

STATE HOUSING APPEALS BOARD

SUFFOLK REALTY, LLC
Appellant

v.

TOWN OF SOUTH KINGSTOWN PLANNING BOARD
Appellee

and

WAKEFIELD MEADOWS CONDOMINIUM ASSOCIATION
Intervenors

DECISION VACATING TOWN OF SOUTH KINGSTOWN PLANNING BOARD
DECISION AND GRANTING MASTER PLAN APPROVAL FOR
COMPREHENSIVE PERMIT APPLICATION

I. INTRODUCTION

Applicant/Appellant Suffolk Realty, LLC (“Suffolk”) filed an application for a comprehensive permit (the “Application”) under the Low- and Moderate-Income Housing Act, R.I. Gen. Laws § 45-53-1 *et seq.*, (the “Act”) to construct a residential multi-family building consisting of seventy (70) rental housing units with eighteen (18) units dedicated to affordable housing. The Town of South Kingstown Planning Board (the “Planning Board”) denied the Application for reasons stated in its written decision dated June 16, 2023 (the “Decision”).

The Act intends to provide eligible individuals and families with opportunities to find affordable housing throughout the state. R.I. Gen. Laws § 45-53-2. Under the Act, parties seeking to construct affordable housing may apply for a comprehensive permit by submitting a single application to a local review board, rather than separate applications to the applicable local boards. § 45-53-4(a). The comprehensive permit permitting process is “a streamlined and expedited application procedure,” *Town of Burrillville v. Pascoag Apartment Assocs., LLC*, 950 A.2d 435,

438 (R.I. 2008), to encourage the construction of affordable housing. To be eligible for a comprehensive permit, the applicant must guarantee that at least twenty-five percent of the units will be designated as low- and moderate-income housing. § 45-53-4(a).

Suffolk filed a timely appeal of the Decision to the State Housing Appeals Board (SHAB). Abutters, who identify themselves as the Wakefield Meadows Condominium Association (“Intervenors” or “Wakefield Meadows”), were allowed to participate in the appeal. Based upon SHAB’s careful review of the record, and consideration of the parties’ extensive briefing and oral arguments, SHAB hereby vacates the Planning Board’s Decision and issues master plan approval of the Application for the reasons set forth below.

II. BACKGROUND

A. The Property

The subject property is situated along Tower Hill Road (Route 1) in the Town of South Kingstown, Rhode Island, and is more particularly described as Lot 22 and Lot 26 on Town of South Kingstown Tax Assessor’s Plat 50-4 (the “Property”). The Property is approximately 8.5 acres in size and is located within South Kingstown’s Route 1 Special Management District (“SMD”), regulated in accordance with Article 6, § 605 (Route 1 Special Management District) of the South Kingstown Zoning Ordinance, and is part of the mixed-use development known as “The Village at South County Commons” (“VSCC”).

B. The Application

On September 30, 2022, Suffolk submitted a comprehensive permit application seeking master plan approval of its application. On December 14, 2022, the Town Planner certified the application as complete. The Application included, in pertinent part: Application for Comprehensive Permit pursuant to the Act, Master Plan Waiver List, Monitoring Agent Letter of

Interest, Master Plan Checklist, Master Plan Narrative and Rhode Island Housing Letter of Eligibility. A number of supplemental documents were also submitted, including expert reports prepared by Edward Pimental, AICP, Pimental Consulting (Land-Use); Paul Bannon, BETA Group (Traffic); Joseph Lombardo (Fiscal Impact), and supplemental reports prepared by DiPrete Engineering.

The Application proposes a residential multi-family building consisting of seventy (70) rental housing units containing a mixture of thirty-six (36) one-bedroom and thirty-four (34) two-bedroom rental units. Twenty-five (25%) percent of the rental units – eighteen (18) units – will be set aside and classified for low-and moderate-income families in accordance with the Act. A total of 241 parking spaces will be available for both the existing Fairfield Inn Hotel and the proposed residential use. This includes 135 existing spaces east of Fairfield Way and 106 spaces west of Fairfield Way. The proposed parking is consistent with the shared parking provision contemplated in the SMD District.

