

April 17, 2024

APPROVED 5-1-2024

**TOWN OF EPSOM  
ZONING BOARD OF ADJUSTMENT MEETING  
Epsom Central School Cafeteria, Epsom, New Hampshire  
April 17, 2024, 6:30 PM**

**PRESENT**

Glenn Horner, Chair  
Gary Matteson, Vice Chair  
Gary Kitson, Member  
Lisa Thorne, Member  
Roger Rheume, Alternate Member

**ALSO PRESENT**

Jennifer Riel, Recording Secretary- via Zoom  
Virginia Drew, Board of Selectman Representative  
Wendy Nelson, applicant  
Krist Nelson, applicant  
Steve Warner  
Mark Peters  
Amy Merrill  
Jessica Nelson  
Justin Guth, Zoning Compliance Officer  
Meadow Wysocki, resident

**CALL TO ORDER**

Chair Horner called the meeting to order at 6:30 PM. Introductions were made of the Board members present.

Chair Horner asked Mr. Rheume to sit on the Board for this meeting.

**APPROVAL OF MINUTES**

Meeting of April 3, 2024 – Edits were made. **MOTION: To approve the minutes as amended. Motion by Mr. Matteson. Second by Mr. Rheume. Motion passed unanimously.**

**Case 2024-05 (Sunrise View Leasing, LLC – SE & Var.)** - *Krist and Wendy Nelson, on behalf of Sunrise View Leasing, LLC, have applied for a Special Exception, per Article II, Section C [Table of Uses] for Retail and Service Use Number 19 (b), and a Variance to Article III, Section G [Residential Single and Multifamily Residence Requirements], Subsection 5 [Elderly Multifamily Apartment Residences with Three or More Units] to modify conditions contained in the Case 2016-02 (Sunrise View Leasing, LLC – SE & Var.) approval to permit construction of an additional three residential buildings containing six 2 bedroom and six 1 bedroom apartments and a fourth building to be used for storage, laundry and maintenance. The property is located on Short Falls Road within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map as U-14, Lot 30.*

*Public testimony will be considered in determining if sufficient evidence has been submitted to justify granting this zoning appeal.*

Chair Horner read the public notice into the record. It was confirmed the public notice was published in *The Concord Monitor*, posted at the Town Offices, the Town website, and the Post Office; certified letters were sent to abutters. Receipts were received from all abutters with the exception of: Evergreen Lodge #53, and Vicky Watson.

Chair Horner opened the public hearing at 6:34 PM.

Wendy Nelson, applicant, stated Sunrise Meadows currently has 4 units on the property and their goal is to add an additional 12 units. They are proposing three additional buildings on the lot; she stated there will be a separate building for laundry units and maintenance. Ms. Nelson stated there will be minimal impact on the use of the property and the new residents will use the same road; no additional signage will be needed. She stated the entire property is surrounded by trees and berms. Ms. Nelson stated the buildings will be similar to the existing buildings on the lot; she stated she and her family work at the property, and they are responsible for the maintenance at the property.

Chair Horner asked if the calculations have been done for the Open Spaces. Ms. Nelson confirmed that information is included in the application packet.

Ms. Nelson went through the Special Exception criteria. She stated they currently have a waiting list for this community; it is single level living in a nice area to live. She stated there are numerous community events for the residents to participate in and it creates a desirable community. She stated there is significant buffers between this property and abutting properties. Ms. Nelson stated this proposal will not negatively impact the values of surrounding properties which have consistently increased. She stated they will have adequate water supply and sewage treatment; the property is located within the Epsom Water District. There will be a new septic system design for the additional buildings. It was confirmed the new system will be approved by NH DES. Letters were received from the Police and Fire Departments, indicating the proposal has been reviewed by the department heads.

Ms. Nelson stated the proposal is not contrary to the spirit of the ordinance as the request is for the same special exception and variances as previously requested when the existing buildings were constructed. She stated the driveway and access ways will not change and will remain from a NH DOT road. She stated granting the variance would not be contrary because their business provides a service that is needed in the community, and it will not change the character of the neighborhood as the buildings are residential. She stated it will also create additional tax revenue for the Town, but it is a 55+ community so will not impact the school system. Ms. Nelson stated denial of the variance would prevent them from building additional homes to meet the demand that is in the community for adult children who want their parents to live in the area. She stated the property has more road frontage than is needed.

