

**Town of Milford
Zoning Board of Adjustment Minutes
June 2, 2016
Case #2016-07
Red Oak Apartment Homes, Inc.
Special Exception**

Present: Kevin Johnson, Chairman
Joan Dargie
Jason Plourde
Len Harten

Absent: Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicant, Red Oak Apartment Homes, Inc. for the property located at 9 Capron Road, Milford NH, Tax Map 43, Lot 57, Special Exception from the Milford Zoning Ordinance, Article V, Section 5.03.8.C to permit a maximum height of 46' 10" for the construction of three proposed 36-unit apartment buildings and a maximum height of 45' 6" for four 4-unit townhouses where 35' is the maximum height allowed in the Residential "B" Zoning District.

MINUTES APPROVED ON 11/3/16

Kevin Johnson, 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 then introduced the Board. He continued by informing all of the procedures of the Board. The list of abutters was read. Representative of applicant, Attorney John Cronin of Cronin, Bisson & Zalinsky and Schauer Environmental Consultants were present.

K. Johnson said there was another case, #2016-08 by same applicant re wetlands, which will be heard separately.

J. Cronin stated he had people from Nordstrom present, including the architect.

He had an unexpected concern. Asked if there was an alternate for the Board member who left because of being ill. He was informed there was no alternate. Brief discussion with K. Johnson as to whether he could request a postponement. Lack of a quorum would be reason for postponement, but not lack of full five members.

J. Cronin said he'd tried to reach his clients and has not been able to. He will risk moving forward tonight. J. Cronin presented the case. Started with height portion of the application. This property on Capron Road has been subject of planning and zoning efforts. Adjacent to it at end of the road is a complex which was constructed before 2005 before the current height ordinance. This current application was proposed about five years ago. Went to Planning Bd and discussion with Zoning. Not sure any votes were taken. He spoke to Mr. Fougere at Planning Bd at that time and it appeared project was ready to go forward. His client bought property and came before ZBA and Planning Bd last year with proposed mixed use development. He was trying to do a combination of things – one was to subdivide to create

three distinct types of apartments. One would be upscale. Another would have been a standard market rate community. Third was a 60-unit low income or workforce housing units. He sought a community block grant for tax credit financing. NH Housing Finance administers it and chooses what they believe is most appropriate project. Mr. Dupont came before the Selectmen who were not in favor of workforce housing; they didn't support block grant and it was not received. Mr. Fougere carried on with NH Housing Finance. Two variances granted by Zoning Bd. One for height.

K. Johnson said Special Exceptions.

J. Cronin said Special Exceptions that were approved. NH Finance issued tax credit financing but not for this project. Mr. Dupont, with help of Keach, Nordstrom, went back to the drawing board. Didn't have workforce housing component. Complemented Eastern Trails well. This was what was proposed to the Planning Bd. Three structures, he calls multiplex. 36 units in each. Four townhouses which in addition to the existing buffer of trees area – no proposal to cut that. Some discussion at Planning Bd. to plant trees. Applicant has no issue to plant trees on Souhegan Valley, with their permission. He pointed out three buildings with gable roof design. Our ordinance has average height to the peak. They believe they are designed in way compatible with neighborhood. Eastern Trails wasn't subject to the ordinance when they were built. But seem to be compatible. Looking at other criteria for special exception they believe they meet them. This is not any more obstructive than prior application last year that was granted. Commonly runs with the land and lasts two years. Could go with granted special exception but in fairness when adding a building and giving more mixed use, felt with the townhouse structures, would be well advised to come back before ZBA. Issue is grade with walkout basements. Townhouses look for Special Exception are ones most remote to the property. He asked Dennis Mires to come and discuss elevations. Dennis Mires is the architect.

