

**Town of Milford
Zoning Board of Adjustment Minutes
June 4, 2015
Case #2015-08
Little Nell Trust
Special Exception**

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice-chair
Michael Thornton
Joan Dargie
Kevin Johnson

Excused: Len Harten, Alternate
Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicant, Little Nell Trust, owner of Map 43 Lot 55, Nashua St, in the Commercial district & Map 43 Lot 57, Capron Rd, in the Residence "B" District, is requesting a special exception from Article V, Section 5.03.8.C to allow a height of 45.5' for two 3-story buildings where 35' is maximum allowed.

Minutes Approved on July 2, 2015

Zach Tripp, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board; he then introduced the Board and read the notice of hearing into the record. Applicant, Red Oak Apartment Homes, Inc. c/o Ron Dupont, was present. The list of abutters was read. The following abutters were present:

Milred Ninety Six, LLC, 289 Pine St., Manchester NH

Glenna L. Daniels Revocable Trust, Glenna L. Daniels Trustee, 529 Nashua St, Unit 23, Milford Attorney Ashley Scott of Cronin, Bisson & Zalinsky in Manchester, appeared, representing Little Nell Trust, owner of Lot 57 and 55.

She asked if procedure used in the previous case would be the same for this case. She was informed it would. She stated there were two cases being brought on behalf of Little Nell for the same property and project, and was told they would be heard separately.

Z. Tripp asked her to present the case.

A. Scott said Lot 57 is a 25.146-acre parcel. Little Nell proposed to construct two rental apartment building on the property with 60 total units. Building will be two-story consistent with others in the area. Minor architectural detail does conform. Architectural detail gives you a nice picture as opposed to a flat roof that is what exceeds the height limitations, hence the special exception. The unique characteristics of the property include a wooden buffer that is taller than the proposed building. Purpose of the height limitation is light and air access for adjacent property and property owners. On a 25-acre lot with two buildings of this height it is not an impact issue.

K. Johnson asked for copy of the plot plan be put up for the audience.

Z. Tripp asked him to show where Nashua St. is on the plan.

Patrick Colburn, Project Manager with Keach-Nordstrom Assoc. in Bedford, who are representing Little Nell Trust, also, introduced himself. He said the parcel is 25.146 acres. He pointed out the location of Nashua St. at the top of the plan and the frontage for the parcel on Capron Rd. The front part of the parcel proposed for development is primarily open field and remainder is wooded. Open field is separated by jurisdictional wetland. Plan proposes two 30-unit apartments and two drives, two parking lots for 1 ½ spaces per unit.

Z. Tripp asked the height of the residential building – the Eastern Trails building.

P. Colburn said they are three-story, generally 10 – 12 ft per floor. They have flat roofs. They were built in late 60s or 70s.

Z. Tripp asked if the plan was before the Planning Board.

P. Colburn said it was submitted to them May 18 and scheduled to appear before them on June 16 for the first time.

Z. Tripp asked if any studies have been done with the height where shadows will be.

P. Colburn wasn't aware of any. When the architect was brought on they situated structures with their help to orient them for natural light. Not aware they studied shadowcast. With location of the buildings on the parcel, hard to believe it would impact anyone other than their own development.

J. Dargie said a portion of the roof is flat and a peak and that is all going over 30 ft?

P. Colburn said rendered drawing shows roof detail. There is ridge pole running down middle of the building and placed gables.

J. Dargie asked how close the nearest abutter was. Not just land, but a house.

P. Colburn said nearest abutter was Souhegan Valley Manufactured Home Park and owns the residential property on Nashua St. also owns Eastern Trails. The property line is approximately 110 ft from the building. He had gone out on site and guessed the nearest building was about 10 or so ft from the property line, so 120 ft.

J. Dargie asked if new proposed building would be closer to Nashua St. or up on the hill.

P. Colburn said driving on Capron Rd there is a wide open road; that is where the buildings are proposed. No proposal for clearing the woodland on the property. There is a large kept field which is where the development was proposed.

K. Johnson said the new constructed building would primarily run east and west.

J. Dargie asked, with a building in the mobile home park 100 to 110 ft. away, was it fair to say a building that's taller could affect it, and whether there were trees in between.

P. Colburn said there are a few trees on their property in the wetland. When he was there with the Conservation Commission you could clearly see the mobile home park. He couldn't tell how far a shadow would cast, but in his opinion it was highly unlikely that a shadow would cast on the adjacent property.