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Ms. Nelson explained they chose to create a 55+ community to meet the needs and demands of the population. It was confirmed one of the new buildings will house the laundry services, which will have a separate septic system.

Chair Horner opened the hearing to input from the public in favor of the proposal.

Steve Warner, resident, stated he is supportive of the proposal; he expressed concerns about the culvert at the entrance to Sunrise Meadows. He stated there isn't a lot of traffic for this property and it's quiet. Chair Horner stated there were concerns about the traffic with the initial proposal, but it sounds like there hasn't been an impact on the traffic as anticipated.

A resident asked if there will be additional buildings after this proposal. Mr. Nelson stated they don't intend to build any more. Ms. Nelson stated they want to retain the rural residential feel without building too much.

Chair Horner opened the hearing to input from the public in opposition of the proposal.

Chair Horner stated this case is to modify the conditions of the previous approval for this property. The Board reviewed and discussed the previous decision and variance conditions.

**MOTION: To close the public hearing. Motion by Mr. Kitson. Second by Ms. Thorne. Motion passed unanimously.**

The public hearing closed at 7:22 PM.

The Board went through the Special Exception worksheet for Article II.C.19(b):

*After reviewing the petition, hearing all of the evidence and taking into consideration the personal knowledge of the property in question, the general conditions of a special exception are evaluated as follows:*

*1. A complete plan for the proposed development shall be submitted showing location of all buildings, parking areas, access, open space, landscaping and any other pertinent information. Such plan has been submitted to the satisfaction of the board.*

YES

*2. The requested use is essential or desirable to the public convenience or general welfare.*

YES

*3. The requested use will not impair the integrity or character of the immediate or adjoining areas.*

YES

*4. The specific site is an appropriate location for the proposed use and will not be detrimental to the health, morals, or general welfare of the immediate or adjoining areas.*

YES

*5. No factual evidence is found that property values in the area will be adversely effected by such use.*

YES

*6. No undue traffic, nuisance or unreasonable hazard will result because of the requested use.*

YES

*7. Adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.*

YES

*8. All valid objections presented at the public hearing are given full consideration.*

YES

*9. The proposed use has an adequate water supply and sewerage system, and meets all applicable requirements of the State.*

YES

The Board went through the Variance Criteria worksheet.

*The variance will not be contrary to the public interest. YES*

*A. The variance will not be contrary to public interest because:*

*B. The variance is consistent with the spirit of the ordinance. YES*

*C. By granting the variance, substantial justice is done. YES*

*D. The proposed use will not diminish the value of surrounding properties. YES*

*Evidence was presented that approval will allow for construction of two new homes which will increase property values in the neighborhood.*

*E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For purposes of this criteria, "unnecessary hardship" means that, either:*

YES

*Either: F.(1) Owing to special conditions of the property that distinguish it from other properties in the area: • No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. YES*

*Literal enforcement of the provisions create an unnecessary hardship due to the following special conditions of the property:*

*Or: F.(2) Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. YES-2; NO-3*

**MOTION: The Case 2016-02 (Sunrise View Leasing, LLC – SE & Var.) approval conditions are modified and annotated to reflect current status as follows:**

- 1. The number of dwellings to be constructed shall be limited to eighteen (18) two-bedroom apartments and eighteen (18) one bedroom apartments in nine (9) buildings;**
- 2. The thirty six housing units contained in the facility are for older persons and shall be subjected to the provisions of NH RSA 354-A:15, the Rules of the NH Commission for Human Rights (Hum. 302) and Federal Housing for Older Persons Act of 1995 (24 CFR Part 100). The dwelling units are referred to as HOP unit(s) below;**
- 3. Use of the HOP units shall be restricted by written covenants as follows:**
  - a. The use and occupancy of each HOP unit shall be by individual(s) aged 55 years or older. Occupancy per HOP unit shall not exceed two persons;**
  - b. Prospective tenants shall provide positive documentation of the age and number of occupants intending to occupy the HOP unit to the facility owners prior to commencing residency in order to enable the owners to demonstrate that the occupancy restrictions are met;**
  - c. No guest or other invitee who is under 55 years of age or who would cause occupancy in the HOP unit to exceed two persons shall be permitted for a cumulative period of more than 45 days in any one year period without written permission from the owner. Under no circumstances shall the stay by the guest or invitee exceed 90 days;**
  - d. An individual who is certified to provide in-home care to an occupant of a HOP unit may occupy the HOP unit on an as needed basis in spite of the occupancy restrictions;**
  - e. The owners of the facility shall conduct annual surveys of the occupants in each HOP unit to ensure compliance with the occupancy restrictions. The result of these surveys shall be provided to the Town of Epsom upon request;**
  - f. In the event of a violation of any of the occupancy restrictions, including failure or refusal to provide documentation evidencing a HOP unit tenant's compliance with the occupancy restrictions, the facility owner shall, after a 30 day written notice to the HOP tenant and to any occupant in violation of the occupancy restrictions, enforce such restrictions in any court of competent jurisdiction and may seek all equitable or legal remedies including, but not limited to, the requirement that the HOP unit be vacated or that the person(s) found**