D. Mires showed pictures of elevations of one of the first buildings at entrance to Capron Rd. and the elevation that faces the road. Narrowest elevation to face the road. Very residential scale building to the street. He described roof pitch, effort to retain New England look, floor to floor height of 10 ft., different materials, different size windows, change in texture slight change in color. With 36-unit building which presents to Capron Rd is similar concept. Two building types, A & B. One has entrances on one side because of parking location – no parking out back, so both entries on street & parking lot side. The other building has one entrance on each side. Townhouses comply with ordinance in general except where graded flows toward the wetland, have walkout basements. Same cross gables, change in materials, etc. Issue of height for townhouses occurs where it slopes toward wetland and higher elevation out back side of two buildings. To address issue raised by Planning Bd, they started to model the site. Pictures show no landscaping shown, but accurate for distance and relative grade. On site plan one issue was how development is viewed from the nearby modular housing project. One issue is area where less existing vegetation. Mobile home view 1 and 2 pointed out. There is undisturbed existing buffer. Mobile home view 3, looking up toward the townhouses without existing vegetation on that side. Other views shown, Mobile home view 4, with thinner edge of existing vegetation but seeing side of buildings with others in the distance. Took views from Nashua St and Capron Rd, shows existing building. With grade difference it is difficult to see the buildings because of setback and diminishing scale. Next was taken looking across – no vegetation shown but can see angle of buildings. Some existing vegetation but off the property. They think they have a reasonable set of pictures attempting to identify some of the critical vantage points identified by the Planning Bd. The 45 ft. 6 fire approved goes for two of the 36 ft. buildings. Reason for 46 ft. is in the corner of the 36 unit buildings. Adjacent is area of detention pond for storm drainage. Grade begins to fall off toward that. Measuring heights accordance with ordinance. Townhouses do exceed 35 ft. height to allow basement but only by approx 3 ft on that lower elevation based on average grade definitions.

J. Cronin asked him to show front sheet with measurements.

J. Plourde said he was going to ask that, too.

D. Mires said a 44ft. 6 is actual from the base floor to the ridge – average grade around the building and based on the grade difference. Eave is actually about 29 ft. 10.

J. Plourde said they are already at highest level of 46 ft but going down to the level below the gable in height?

D. Mires measured it to be about 35 ft. maybe 6 in. for the end gables.

J. Cronin noted one of the reasons height is consistent with Eastern Trails with this many units. Goal environmentally was to minimize number of structures. He will address criteria in application, but suggests it tracks the table of uses, but that designed for uses allowed by special exception rather than height. First criteria – similar to those permitted in the district. Apartment house is allowed on the site in this zone. Proposed site is appropriate - it is expressly allowed by ordinance, that being the use itself. Use as developed – relative to height. Will not adversely affect abutters – largest adjacent owner is the applicant. They have allowed to have at least two buildings up to the 45 ft. People at trailer park seem to be fine with the proposal. One gentleman came forward with issue of planting trees which his client is willing to do. No nuisance or serious hazard to vehicles or pedestrians because – there will be no difference. If you took same number of units and spread them out with more buildings, could have more traffic. Adequate facilities – relates more to use than dimensional request. This is large parcel on dead end street, Nashua St is busy road with commercial interests on either side. Will enhance appearance of lot which has been idle. Zoning Bd. identified this use as compatible with area. Will be willing to answer questions.

J. Dargie asked for something showing height from Nashua St.

D. Mires pointed out view from Nashua St in #1, from intersection looking up the hill. Showed picture with eye clinic blocked out which is first building in the foreground and their building up behind. Another view from Nashua St in back of property line between eye clinic and apartments through the opening with existing tree line. Pictures do not show trees but show scale of buildings from Nashua St up on the hill.

J. Dargie said it was hard to visualize that. Thinking of going down Nashua St, what it will look like with all that there. Do balloon tests? Place balloons at the height of the buildings so they could see what they are looking at for height of the building itself.

K. Johnson said while they are considering that, in reviewing the application, it states “height restrictions and zoning ordinances serve to provide adequate light and air. Red Oak proposes to construct two three story multi-family” buildings. He thought they had said three.

D. Mires said in reading the application, he would see that was clearly a typo. Re Joan’s question, if the Bd felt that was helpful they were willing to do whatever. Never done it. Didn’t know if it was feasible. If they could feasibly do it, they would try.

K. Johnson also concerned about long view from Nashua St looking up to the hill and potential for all these tall buildings dominating that area. From the illustrations shown without references to what the 47 ft. building vs. what a 35 ft. building would look like makes it difficult to determine impact on the neighborhood.

J. Cronin said it didn’t show landscaping. Didn’t have a chance to do that this afternoon. Suggested tabling to the next meeting.

K. Johnson said it wouldn’t be next meeting; probably the first meeting in July, given what is already on the agenda.

J. Cronin said that would give time to comply with the request. Suspected that balloon test wouldn’t be necessary once it showed adequate elevation from Nashua St and other locations?

