of law.

Attorney Best said there isn't any data source for that information. There's no evidence of applications being submitted under the town Workforce Housing ordinance. He said information about current Workforce Housing in the town should have been submitted to Strafford Regional Planning when it was doing its assessment.

No one on the Board was aware of the town's involvement in any housing needs assessments.

J. Varga asked what utilities are considered in the rent limit equation.

Attorney Best said water, power, heat, sewer, probably not cable tv, possibly internet in the future since it may be considered essential.

It was decided not to review the variance application in detail again.

Attorney Best summarized his previous points about how the application for variance criteria was satisfied. He also talked about the benefits to the community.

L. Gunnison asked how many of the units are two bedrooms.

Attorney Best said 18 are two bedrooms and 20 are one bedroom.

J. Keegan said he would like more current data about the expected effect on the school system since what was presented was from 2012.

Attorney Best said the updated data is more favorable to this proposal. He said there are ten times as many students from free standing homes as compared to apartments like these.

J. Keegan asked why two-bedroom units would be available if they did not expect to have many children live there.

Attorney Best said some people want an extra room for other reasons such as roommates.

Attorney Spector-Morgan asked for more recent information on the projects and the effects in small towns. She said they would look up the size of the towns if he would provide the list of projects. She said they would also like the more recent NH Housing Finance Authority study on students.

J. Varga said the ratio of one-to-two-bedroom units doesn't align with the town's ordinance that says "Housing developments ... in which more than fifty percent (50%) of the dwelling units have fewer than two (2) bedrooms, shall not constitute Workforce Housing..."

Attorney Best said he would look into that.

J. Keegan asked what is special about this property that a variance should be granted.

Attorney Best said it's a small part of a big parent parcel. They would only use five or six acres for the apartment building and there would be much more land dedicated to no residential or commercial structures at all. The uniqueness is there is no other parcel in the 4 corners zone that has enough acreage to allow that and still meet the density requirement.

Attorney Spector-Morgan said in speaking with the board before coming here tonight they suggested a site visit may be helpful to them.

Attorney Best said sure. He summarized the items requested:

- List of housing projects
- Later data on students
- Is there another variance needed for the number of 2 bedrooms
- Site visit

Attorney Spector-Morgan said also documentation on how much it would cost to have separate buildings.

J. Varga asked who verifies the HUD imposed restrictions are being followed

Attorney Best said traditionally HUD does the inspections and verification. However, the New Hampshire Statute allows the Planning Board to dictate who they want to enforce the covenants. The Middleton ordinance delegates that to HUD. Any interested party can make reports to HUD and they will investigate.

Attorney Spector-Morgan asked about how safety and security is addressed in other developments.

Attorney Best said it varies greatly and is specific to the area and building depending on the project. He listed examples of possible requirements.

There was some discussion about the proposed site visit and the process that would be followed.

Recess at 7:30 PM

The hearing was resumed at 7:36 p.m. and opened to Public Comment.

Kelly Benedetti (non-abutter) said she did some research about the difference between Workforce Housing and affordable housing. She read the description of Workforce Housing from the NHHFA website. She said we can have our share of affordable housing without Workforce Housing. She said the purpose of Workforce Housing is to meet the current climate of outrageous costs and she feels the definition of affordable will change with time. Affordable housing does not need to be Workforce Housing. She said this is a permanent project to address a temporary problem. She asked if it's not profitable, why are they doing it. She asked at what point can the building be sold and converted to more profitable luxury units.

Attorney Best said the Middleton Zoning Ordinance creates the local and enforceable restrictions. It says the 30 years is renewable at each rental, so it is effectively forever. He said concerning the comments about the definition of Workforce Housing, the proposed project is complying with the government requirements for Workforce Housing. If the housing market changes and housing becomes more affordable, they would be required to lower the rent to meet the new market. The HUD rent rate and utilities are recalculated every year. Accessibility and other things like no lead paint and no asbestos are also requirements for housing to be recognized as Workforce Housing.

David Dufrense (non-abutter) asked about the subdivision of the land. The lot owned by Therriault's Landing is much larger than the 25 acres being discussed for this project.

Attorney Best said subdivision has always been part of the plan. That is a Planning Board function they would address at the right time. One thing that is unique about this parcel and makes it suitable for a hardship for this type of development is the size. This is the only parcel in the vicinity that can support a yield plan of 38 apartments. Some towns require you get variances before going to the Planning Board.

Attorney Best reminded everyone that many of the concerns raised by residents such as rainwater, traffic, parking, lighting etc. will be addressed by the Planning Board with the assistance of consulting engineers.

Robin Bouchard (non-abutter) asked if the towns people have any say in this development.

J. Keegan explained the process. He said the same criteria apply to any request for a variance. Public comments are taken into consideration, and any evidence they provide is considered, but basically it comes down to the law. The criteria are specific. He said the best way to be part of the decision-making process is to get involved with the town's various boards and committees.

Robin Bouchard said residents are concerned about the affordability of the current property tax and worried that will increase with this project.

Attorney Best talked about the effect of this project on taxes and costs to residents. He said it's common for the Planning Board to ask for a financial impact statement. If a project doesn't contribute more than it takes away the Planning Board will have more to say. Generally, these projects pay more taxes than they demand, but that is analyzed at the Planning Board level.

Attorney Best said the public does have a say. It's not a voting process for the public or a popularity contest, but it is part of the analysis. That's what a Public Hearing is. The public also has a say on who is on the boards. That's what local government is.