The proposed residential development and associated parking will be created through a re-subdivision of Lot 22 and Lot 26. The existing Fairfield Inn Hotel will be located on Lot 22, and the proposed multi-family residential structure will be located on Lot 26.

Relief was sought from the following provisions of the Zoning Ordinance, Section 605 (SMD) and the South Kingstown Subdivision Regulations:

- Maximum Allowable residential density – five (5) dwelling units per developable acre. Waiver requested to allow seventeen (17) dwelling units per developable acre.
- Maximum Allowable Building Size – 30 dwelling units per building and 160 feet in length. Waiver requesting seventy (70) dwelling units per building and 290 feet in length.

- Maximum Allowable Building Height – forty (40) feet. Waivers requested to permit proposed building heights as measured from various locations on the Property.
- Waivers from various design guidance and regulations with respect to Build-to-line, yard setbacks, parking location, architectural standards and other requirements and guidance of the SMD, zoning and land development regulations to permit the proposed design;
- Waivers required to permit the construction of a seventy (70) unit multi-family residential building on the Property.
- Waivers from Article 7 – Standards for Parking Lots and Loading Facilities to allow to allow 1.5 spaces per dwelling unit where 2 spaces per dwelling unit is required.

III. THE PLANNING BOARD'S REVIEW

A. Standard of Review by the Local Review Board

Before issuing a comprehensive permit, a local review board, such as the Planning Board here, must make the following positive findings, supported by legal competent evidence: (a) the proposed development is consistent with local needs as identified in the municipality's comprehensive community plan with particular emphasis on the community's affordable housing plan and/or has satisfactorily addressed the issues where there may be inconsistencies; (b) where the proposed development is not in compliance with the provisions of the municipality's zoning ordinance and subdivision regulations, and/or where expressly varied or waived local concerns do not outweigh the need for low- and moderate income housing; (c) all low- and moderate income housing units are integrated throughout the development; (d) the proposed development as shown on the final Plan will not have a negative impact on the environment; (e) the proposed development will not have a significant negative impact on the health and safety of current or future residents of the local community (f) all lots will have adequate and permanent physical access to a public

street; and (g) the proposed development will not result in the creation of individual lots with any physical constraints. § 45-53-4(a)(4)(v).

A local review board may deny the application for any of the following reasons:

(A) [the municipality] has an approved affordable housing plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing plan; provided that, the local review board also finds that the municipality has made significant progress in implementing that housing plan;

(B) the proposal is not consistent with local needs, including . . . the needs identified in an approved comprehensive plan, and/or local zoning ordinances and procedures . . . ;

(C) the proposal is not in conformance with the comprehensive plan;

(D) the community has met or has plans to meet the goal of [having at least] ten percent (10%) of the year-round [housing] units [designated as affordable]. . . provided that, the local review board also finds that the community has achieved or has made significant progress towards meeting [these] goals; or

(E) concerns for the environment and health and safety of current residents have not been adequately addressed.

§45-53-4(a)(4)(vii).

B. The Planning Board's Hearings and Decision

The Planning Board opened its Master Plan Public Informational Meeting on January 24, 2023. Suffolk provided the Planning Board with four (4) extensions of time, continuing the public hearings scheduled for February 28, 2023, March 28, 2023, and April 25, 2023. The public hearing closed on May 23, 2023, with the Decision rendered by the Planning Board during a special meeting held on May 30, 2023.

1. The January 24, 2023 Hearing

At the outset of the Planning Board's January 24, 2023 hearing, Suffolk's counsel provided an overview of the project; the applicable provisions and standards of review under the Act; the number, design, and bedroom count of the units; the Town of South Kingstown's lack of affordable

housing and progress towards affordable housing goals; as well as a summary of the Application materials and reports submitted. Suffolk called two (2) witnesses in support of the Application: (1) Eric Prive, Project Manager, DiPrete Engineering; and (2) Hans Strauch, HDS Architecture.