- in violation of the occupancy restrictions be evicted. All costs and expenses, including reasonable legal fees, shall be recoverable by the successful moving party against the HOP unit tenant;
- g. The covenants shall specify the rights of the Town of Epsom to enforce the conditions of the covenants in accordance with zoning regulations;
4. To ensure the intent of these conditions are met, the format and language of the covenants shall be approved by the Town of Epsom through the Town Attorney and shall be registered in the Merrimack County Registry of Deeds. A copy of the registered declaration shall be provided to the Zoning Compliance Officer at time of building permit application (Complete – No further action required);
  5. Rental lease agreements shall be established and executed with all tenants to ensure compliance with the covenants as outlined above. Copies of the executed lease agreements shall be provide to the Epsom Zoning Compliance Officer within five (5) days of a written request;
  6. A firewall shall be provided between each residential unit and each unit shall have its own fire sprinkler system. The design of the sprinkler system shall be approved by the Epsom Fire Department and shall be operational prior to the issuance of the Zoning Certificate of Occupancy. An annual inspection of the fire protection system shall be undertaken in conjunction with the Epsom Fire Department;
  7. Emergency access codes shall be provided through any driveway access gate for local emergency responders (i.e.: fire, police, and ambulance);
  8. Subsurface disposal:
    - a. A reserved subsurface disposal site shall be located on the property. The Epsom Planning Board shall approve the location of the reserved field based upon suitable engineering data provided by the applicant (Completed for existing residences – No further action required)
    - b. A subsurface disposal system for the twelve new HOP units and laundry facility shall be designed and approved through the NH Department of Environmental Services. Approval shall be reviewed as part of the Epsom Planning Board's Non-Residential Site Plan Review;
  9. Runoff within the site shall be treated using the best management practices and approved by the Epsom Planning Board;
  10. Temporary water pollution controls during construction shall be utilized that meets or exceeds the best management practices for site developments and shall be approved by the Epsom Planning Board. All necessary State and Federal permits shall be obtained prior to construction commencing and copies of the permits provided to the Epsom Planning Board and Zoning Compliance Officer;
  11. The driveway and parking areas shall remain in private ownership and the owners shall be responsible for maintenance. Approval shall be obtained from NH Department of Transportation for a Driveway Permit (Permit obtained, No further permitting action required);

12. The exterior lighting within the site shall be designed for “downward” illumination and shall be designed to have minimal intrusion into the neighboring parcels unless the property owner consents in writing;
13. The facility shall utilize the existing Town water supply;
14. The existing tract of land upon which the facility is sited shall not be subdivided;
15. Fencing and/or vegetation shall be used to screen adjacent lot U14-29 located at the Northeast corner of the property. Specifics of this screening shall be determined by the Planning Board (Completed, No further action required);
16. The applicant shall proceed to the Planning Board to obtain a Non-Residential Site Plan Review for the additional 12 HOP units within twelve months from the date of this “Record of Hearing Decision”;
17. Variance and Special Exception approval for the additional 12 HOP units shall expire if after two years substantial development has not commenced. Substantial development shall mean the completion of the first of three new residential building foundations.

**Motion by Mr. Kitson. Second by Ms. Thorne. Motion passed unanimously.**

**ADJOURN**

Chair Horner adjourned the meeting at 7:41 PM.

Respectfully Submitted,

*Jennifer Riel*

Jennifer Riel, Recording Secretary