



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Planning Board Approved Minutes

April 12, 2023

7:00 pm at Community Development Meeting Room
3 North Lowell Road

Attendance:

- Chair Tom Earley, Present
- Vice Chair Derek Monson, Present
- Jennean Mason, Present
- Jacob Cross, Excused
- Matt Rounds, Present
- Alan Carpenter, Present
- Joe Bradley (alternate), Present
- Dave Curto, (alternate), Excused
- Pam McCarthy (alternate), Present, seated for Mr. Cross
- Dan Spalinger (alternate), Excused
- Bruce Breton, Board of Selectmen ex Officio, Present
- Roger Hohenberger, Board of Selectmen ex Officio (alternate), Excused
- Alexander Mello- Planning Director, Community Development
- Chris Sullivan- Assistant Planning Director, Community Development
- Renee Mallett- Minute Taker

The meeting opened at 7:00pm with the pledge of allegiance and the introduction of members.

Case 2019-19F – 64 Mammoth Road (Parcel 19-A-200); Application for Workforce Housing-Final; Zone - Rural District.

Joe Maynard of Benchmark Engineering is representing 10 Harris Rd LLC in this proposal that includes 16 single-family detached units, including an existing home, in a condominium form of ownership. In this project, 23.5% of the proposed units (4 out of 17 units) are proposed to be designated as Workforce Housing.

This public hearing is in response to the State of New Hampshire Supreme Court Order (Case No. 2021-0473) which affirmed the Housing Appeals Board Order (Case No.: PBA-2021-04) that 1) VACATED the 2/3/21 PB denial of the waiver for the required percentage of workforce housing; 2) REVERSED the 2/17/21 PB denial of the two CUPs, and 3) VACATED the 2/17/21 PB denial of the overall project. The Planning Board previously discussed this case on 11/4/20, 12/16/20, 2/3/21, 2/17/21, 11/16/22, 12/7/22, 1/18/23, 2/15/23 and 3/15/23.

Mr. Mello reviewed the process which resulted in the town hiring their own third-party financial review for this application. He explained the edits in the bonding worksheet based on changes in the market due to the pandemic.

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Ms. McCarthy was seated for Mr. Cross.

Mr. Maynard reviewed the estimated costs for building the road, saying the quote had been received the same day. Mr. Maynard explained why blasting is a more expensive and a lengthier process in Windham than in other towns.

Jeffrey Donohue, of Jeffrey Donohue Associates under employ of the applicant, shared a presentation on the updated evaluation of workforce housing feasibility for this proposed development. He said there were not many detached units in town that were not age restricted. Mr. Donohue said the new affordability guidelines had not been released so his numbers were based off the numbers that came out last year.

There is a 2.7% difference in the costs to build the market rate units versus the workforce units. Carrying costs were also looked at.

Mr. Cross arrived at 7:26pm but was not seated.

The conclusions of Mr. Donohue were that engineering costs, road costs, and constructions costs have outpaced the projected increase in revenues. Mr. Donohue estimates that the break-even point for the development would be three workforce housing units.

Mr. Maynard reviewed the history and timeline of this project. Mr. Bradley asked where Mr. Donohue had gotten the numbers he had evaluated. Mr. Donohue said he was not an engineer but that he used Marshall and Swift, which is an industry standard service used to source this kind of data. As a licensed real estate agent Mr. Donohue explained how he used the MLS to source the numbers for comparable sold condos in Windham. Vice Chair Monson asked why asbestos removal was listed as a cost. Mr. Maynard said the existing home had asbestos when it was bought by the applicant, as well as pallets of asbestos in the yard. The \$25,000 number on the report was what was already spent cleaning the home and lot.

Mr. Maynard said based on these numbers the applicant would like to include only two workforce housing units. He said the towns consultant leaned more towards three units.

Mr. Carpenter thought the detached units seen in this development would sell for more than the attached units that were used for comparable sales numbers. He agreed the sampling was low and thought it was artificially pressing numbers downwards. Mr. Carpenter said that in 2020 around 39% of the housing stock in Windham met the requirements for workforce housing. He pointed out that allowing developments to be created with 25% workforce housing units would put the town further behind in their pursuit of having a fair share of affordable housing. Mr. Carpenter thought the units would sell closer to \$600k, with some closer or over \$700k.