2. May 23, 2023 Hearing

At the commencement of the May 23, 2023 public hearing, Suffolk presented two (2) additional expert witness: (1) Paige Bronk, was presented as a land-use expert; and (2) Paul Bannon, BETA Group.

After the presentation of Suffolk's witnesses, the Planning Board opened the hearing for public comment. Counsel for Wakefield Meadows spoke on behalf of the association's members and described the community for the Planning Board. Wakefield Meadows is a 142-unit residential development for 55+ homeowners, which directly abuts the Property to the South. Wakefield Meadows is accessed through Hampton Way, a private road owned in fee.

At the conclusion of the testimony and comment, the public hearing was closed.

3. May 30, 2023 Meeting

On May 30, 2023, the Planning Board held a special meeting for the sole purpose to make its determination regarding the Application. The Planning Board voted 4-2 to deny the Application.

4. The Planning Board's Decision

In its written Decision dated June 16, 2023, the Planning Board's justification for its denial is premised upon a myriad of regulatory and procedural grounds rooted in the original intent and purpose of the VSCC. The Decision provides, in part:

- (1) The Planning Board concludes that it cannot make a positive finding in accordance with R.I. Gen. Law § 45-53-4(a)(4)(v)(B) that the proposed development is in compliance with the standards and provisions of the Town of South Kingstown's zoning ordinance and subdivision regulations and finds that

local concerns affected by the relief requested, do, in fact, outweigh the state and local need for low-and moderate income housing . . .

- (2) The Planning Board concludes that it cannot make a positive finding in accordance with R.I. Gen. Laws § 45-53-4(a)(4)(v)(C) that the low-and moderate income housing units proposed are integrated throughout/into the development because the project, along with all of District 5, is completely isolated and cut off from the remainder of VSCC. . .
- (3) In addition to being unable to make all of the positive findings required by law under R.I. Gen. Laws § 45-53-(a)(4)(v), the Planning Board further concludes that the application should be denied in accordance with R.I. Gen. Law § 45-53-4(a)(4)(vii)(C) because the proposal is not in conformance with the South Kingstown Comprehensive Community Plan as it relates to the adherence with the intent of the SMD associated with approved development of the eight districts within the VSCC.

In support of its denial, the Planning Board sets forth several findings of fact related to safety concerns raised by abutting landowners; the factual dispute concerning the Access Easement raised by Wakefield Meadows; inconsistency with the height standards of the SMD; Parking regulations for all uses, existing, approved and proposed within District Five; use limitations and anticipated uses; and existing approvals for the Property. The Planning Board also suggests Suffolk “concealed” and “misled” planning staff by mischaracterizing the Application as a “new master plan application” as opposed to an “amendment”.

IV. SHAB STANDARD OF APPELLATE REVIEW

Suffolk timely appealed the Planning Board’s denial of the Application, seeking SHAB’s appellate review in accordance with § 45-53-6 of the Act. Sections 45-53-6(b) requires that SHAB must undertake the following review of a denial of a comprehensive permit application:

“In hearing the appeal, [SHAB] shall determine whether: (i) in the case of a denial of an application, the decision of the local review board was consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, was reasonable and consistent with local needs.”

Section 6(c) delineates a non-exclusive list of factors that SHAB may consider in its appellate review:

- (1) The consistency of the decision to deny or condition the permit with the approved affordable housing plan and/or approved comprehensive plan;
- (2) The extent to which the community meets or plans to meet housing needs, as defined in an affordable housing plan, including, but not limited to, the ten percent (10%) goal for existing low- and moderate-income housing units as a proportion of year-round housing;
- (3) The consideration of the health and safety of existing residents;
- (4) The consideration of environmental protection; and
- (5) The extent in which the community applies local zoning ordinances and review procedures evenly on subsidized and unsubsidized housing applications alike.