J. Dargie was thinking of light.

P. Colburn said it's not part of the height request, but they had submitted a lighting plan to the Planning Board.

J. Dargie said the reason it was not part of the height request was because the only thing going over the 35 ft. was the roofline.

P. Colburn said that was correct. To the best of his knowledge there were not any building mounted lights proposed in the gables.

J. Dargie asked if they board said no to the height request, they could potentially build with a flat roof and it would be the same.

K. Johnson said you can't build a flat roof by ordinance. He thought it was an architectural requirement within that district.

P. Colburn wasn't certain, can't make one as aesthetically pleasing as this, with the pitched roofs and gables.

There were comments from Board members about the disadvantages of flat roofs in New England.

J. Dargie asked if they couldn't build with flat roofs they could build gabled, slanted roof and only have a two-story building.

P. Colburn said yes, but to get the density the applicant was seeking they would need a third building, which is permissible but contrary to the open space concept.

Z. Tripp asked for further questions from the Board. There were none. He opened the meeting for public comment.

Glenna Daniels of 529 Nashua St. had two questions. What will happen with the brook running through that divides the park from that property? At one time there was something that washed the property out. Two houses were hanging on the edge. She was concerned what would happen if that brook was stopped.

Z. Tripp said that was more an issue for the next case but asked P. Colburn to respond.

P. Colburn said the jurisdiction thread wetland runs from south to north along common property boundary of Souhegan Valley and hooks almost 90 degrees and runs west to east across a culvert to Capron Rd. Site plan application preserves that wetland. Only temporary impact, the next case, is construction of subsurface utility extension. Will not adversely impact that existing thread of wetland.

G. Daniels asked what kind of buffer will be between the park and that property.

Z. Tripp said that was probably more a Planning Board question. If applicant could answer?

P. Colburn didn't have it. From nearest building 120 ft. to the nearest structure in the park there is some existing wooded buffer. They are proposing a full site landscaping plan next to the proposed nearest building is a fire access road for fire apparatus access to the rear of the building and a filled slope from that construction down to the wetland.

Z. Tripp said those details are usually handled by the Planning Board which will be June 16.

K. Johnson told her that she and anyone else with concerns on how the development would proceed were welcome to attend the Planning Board meeting.

There were no further public comments. Z. Tripp closed the public comment portion of the meeting. He stated there were no letters or e-mails received regarding this case.

A. Scott said, for the record, she had two points she wanted to make re any health and safety considerations that may exist about the height. One, there will be no actual residential use of the higher structure, but if there were the Fire Dept. has no concerns about the height of the building. Only concern is accessing the building during construction, which is the next application. That is not an issue re health and safety. Re chopping off the architectural feature and adding a building, the applicant was trying to fulfill the goals of the town by maximizing open space. If you add a building you add extra parking space and driving space.

M. Thornton remarked it was also less expensive.

Z. Tripp asked A. Scott to read the application into the record.

A. Scott read the application:

1. The proposed use shall be similar to those permitted in the district because:

Red Oak proposes to construct two buildings each containing 30 units. Such a multi-family use is a permitted use of Lot 57. Like the only other multi-family development in the immediate area, Eastern Trails, Red Oak seeks to construct three-story building. As such the basic design is not out of character for the immediate area in terms of multi-family development. The additional height of the proposed buildings is attributable to the use of pitched roofs as a part of the architecture. Pitched roofs appear to be the norm for residential development in general in the immediate area and indeed required in the nearby Nashua and Elm Street Corridor Overlay District. Accordingly, the proposed use is similar to those permitted in the area.

2. The specific site is an appropriate location for the proposed use.

Height restrictions in zoning ordinances, at least, in part, serve to provide adequate light and air. RSA674:17,I(d). Red Oak proposes to construct two three-story multi-family buildings on an approximately 25 acre parcel. The only other multi-family development in the immediate area also has three story buildings. Red Oak does not seek relief from the general setbacks for its proposed development. Capron Road, which will provide access to the development, is lined in significant part with mature trees and Red Oak proposes to maintain a wooded buffer along the edges of Lot 57. In light of these circumstances, notwithstanding the additional height of the proposed buildings, air and light will not be impeded by the proposed structures.

Additionally, the relief sought will allow for more pleasing architectural. The roofs of these residential buildings will be pitched, rather than flat. In addition, the design calls for changes in the elevation of the rooflines so as to assist, along with other architectural features, in breaking up the mass of the buildings. Breaking up the mass of larger buildings through architectural features is preferred as is evident from design guidelines for some of the Town's districts. In short, the additional height and the features it allows will allow the development to blend in better with its surroundings.