Mr. Underwood was hired by the town to review the financial information submitted by the applicant. He confirmed that the 55 plus housing units in town were more plentiful and called it a more active market. Mr. Underwood concluded that the estimated sales prices submitted by the applicant seemed reasonable. Mr. Underwood said the financials and markets were drastically different when this application was first submitted three years ago. Mr. Underwood said he did not see a way forward at 50% workforce housing units. Chair Earley asked if the estimates were correct that age restricted condos would sell for so much more than unrestricted ones. Mr. Underwood said that Windham did not have the data for him to answer that. He cautioned that building costs for the kind of high-end age restricted units the board was using as comparison would be much higher than what was being looked at here. Mr. Underwood said the data for the town showed a closer to 17% increase in sale pricing.

Chair Earley opened and closed the session to public comment.

91 Chair Earley said he would like to see Mr. Underwood reconcile the potential sales prices that had
92 bene estimated by Mr. Donohue and board members. Ms. Mason said the potential for profit by the
93 applicant was not the purview of the board, that the board was tasked by the courts with finding the
94 appropriate number of workforce housing units. Vice Chair Monson said two units was not a workforce
95 development. Mr. Carpenter said the workforce housing ordinance was an exchange, the town gave up
96 density in favor of creating affordable housing in town. He agreed with Vice Chair Monson that two units
97 was not a favorable exchange for the town.
98

99 **Mr. Carpenter made a motion to settle the CUP density issue by approving six workforce housing**
100 **units, putting the percentage of workforce housing around 36%, halfway between the applicant’s**
101 **proposal of less than 25% and the town required 50%. Vice Chair Monson seconded for discussion. Mr.**
102 **Rounds said he would like to see more information from Mr. Underwood on the numbers before making**
103 **this decision. Vice Chair Monson said the applicant was proposing two units, which he thought was a**
104 **non-starter. The motion failed with the following roll-call vote:**

- 105 **Chair Earley, opposed**
- 106 **Vice Chair Monson, opposed**
- 107 **Ms. Mason, opposed**
- 108 **Mr. Rounds, aye**
- 109 **Mr. Carpenter, aye**
- 110 **Ms. McCarthy, opposed**
- 111 **Mr. Breton, opposed**

112
113 **Mr. Breton made a motion to approve the CUP at 4 workforce housing units. Ms. Mason**
114 **seconded the motion. Mr. Carpenter thought it was still too low to be considered a workforce housing**
115 **development. Mr. Rounds reiterated he would like further information. Mr. Bradley said the town was**
116 **giving up an immense amount of density and he would like to think it was a worthwhile exchange. Ms.**
117 **Mason thought this motion fulfilled the intent of the court. Ms. McCarthy also thought the board needed**
118 **more time to digest the numbers. Mr. Carpenter made the point that the HAB did not approve the plan**
119 **at four units, which was in their right, instead they sent it back for reconsideration on the number of**
120 **units. The motion failed with the following roll-call vote:**

- 121 **Chair Earley, opposed**
- 122 **Vice Chair Monson, opposed**
- 123 **Ms. Mason, aye**
- 124 **Mr. Rounds, opposed**
- 125 **Mr. Carpenter, opposed**
- 126 **Ms. McCarthy, opposed**
- 127 **Mr. Breton, aye**

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129
130 Mr. Maynard said the sales price for workforce housing was expected to be lower in May due to the
131 increase in interest rates. Mr. Rounds asked if looking at towns like Bedford or Hollis could give a better
132 idea of what these units might sell for. Mr. Donohue said every town was different and that Bedford had a
133 commercial district that meant lower taxes than Windham. Mr. Underwood agreed, stressing her was
134 acting as a consultant and not an appraiser, that Bedford was not a comparable market. He thought
135 Amherst and Hollis were closer to Windham. Looking at a total of 125 sales this year \$429,000 was the
136 median condo sales (\$431,000 average) prices. He said the high was in the millions and the low was closer
137 to \$200,000. Mr. Underwood said with that data pool units would have to be much higher end or much
138 cheaper quality to see a significant deviation from those numbers. Mr. Rounds questioned how many of

139 those units were in large condo complexes. Mr. Keach, town engineer, said he also works for Amherst and
140 they do not have a condo development of more than six units in a single building. Mr. Underwood thought
141 the market was going to be tougher going forward and said there were no indications that sale prices would
142 be going up in the next 6 to 12 months.