Further, Section 6(d) of the Act provides as follows:

“If the appeals board finds, in the case of a denial, that the decision of the local review board was not consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, was not reasonable and consistent with local needs, it shall vacate the decision and issue a decision and order approving the application, denying the application, or approving with various conditions consistent with local needs. If the appeals board finds, in the case of an approval with conditions and requirements imposed, that the decision of the local review board makes the building or operation of the housing infeasible, and/or the conditions and requirements are not consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, are not consistent with local needs, it shall issue a decision and order, modifying or removing any condition or requirement so as to make the proposal no longer infeasible and/or consistent, and approving the application; provided, that the appeals board shall not issue any decision and order that would permit the building or operation of the housing in accordance with standards less safe than the applicable building and site plan requirements of the federal Department of Housing and Urban Development or the Rhode Island housing and mortgage finance corporation, whichever agency is financially assisting the housing. Decisions or conditions and requirements imposed by a local review board that are consistent with approved affordable housing plans and/or with local needs shall not be vacated, modified, or removed by the appeals board notwithstanding that the decision or conditions and requirements have the effect of denying or making the applicant’s proposal infeasible.”

V. PROCEEDINGS BEFORE SHAB

The Wakefield Meadows abutters moved to intervene in this appellate proceeding, which was allowed without objection by Suffolk or the Town. On September 6, 2023, Suffolk filed its brief with SHAB. The Town responded with its opposition brief on September 18, 2023. Intervenors filed their brief in opposition on October 6, 2023. Suffolk filed reply briefs on October 2 and October 20, 2023 (addressing the issues raised by the Town and Intervenors respectively).

On November 6, 2023, the appeal came before SHAB for oral argument with the following members presiding: Chairperson Kelley Morris, Vice Chair James Grundy, Brenda Clement, Robert Najarian, Mary Meagher, and David Soucy. Mr. Najarian, a municipal alternate, did not participate as a voting member. SHAB's members and legal counsel questioned counsel for each party extensively on several material issues, as reflected in the transcript.

After receiving the parties' oral arguments and responses to its questioning, SHAB deliberated publicly regarding the issues relevant to the determination of this appeal. At the conclusion of the deliberations, Vice Chair Grundy made "a motion to overturn the Planning Board Decision." In its consideration of the motion, SHAB first applied standards prescribed by § 45-53-6(c) to render its findings, each of which was adopted unanimously. Based upon its findings, SHAB voted unanimously to vacate the Planning Board's Decision and grant master plan approval of the Application with a condition. SHAB states its analysis below and also incorporates the transcript of the hearing for a detailed review of the material issues addressed during the November 6, 2023 hearing.

VI. ANALYSIS

A. **The consistency of the decision to deny or condition the permit with the approved affordable housing plan and/or approved comprehensive plan.**

Pursuant to the Town of South Kingstown Comprehensive Community Plan, it is anticipated that by 2040, there will be a shortfall of approximately 800+ affordable housing units to meet the minimum 10% threshold. Thus, any progress is dependent upon every reasonable development option being well received. The Town's prior Housing Plan spoke to achieving 10% affordable housing compliance by 2025, whereas the current Comprehensive Community Plan extends it to 2030, acknowledging roadblocks to achieving compliance.

Based on the forgoing, SHAB finds the Town has failed to conform to the minimum threshold required by the Act and has not made substantial progress to meeting the affordable housing needs of the community.

B. **The extent to which the community meets or plans to meet housing needs, as defined in an affordable housing plan, including, but not limited to, the ten percent (10%) goal for existing low- and moderate-income housing units as a proportion of year-round housing.**

As of 2022, the Town had an approximate total of 607-units of affordable housing. According to the South Kingstown Comprehensive Community Plan, the Town had 485 affordable units as of 2004, and 589 in 2012, representing 5.07% and 5.39% affordable housing stock, respectfully. As of 2016, the number rose slightly to 612 affordable housing units or 5.61%. As Mr. Pimental concluded in his report, The Housing Fact Book details a current 2022 provision of affordable housing in the Town approaching 5.57%. More troubling, however, the Town has seen less than a 1% increase in affordable housing stock in almost twenty (20) years and is still well below the 10 percent threshold.

