

SUPREME COURT OF NEW HAMPSHIRE

Appeal of Town of Amherst

Housing Appeals Board No. 2021-0570 · No. Housing Appeals Board No. 2021-0570 · Decided January 18, 2023

SUMMARY

The Supreme Court of New Hampshire affirmed the Housing Appeals Board’s orders vacating the Town of Amherst Planning Board’s denial of subdivision and site plan approval for a 49-unit housing project, including age-restricted units. The court held that the Board acted unreasonably by denying the application based on unresolved age-restriction compliance concerns without completing its customary review of the condominium documents, and by relying on rural-aesthetic and density concerns previously addressed in an earlier conditional use permit.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	HICKS, J.; MACDONALD, C.J.; BASSETT, J.; HANTZ MARCONI, J.; DONOVAN, J.
JURISDICTION	New Hampshire
DECIDED	January 18, 2023
DOCKET	Housing Appeals Board No. 2021-0570
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Town of Amherst appealed Housing Appeals Board orders vacating the Town planning board's denial of the respondents' subdivision and site plan application and remanding for further proceedings.
STANDARD OF REVIEW	Under RSA chapter 541, the Supreme Court will not set aside a Housing Appeals Board order except for errors of law or unless, by a clear preponderance of the evidence, the order is unjust or unreasonable. The Board's factual findings are prima facie lawful and reasonable and are reviewed for support by competent evidence, without reweighing the evidence. Interpretation of a tribunal's order is reviewed de novo. The Housing Appeals Board may reverse or modify a planning board decision only for legal error or when the decision is unreasonable under the balance-of-probabilities standard in RSA 679:9, II.

PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential unless later limited, overruled, or abrogated.
PARTIES	Town of Amherst v. Migrela Realty Trust II, GAM Realty Trust

TOPICS

judicial review of agency action zoning municipal law administrative law appellate procedure

PRACTICE AREAS

administrative law municipal law land use appellate procedure real estate

QUESTIONS PRESENTED

1. Whether the Housing Appeals Board erred in finding unreasonable the planning board's denial based on concerns about compliance with state and federal age-restricted-housing requirements.
2. Whether the Housing Appeals Board erred in finding unreasonable the planning board's denial based on the project's alleged failure to preserve a rural aesthetic.
3. Whether the Housing Appeals Board improperly substituted its judgment for that of the planning board and failed to apply the required deferential standard of review.

HOLDINGS

1. The Housing Appeals Board did not act unjustly or unreasonably in vacating the planning board's denial based on age-related legal-compliance concerns where the board had not completed the customary review of the proposed condominium documents and compliance could be addressed through those documents and approval conditions.
2. The Housing Appeals Board reasonably determined that the planning board could not deny the subdivision and site plan application on the asserted rural-aesthetic and density grounds because those considerations had already been addressed when the conditional use permit authorizing density of up to 54 units was granted.
3. The Town failed to demonstrate that the Housing Appeals Board substituted its judgment for the planning board's or failed to apply the statutory standard of review.

KEY QUOTATIONS

“We cannot say that it was unjust or unreasonable for the HAB to conclude that the Board’s failure to follow this customary practice, and instead, to deny the application based on its own concerns about legal compliance, was unreasonable.” (4)

“In other words, the HAB observed that “Denying a project using the undefined concept of ‘rural aesthetics’ is misplaced,” but nevertheless concluded that “the grant of the CUP ‘for up to 54 units’ satisfied this ‘undefined concept.’” (7)

FACTUAL BACKGROUND

Migrela Realty Trust II and GAM Realty Trust sought approval for a housing project in Amherst. The project had previously received a conditional use permit under the Town's Integrated Innovative Housing Ordinance authorizing increased density of up to 54 units; the later subdivision and site plan proposal was reduced to 49 units, including 14 age-restricted units and 35 unrestricted units. The planning board denied the application based on concerns about compliance with elderly-housing laws, the absence of sufficient separation or governing controls between age-restricted and unrestricted units, and preservation of the Town's rural aesthetic. The planning board denied the application before Town Counsel reviewed the proposed condominium documents.

PROCEDURAL HISTORY

The respondents applied for subdivision and site plan approval for a 49-unit housing project that included 14 age-restricted units. The Town planning board denied the application based on perceived conflicts with state and federal elderly-housing requirements and failure to preserve a rural aesthetic. The Housing Appeals Board vacated the denial and remanded to the planning board, then denied the Town's motion for reconsideration. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Housing Appeals Board's remand directives remained in effect. On remand, the planning board and applicant were to collaborate regarding state and federal age-restriction rules, the applicant was to provide complete condominium documents addressing the mixed-age-housing concerns, and the planning board was to review those documents before voting again. A new vote could deny the application only for legitimate unsatisfied requests, noncompliance with zoning ordinances or planning regulations, or valid concerns not addressed, or could approve it with customary and reasonable conditions.

CASES CITED

- Appeal of Chichester Commons, LLC, 175 N.H. ___, ___ (decided Sept. 2, 2022) (slip op. at 4)
- Guy v. Town of Temple, 157 N.H. 642, 649 (2008)