Ann Donahue (non-abutter) asked if this project includes a convenience store, drive thru or day care center like what was included in a project a couple of years ago. She said those present concerns about safety for many people.

Attorney Spector-Morgan said the number of units for the project proposed last year was 34; this project is for 38 units and it has none of the commercial aspects.

Ann Donahue said she doesn't understand why they are before the ZBA first and not the Planning Board. She knows it's protocol, but it does not make sense.

J. Keegan said the whole project hinges on whether they get the variance so it does make sense the ZBA would be first.

Valerie Burke (non-abutter) asked if there is a buffer zone around the project so it's not close to the road. She asked is there a number for our fair share like ten per thousand or is it arbitrary. She asked if they have the right to know who is in the corporation.

Attorney Spector-Morgan said there are required setbacks. She said fair share is not defined by the law; there is no formula. She said Middleton Workforce Housing is an LLC and is registered with the Secretary of State's office; you can go online and find information on them.

Kate Buzard (non-abutter) asked if Attorney Best is saying the town's Workforce Housing statute is not compliant with the state RSAs. She asked if he built it the way the town voted on would he not be making enough profit. She said Workforce Housing is not exempt from impact fees and that is up to the Planning Board to implement. Workforce Housing is odd terminology because they will live here but will commute to work. She said it seems like they are providing housing for people to work somewhere else. She said she finds it hard to believe architects and engineers will be renting there. She asked if the school was already near capacity.

Attorney Best said the town's regulations are not compliant. They do not permit the construction of any Workforce Housing that is economically viable, and the statute requires that. He said they did provide information that the number of students in New Hampshire has radically dropped and continues to do so. He said it's not the number of students causing the rise in the cost of education. The delivery of education has gotten more complex and expensive. He said he heard someone discussing 20 single family homes being built in Middleton. Twenty single family homes statistically will bring in 20 students. This proposal will produce 3.4 students. Even so, that's not relative to the variance criteria.

Linda Adamo said when they built the school, they made sure there was enough room to expand, and the classes would not be full. They are now maxed out. She said data saying school populations are dwindling does not apply to Middleton.

Jon Sindorff (non-abutter) asked how much specificity the board can get as far as who is going to get paid from this project. He said it's easy to make Middleton Workforce Housing look like it is not profitable, while other people involved in the project are doing very well.

J. Keegan asked **Jon Sindorff** if his question was do they have the authority to ask who is going to be doing the construction work.

Jon Sindorff said anything that would affect the feasibility. There could be factors present that would make this very affordable for the people involved. He said there could be a way to make an 8-unit project profitable in the right zone.

Attorney Spector-Morgan said she thinks **J. Sindorff** is asking how much rent is going to the landowner. She said they haven't analyzed the project to that degree

J. Keegan asked do they have the right to ask who is doing the contract work.

Attorney Spector-Morgan said they have a detailed proforma. The town cannot dictate who they are going to hire for contractors or how they are going to set up their business operations.

Roxanne Tufts-Keegan (abutter) talked about the Master Plan and asked the board to review pages 2 – 7 about the town vision, housing, population, and affordability before making a decision.

Steve Rawlinson (non-abutter) asked how the project is being financed.

Attorney Spector-Morgan said tax credits and loans. Taxpayers are not paying to construct the building or the offsite improvements that are required.

Steve Rawlinson said we are paying into the federal government, so we are all paying for something we don't want.

Attorney Best agreed to waive the 90 day time limit for the review process.

Attorney Best reviewed the information requested.

- List of housing projects and where they are addresses, etc.
- More recent data on students and enrollments impacts
- Site visit
- Cost of construction for comparable six or eight unit buildings.

Attorney Best said rather than seeking another variance, they will adjust the number of one-bedroom units to 18 and the number of two-bedroom to 20 to make it a majority of two-bedroom apartments.

D. Saliga made a motion to start the next meeting at 6:00 p.m.

L. Gunnison seconded.

Motion passed.

J. Keegan said they would hear the other applicant first and then proceed with the continuation of this hearing.

D. Saliga made a motion to continue this hearing to June 18, 2023.

J. Keegan seconded the motion.

Motion passed.

There was some discussion about the upcoming site visit. They will meet at the school and walk to the site. The applicant will do their best to mark the area.

J. Keegan asked them to confirm the location would be on Kings Highway, not Ridge Road.

Attorney Best said Ridge Road was never part of the plan.

L. Adamo asked for a sketch of the basic layout.

Attorney Best said he gave them one but they will get another that is more clear.

D. Saliga made a motion to meet Saturday, June 8, 2023 at 9:00 a.m. at the parking lot at the school for the site walk.

Motion passed.

Attorney Spector-Morgan said Board Members can ask questions one at a time to the applicant, in a manner that can be captured in the minutes. They cannot talk amongst themselves.

L. Adamo made a motion to approve the minutes from March 19, 2024 as transcribed.

L. Gunnison seconded the motion.

Motion passed

L. Adamo made a motion to approve the minutes from April 9, 2024 as transcribed.

J. Keegan seconded the motion.

Motion passed

L. Adamo made a motion to approve the minutes from April 16, 2024 as transcribed.

J. Keegan seconded the motion.

C. Therriault abstained from the vote.

Motion passed

J. Varga made a motion to adjourn the meeting at 8:34 p.m.

L. Adamo seconded the motion.

Motion passed

Respectfully submitted,

Robin Willis
Administrative Clerk