J. Dargie said correct representation. In 2005 those other buildings were allowed. Zoning changed for a reason and height changed. In order to not perpetuate what they already had going on. While things may have been done then in that area, and whether they should continue. If they gave everyone a special exception for 45 or 46 ft. building the Bd would be going against why the zoning was created. Obviously they could build 35 ft. buildings and he had stated they could put more buildings on the property and they would still be 35 ft. in height.

J. Cronin said that was a variance criteria.

K. Johnson said actually it was a right criteria, by right. It is a huge piece of property. If Bd. said no to 45 ft and they had to drop from three story to two story and put in two more buildings, they have more than enough land to do so.

J. Cronin thought they could go with two 45 ft. height buildings under the initial special exception, which was good for another year.

J. Dargie would question that. They were brought a plan with two buildings in front. They asked about the back and told that may come up in future. What was granted for those two buildings for that specific site.

J. Cronin said it was for two on that site. If they went with those and stayed consistent. Don't want to do that. Want to go forward with this and make effort to make people comfortable, give them the data they need. Asked who to talk to about it.

J. Dargie said Lincoln in the office.

Robin Lunn, Planning & Zoning Administrator mentioned CAD programs use Google maps with street view data and import data into that. Balloon test would be irrelevant because you are seeing physical property, including a road elevation behind it. The height of the trees and seeing actual building and importing proposed data.

D. Miles said could do that; didn't have it available tonight. Can show it in relation to a 35 ft. structure to see difference from end points along the road or tie them all together.

L. Harten said memo received indicating in 2015 the height of the two three-story building was not to exceed 45 5.

K. Johnson said that was 45 5 which is 45 6.

L. Harten asked if that was still valid.

It was determined that was still valid for another year.

L. Harten said what they were currently requesting didn't exceed that.

K. Johnson said there is one 46 10. J. Dargie said also more buildings – 7 buildings vs. two, and elevations.

L. Harten believed there was some validity to the special exception in 2015.

K. Johnson said if they followed that plan they could build those two buildings at 45ft. 6. What they want is to pretend that didn't happen for now and have a whole new proposal for three building up to 46ft 10 – not necessarily all of them – and add four four-unit townhouses, total of seven buildings.

L. Harten said would not be an issue if not dealing with additional buildings.

K. Johnson agreed.

L. Harten said difference isn't that great in height.

K. Johnson said issue is now it is not just two buildings exceeding height; it is four or five buildings exceeding height.

J. Dargie said two buildings granted special exception. However, at lower elevation. Now going further up the hill so visual impact will be greater.

K. Johnson said he grew up in Sioux City and one of the high schools was called the Castle on the Hill because it sat right on top of the hill and you could see if forever. Concern in relocating buildings and increasing height you will have tall buildings that appear to dominate the area going down Nashua St. Can only judge that would have significant visual impact on the surrounding property. Height ordinance not just air and light but, as indicated, it was put forth in 2005 to maintain character of Milford and avoiding large tall complexes that appear to dominate the area. Nor sure he has enough information to make a fully informed decision right now. Would have to see remainder of presentation. If applicants willing to try it would probably be first July meeting –bring additional documentation and if it turns out the new information shows their fears are unfounded that it won't be an exclusive community looking down on the town, he would be happy to approve it. But not now.

J. Plourde said re building height – as far as safety in his mind, any discussion with the Fire Dept? Any issues brought up?

J. Cronin said there were discussions; no issues. Concern expressed about access but that was resolved. Fine with the height.

J. Plourde asked about distance from closest mobile home to the buildings.

K. Johnson said on the last it was 120 ft.

Patrick Colburn, Project Manager with Keach, Nordstrom came forward. Nearest townhome unit to the mobile homes are two units that don't require height special exception. Townhome #3 would be closest to the adjacent home. Fifty scale to the home is 210 ft, to another is 195 Ft.

J. Plourde asked about the top building

P. Colburn said nearest home in the park is 135 ft from the nearest corner of the proposed structure.
J. Plourde asked, looking through application for special exception for height, it referenced pitch roof appears to be the norm for residential - in argument #1- and be required for Elm St-Nashua St. overly district. Is that in Res B, and what are those heights?
J. Cronin didn't know, but would get that.
K. Johnson said, with concurrence of applicant, would like to continue hearing. Will pick up at this point in the hearing. First July meeting will be July 7.
J. Dargie made motion to continue to July 7.
J. Plourde seconded.
All voted in favor. Case #2016-07, for the height exception was continued to July 7.