3. The use as developed will not adversely affect the adjacent area

As noted above, Lot 57 is large enough such that the proposed three story buildings may be constructed without encroaching into the general setback or otherwise being in close proximity to the development on any adjacent properties. The only other residential development on Capron Road itself is another multi-family development consisting of three story buildings. In addition, mature trees, some of which appear to exceed the height limitation at issue here, line not only Capron Road, as noted above, but other edges of Lot 57 as well. Red Oak, as is evident from the plan, intends to generally maintain these wooded buffers and the tall trees therein. In short, the natural features of Lot 57 will diminish any arguable impact. Furthermore, as noted above, relief from the height restriction in this case allows for a more aesthetically pleasing development with the mass of the otherwise permitted multi-family buildings broken up with the use of varying rooflines and pitched roofs. In sum, the proposed buildings will not be looming over some adjacent residence or building despite their height and that additional height will better allow the buildings to fit within the area architecturally and visually with their pitched roofs.

4. There will be no nuisance or serious hazard to vehicles or pedestrians.

The proposed buildings will not be constructed near Capron Road so as to arguably impede any line of sight for traffic on Capron Road. Likewise, potential traffic within the proposed development will travel in between the two buildings as shown on the plan such that the proposed buildings will not impede the line of sight for vehicles travelling on Lot 57 either. The proposed buildings are a part of a master plan under which the development of Lot 57 and the existing development at Eastern Trails would be interconnected and provide for a better flow of traffic rather than the current dead end street. The proposed height of the buildings will not have any foreseeable impact on pedestrian traffic either as the proposed development will include sidewalks and path between and to and from the proposed buildings and the parking areas.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use.

The proposed development will be served by municipal water and sewer. The plan provides for two curb cuts along Capron Road, a dead end street which serves limited properties. The proposed development will have sufficient parking for the proposed buildings and will include a recreational area. Red Oak proposes to limit its development to the open area of Lot 57 so as not to disturb the wooded portion of the lot. Likewise, it proposes to maintain the majority of the wooded buffers along the edges of Lot 57. As discussed in the related application, the limited wetlands impacts serve to accommodate utility access, fire apparatus access, and promote proper stormwater drainage. The buildings themselves, which are the focus of this request for relief, have been designed by an architect and have been designed by that architect to mitigate their mass through varying rooflines and other architectural features. Moreover, the use of pitched roofs to which this request for relief is attributable avoids the load bearing issues which are more common with flat roofs, particularly, with respect to snow during winters like this last one. As such, the pitched roofs contribute to the safety of the proposed tenants of the building.

There being no further questions from the Board, Z. Tripp moved on to discussion of the criteria.

A. The proposed use shall be similar to those permitted in the district:

M. Thornton – yes. There is no problem except the architectural detail. There are three story apartments in the area. Only issue is the less expensive roof line and more architecturally pleasing to the eye.

J. Dargie – there is a reason why zoning has restrictions on height. It is to not impede someone's open space. Also the factor that the taller the buildings, the more lights and the lights shining. While they are similar in use to what is permitted by special exception and fact that there are other tall buildings, those other three story buildings are more in the woods more away from the mainstream and other abutters.

They are similar to what is permitted by special exception. To that, she would say yes.

Z. Tripp suggested she might elaborate more on question C.

F. Seagroves – yes. It is similar to those permitted in the district. Across the street is a three story building with flat roof. Just down the street on Nashua St. there is a three story building. Seems like all our apartments are three stories. If it is flat, it could be about 30 ft. He felt a roof like this was better in New England. Flat roofs have so much maintenance, etc.

K. Johnson agreed. Not only is use similar to those permitted in the district, this is Residence B district which says multi-family is permitted in the district.

Z. Tripp agreed with Kevin. Multi-family allowed in B, similar buildings in the area. Special exceptions are allowed for buildings that extend the height requirement.

K. Johnson had question for the applicant. Based on the application, he made an assumption but wanted it stated for the record. This will be on municipal sewer and water.

A. Scott stated it would.

Z. Tripp said Sec. 5.03.8.C said special exception should be required for height greater than allowed in either A or B, so special exception for exceeding height is allowed.