143
144 Chair Earley made a motion to approve the CUP waiver for Case 2019-19F for 6 workforce housing
145 units. Mr. Rounds seconded the motion. The motion passed with the following roll-call vote:

146 **Chair Earley, aye**
147 **Vice Chair Monson, opposed**
148 **Ms. Mason, aye**
149 **Mr. Rounds, aye**
150 **Mr. Carpenter, aye**
151 **Ms. McCarthy, aye**
152 **Mr. Breton, opposed**

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154
155 Attorney Campbell addressed the board, reading the HAB decision. He said the plan would need
156 further approval beyond the question of the number of workforce housing units. Mr. Mello said an updated
157 site plan was received in January. Mr. Rounds asked if there were any changes since the last Keach-
158 Nordstrom memo was received.

159
160 **Mr. Rounds made a motion to approve Case 2019-19F contingent on Keach-Nordstrom review of**
161 **the final plan, all state approvals being issued before work begins, a pre-construction meeting to be held**
162 **with staff, and with appropriate bonding to be determined by staff. Mr. Rounds amended the motion to**
163 **include arborvitae to be added to the northwest boundary of the landscaping plan for screening to the**
164 **abutters. Ms. Mason seconded the motion. The motion passed with the following roll-call vote:**

165 **Chair Earley, aye**
166 **Vice Chair Monson, aye**
167 **Ms. Mason, aye**
168 **Mr. Rounds, aye**
169 **Mr. Carpenter, aye**
170 **Ms. McCarthy, aye**
171 **Mr. Breton, aye**

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176 **Proposed Amendments for Site Plan Regulations**

177
178 **Mr. Cross was seated for the rest of the meeting.**

179
180 **Planning Board Amendment #1: Tents:** Chair Earley specified that religious organizations were
181 exempt from this ordinance unless they planned to erect a tent that was 35 feet tall or taller. He further
182 explained that zoning changes had to be put on the town ballot, but site plan changes were not required to
183 be approved by the voters. Mr. Rounds said thirty-five feet was the limit on buildings in town, not just
184 tents.

185
186 **Chair Earley opened the session to public comment.**

187
188 Tom Murray said town ordinances were permissive by nature. He thought there were some
189 questions about what department had purview over what issues with tents. Mr. Murray said the rural zone
190 allowed for tents per the ordinance and that the ZBA recognized the Planning Board did not have the
191 authority to require a site plan review. Mr. Murray reviewed the different zones in town and if, under his
192 interpretation, the site plan was reviewed by the Planning Board. He maintained that the prior staff did not
193 enforce these rules but that the commercial zones already require site plan review so he did not see why
194 the adjustment to the ordinance was needed. He agreed that site plan review had safety and traffic flow
195 impact.

196
197 Shawn Foster said his ministry has faced some harassment since it moved to town in 2000. He said
198 they were required to spend more money for permitting than other businesses had paid. The Board of
199 Selectmen refunded those fees later. Mr. Foster said they would rather spend their time and effort on their
200 community outreach and ministry than on fighting with the town. He said that staff and the Planning Board
201 had been very accessible. He was concerned that other people might needlessly have to go for site plan
202 reviews like his church did.

203
204 Mr. Rounds double checked and confirmed that religious organizations were exempt from this
205 ordinance.

206
207 Daniel Popovici-Muller thought this should go before the voters if it was requiring people to go for
208 a site plan when formerly they were not required to. He would like to see it noted in the ordinance that
209 religious organizations were exempt.

210 Vice Chair Monson said there had been three or four workshops on this language and they had
211 gotten no feedback from residents until now. Attorney Campbell said religious use was exempt from all site
212 plan and zoning so that disclaimer would have to be added to every single ordinance if it was added to this
213 one.

214
215 Michael Cole thought the numbers seemed arbitrary and asked why they were chosen. Chair Earley
216 said the numbers came from the state fire code. Vice Chair Monson said he had worked with the town fire
217 department when confirming those numbers.

218
219 Mr. Cross continued to express his opposition to this regulation. Mr. Breton thought 400 square
220 feet was not a large space. Mr. Murray returned to the podium and said the zoning dictated the tents and
221 he thought this was unnecessary.

222
223 **Chair Earley closed the session to public comment.**

224
225 Attorney Campbell said it was clearly recognized that accessory uses exist everywhere, as a
226 regulation or ordinance cannot list every allowed accessory use. Mr. Murray interrupted the Attorney and
227 was asked by Chair Earley to wait for his turn to speak. Attorney Campbell said the language was tied to the
228 state fire code and it has no effect on any religious use. Attorney Campbell thought it was always better
229 from a clarity point of view to add guidance to the existing regulations.