Also, the Planning Board held erroneously that the proposed units will not be integrated throughout the development “because the project, along with all of District 5, is completely isolated and cut off from the remainder of the Villages at South County Commons.” The Planning Board suggests that Suffolk is required, through the comprehensive permit mechanism, to “integrate” affordable housing units throughout all of the VSCC, including those lots not subject to the Application. SHAB is unaware of any legal authority requiring Suffolk to do so. The record demonstrates that the proposed affordable housing units will be consistent with market rate units and well-integrated throughout the proposed development.

C. The consideration of the health and safety of existing residents and the consideration of environmental protection.

SHAB finds that the issues raised by the Planning Board and objections stated by Intervenor Wakefield Meadows should be more properly and fully addressed at the preliminary plan stage of review, not the conceptual master plan stage of review. The right-of-way to the Intervenor’s neighboring properties does not have any restrictions for access. Intervenor’s condominium association is a gated community, which may limit persons from trespassing by certain actions. Any buffering, landscaping, or other environmental issues should be addressed at the preliminary plan stage of review.

SHAB further finds that Suffolk has provided unrefuted expert testimony to demonstrate negligible impacts to the health and safety of the public, particularly the Wakefield Meadows development. Suffolk’s traffic expert, Paul Bannon, testified that the proposed development will result in less daily trips in comparison to the approved commercial uses for the Property, reducing traffic and safety impacts in the area. He also testified that there would be no significant impacts to the health, safety or welfare of the public and additional provisions will be implemented and reviewed at the preliminary plan stage of review.

D. The extent in which the community applies local zoning ordinances and review procedures evenly on subsidized and unsubsidized housing applications alike.

SHAB finds that, based upon the applicant's uncontradicted representation, that other master plan amendments had been allowed for the Village at South County Commons in the past. The record evidences that the Planning Board was not applying this procedure equally when it raised the issue in its denial Decision. Additionally, it is the choice of the applicant to decide whether to amend an approved master plan or, in the alternative, seek multiple master plan approvals for a subject property.

Suffolk has provided ample testimony and legal support to demonstrate the Application was properly advertised and noticed as an amendment to the master plan. Suffolk made a specific request to amend the 1998 VSCC Master Plan throughout the impendency of the Application and sought appropriate relief to facilitate the development of a residential use in District Five. Amendments to the 1998 VSCC Master Plan is common and Suffolk has provided documentation of at least five (5) other applications involving amendments to the plan, including: the applications of 1) Village Liquors; 2) The Hampton Inn (previously industrial use); 3) The Preserve Condominiums; 4) Building 25 and 5) Phase II of the exiting apartment complex. SHAB finds the Planning Board has not reviewed this Application in a manner consistent with previous applications for amendments to the 1998 VSCC Master Plan.

E. SHAB's Condition of Approval

As a condition of its master plan approval of the Application, SHAB requires that Suffolk must revisit the shared parking among Assessor's Plat 50-4, Lots 22, 25, & 26 during the preliminary plan stage of review.

VII. CONCLUSION

For the reasons set forth above and detailed in the transcript of its November 6, 2023 hearing, SHAB vacates the Planning Board's Decision and grants master plan approval of the Application, along with any waivers requested by the Applicant for the development of a seventy (70) unit multi-family structure on the Property, with the condition as noted herein. This master plan approval does not prejudice the rights of the Town and Wakefield Meadows to raise all appropriate concerns in response to the detailed engineering required in the preliminary plan stage of review.

Entered on this 22nd day of December 2023, as SHAB's ruling in this appeal, which was reviewed and approved by all participating members.

/s/ Kelley Morris Salvatore
Chairperson
Rhode Island State Housing Appeals Board