B. The specific site is an appropriate location for the proposed use:

F. Seagroves – yes, for the roof.

K. Johnson – specific site is an appropriate location. Proposed development is in Residence B which allows multi-family dwellings when on municipal sewer and water and refers to density. Maximum of 5 units per acre, this 25 acre lot- applicant could put in up to 125 units. They are currently requesting 60 units with special exception for additional height. It would be preferable to allow additional height and have two 60-unit buildings rather than maintain that density and have three 20-unit buildings. From a site specific proposal, granting the additional height with two buildings is preferable. This is very appropriate for the proposed use.

J. Dargie –Kevin’s comments raised a question about a future building on the plan. She assumed that was included on the 25 acres.

P. Colburn said it was showing the plan going to the Planning Board with two buildings, 60 units. This property supports density of 125. They were showing a future master plan where two other building could be situated. He agreed when Joan said they were not doing them because of the height, but they could happen in the future.

Z. Tripp said in that case they would need a special exception for those.

J. Dargie said the height of the buildings in back next to the apartment buildings didn’t seem to be a problem. Her concern is about how close the front one is. With all the space for the parking lot they could move it away from the mobile home park. Her reservation is the closeness of that tall building. She had personal case where three stories were put in about 500 ft away and trees weren’t tall enough between her and that. She is below that building. Is that elevation higher than abutters?

P. Colburn said it was, but the setback in the district would allow 15 ft. Proposal is 110 ft.

A. Scott added there were no proposed lights in the height request. Where the residential area ends and the lights would be shining, that is permitted by right. No special exception required for that.

J. Dargie when she asked about building a three story with a flat roof, no one was sure. If so, applicant’s argument is correct. But she heard they have to have a slanted roof in the Nashua St. district.

K. Johnson said he looked it up and this property is just on the other side of the line of the Corridor. All those architectural details apply to those abutters but not this property. Ordinance recommends, but it isn’t a requirement. Looking at plan, even lowering the pitch of the roof none of that area has windows where lights would affect it.

M. Thornton said windows will be at same height, regardless.

J. Dargie if they were on the other side of that corridor, that took care of that. She was torn on appropriateness. Since it was stated it could be 15 ft. away, 100 ft. is better. She would say yes.

M. Thornton – since buildings around are in tune with the proposed use and proposed dwelling heights of these buildings, the specific site is an appropriate location.

Z. Tripp – regard to this lot being residential building on it is appropriate. It is large open space lot. Building A is pretty close to the corner. When looking at appropriate location, it exceeds the height requirements. Liked that it is not on Nashua St. and is back. But as you drive by you have 45 ft. tall building behind the eye care place, it has potential to be a pretty daunting building. It boils down to if the building was a conforming building at 35 ft in the same location whether going up to 45 ft would make it inappropriate location. He didn't think so. It is an appropriate location.

C. The use developed will not adversely affect the adjacent area:

M. Thornton said it would not. It is more attractive and less of a nuisance as far as snow load. You don't want to go with much higher pitched roof at a ridiculous height. The pitch shown is adequate, is appropriate.

J. Dargie – personally felt it will affect adjacent area, the single family home and ones on the side. There are 25 acres and sometimes when you have that much land it is good to consider people living in that area and their quality of life. That is why she is on the board and they have zoning regulations. She always they could do this or that. It boils down to, they could do something else. Has to say it will affect the adjacent area.

F. Seagroves didn't see it would affect adjacent area. Re Joan's comments, he was measuring the distance from the first apartment house to adjacent house. Looking at distance from Building A to the border line of the trailer park is 100 ft. It is much greater from Apt. A to the Lorden house, probably 200 ft.

P. Colburn commented that the Lorden house is owned by the applicant and is a rental.

F. Seagroves' point was that it is almost double.

J. Dargie commented that even at 500 ft. it is a huge building.

F. Seagroves didn't see it would be a problem.

K. Johnson agreed that questions B and C are kind of co-joined. Whether the use as developed might affect adjacent area, from height standpoint he didn't think there would be any significant visual impact to traffic, pedestrians, etc. He shares Joan's concerns re light pollution. It sort of undermines the argument that applicant owns that property and it is a rental. The applicant might not always own it. They need to consider rights of the renters. If they were going to roll that into this property, but as it stands today they need to consider rights of residents of that property.

Z. Tripp said and any future residents.

F. Seagroves said they were talking about height of the roof. Lights won't change.

K. Johnson said not necessarily. The whole architectural revision. He was not going to second guess the Planning Board. He thought balanced against the benefit of granting it, maintaining open space and effective use of the property vs. potential adverse of the light pollution, the adverse effect would be minimal in this case.