230
231 **Chair Earley reopened the session to public comment and invited Mr. Murray to share any further**
232 **thoughts he might have. Seeing no interest, the Chair closed the session to public comment.**
233

234 Vice Chair Monson made a motion to approve Planning Board Amendment #1 as presented. Mr.
235 Rounds seconded the motion. The motion passed with the following roll-call vote:
236 Chair Earley, aye
237 Vice Chair Monson, aye
238 Ms. Mason, aye
239 Mr. Cross, opposed
240 Mr. Rounds, aye
241 Mr. Carpenter, aye
242 Mr. Breton, opposed
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245 **Planning Board Amendment #2: Lighting** This amendment will amend Section 701.1 relating to
246 exterior lighting to limit light spillover into residentially zoned districts, limit uplighting, and establish the
247 height of light fixtures.
248

249 Mr. Rounds made a motion to adopt Planning Board Amendment #2. Mr. Cross seconded the
250 motion. The motion passed with the following roll-call vote:
251 Chair Earley, aye
252 Vice Chair Monson, aye
253 Ms. Mason, aye
254 Mr. Cross, aye
255 Mr. Rounds, aye
256 Mr. Carpenter, aye
257 Mr. Breton, aye
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260 **Planning Board Amendment #3: Parking Requirements:** This amendment will amend Section 703.3
261 relating to the width of handicapped parking spaces.
262

263 Chair Earley opened and closed the session to public comment.
264

265 Ms. Mason made a motion to adopt Planning Board #3. Vice Chair Monson seconded the motion.
266 The motion passed with the following roll-call vote:

267 Chair Earley, aye
268 Vice Chair Monson, aye
269 Ms. Mason, aye
270 Mr. Cross, aye
271 Mr. Rounds, aye
272 Mr. Carpenter, aye
273 Mr. Breton, aye
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277 **Public Hearing for Proposed Amendments to Subdivision Regulations**

278 1. Planning Board Amendment #1: Winter Maintenance
279 Planning Board Amendment #2: No Planting in Right-Of Way
280 This amendment will amend Section 602.2.5.6 by requiring plantings to be placed outside of the
281 right-of-way.

282 3. Planning Board Amendment #3: Street Tree Installation
283 This amendment will amend Section 602.5.1 by requiring street trees to be placed outside of the
284 right-of-way.

285 4. Planning Board Amendment #4: Easements
286 This amendment will amend Section 603.2 relating to easements to require permission from the
287 proper authority for planting trees, shrubs, and other significant constructed features.

288 5. Planning Board Amendment #5: Winter Maintenance Bond
289 This amendment will amend Section 704.1.2 to authorize the Planning Board to require financial
290 surety for a "Winter Maintenance Bond" to cover the municipal costs of winter maintenance on all
291 proposed public ways contained within an approved subdivision.

292 6. Planning Board Amendment #6: Administrative Provisions
293 This amendment will amend Section 904.5 relating to the maintenance of streets and related
294 improvements should an Applicant fail to fulfill their requirements in a reasonable manner.

295 7. Planning Board Amendment #7: Table of Geometric Roadway Design Standards for Streets
296 This amendment will amend the Table of Geometric Roadway Design Standards for Streets by
297 Amending

298
299 **Mr. Rounds made a motion to approve the proposed amendments to the subdivision regulations**
300 **as presented. Mr. Cross seconded the motion. The motion passed with the following roll-call vote after**
301 **Mr. Cross confirmed there had been no changes to the language since last seen by the board:**

- 302 **Chair Earley, aye**
- 303 **Vice Chair Monson, aye**
- 304 **Ms. Mason, aye**
- 305 **Mr. Cross, aye**
- 306 **Mr. Rounds, aye**
- 307 **Mr. Carpenter, aye**
- 308 **Mr. Breton, aye**

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312 **New/Old**

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315 **Mr. Cross made a motion to adjourn the meeting. Ms. Mason seconded the motion. The motion**
316 **passed with the following roll-call vote:**

- 317 **Chair Earley, aye**
- 318 **Vice Chair Monson, aye**
- 319 **Ms. Mason, aye**
- 320 **Mr. Cross, aye**
- 321 **Mr. Rounds, aye**
- 322 **Mr. Carpenter, aye**
- 323 **Mr. Breton, aye**

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