Z. Tripp found this question toughest of the five. The reasons for the height requirement. If this was structure on Nashua St. you could imagine if all adjacent property owners did similar, how that corridor would look. In his opinion, that whole corridor would be dark, shadowy and not have the same feel. Looking at this property, even though current property owners own that residence that could be sold at any time. Re Joan's comments, the property that is set back from Nashua St. probably would not have much impact. His concern is one closer to Nashua St. directly behind the residence and to the west of the manufactured homes. Glad to see house runs east to west so shadows would only be width of the building rather than length. He hasn't made up his mind on the question and would almost like to err on the side of going from 35 to 45. Ten feet would not have any more negative effect at 35 ft. flat vs. 45 pitched roof. It would be interesting to

understand tradeoff to keep A where it is or push it closer to B. He didn't know what that is or what distance would make him more comfortable. Probably saying a cautious yes on this question.

D. There will be no nuisance or serious hazard to vehicles or pedestrians:

F. Seagroves said pitched roof with snow coming down could be a possible hazard. He bets the owners would take care of that because of insurance. That would be his only concern with the pitched roof.

M. Thornton – if this is to scale the sidewalk and parking spaces are enough distance away.

F. Seagroves said that was his only concern; he believed they would take care of it.

K. Johnson – considering the additional 10 ft. in height, since it is set back well from the street, he didn't think it would interrupt sight line of traffic nor on Capron Rd. He didn't think the east/west oriented buildings of that height would be a hazard to traffic on Capron Rd. going to the Post Office or going to the development. Didn't think it would interrupt sight line or cast shadows, etc. No nuisance or hazard to vehicles. As buildings are situated on the lot, he didn't see any concern for pedestrians accessing appropriate areas.

J. Dargie – agreed, no hazard.

M. Thornton – none, looking at scale of trees and buildings, not so large to provide novelty to draw drivers' eyes away from traffic.

Z. Tripp – it exceeds 35 ft. by 10 ft. Didn't think it created any additional hazard to pedestrians or vehicles. It is set well off the street and didn't think it would block the sun or create a glare, or anything.

E. Adequate appropriate facilities will be provided for the proper operation of the proposed use:

J. Dargie -.yes

M. Thornton didn't know. No one talked about it in the special exception what adequate appropriate facilities would be required.

Z. Tripp said applicant had some evidence in application.

M. Thornton said with everything presented that the proper operation of the proposed use is in the best interest of the applicant and they would take care to use appropriate facilities and make sure they provide

K. Johnson would guess plan was drawn up and would guess they are prepared by licensed architect and therefore gable roofs, etc. are appropriate to that facility because the architect is basing his license on that. He would say this criteria had been met.

F. Seagroves – yes, going along with Kevin, he believed it was in a way to eliminate any type of hazard. This question didn't really fit this.

Z. Tripp said these questions are general special exception questions to fit a large area of potential special exceptions. Exceeding height by 10 ft. probably doesn't apply. Proper design and property served by town water and sewer. He would say yes.

Z. Tripp asked for further questions.

F. Seagroves noted a comment was made by code enforcement officer in the packet that Cahill Rd. had height of 47 ft.

A. Scott said the architect provided photos of adjacent properties, the other apartment complexes. From the ground it looks like flat roof, but in fact has a slight pitch. In the interest of disclosure she wanted to fully disclose. She had photos if they wanted to see them. Didn't want board to feel they misrepresented the pitch of those roofs.

Z. Tripp asked if that was the Eastern Trails.

A. Scott said yes, from the ground they look flat but if you step back several hundred feet, they do have a slight pitch.

Vote on criteria:

After reviewing the petition and after hearing all the evidence and by taking into consideration the personal knowledge of the property in question, the Board of Adjustment member has determined the following findings of fact:

Is the special exception allowed by the ordinance?

F. Seagroves - yes; K. Johnson– yes; M. Thornton – yes; J. Dargie – yes; Z. Tripp - yes

Are the specific conditions present under which a special exception may be granted?

K. Johnson – yes; M. Thornton – yes; J. Dargie – no; F. Seagroves – yes; Z. Tripp - yes

Z. Tripp asked if there was a motion to approve the application.

F. Seagroves moved to accept Case #2015-08

K. Johnson seconded.

Final Vote:

F. Seagroves – yes; K. Johnson – yes; M. Thornton – yes; J. Dargie – no; Z. Tripp - yes

Case #2015-08 was approved by 4 to 1 vote.

Z. Tripp reminded the applicant of the 30 day appeal period.