

HOUSING APPEALS COMMITTEE
Adams Housing Authority

Decision # **81-09**
Appellant: **Adams Housing Authority**
Appellee: **Board of Appeals of the Town of Adams**
Date: **April 1, 1982**
Page 1

I. STATEMENT OF PRIOR PROCEEDINGS

The Adams Housing Authority, a public agency [1], on July 1, 1981 [2] submitted an application to the board of Appeals of the Town of Adams for a Comprehensive Peat to construct thirty-two units of elderly housing by rehabilitation of the property known as Berkshire Adams Inn.

The application was filed under the provisions of Chapter 774 of the Acts of 1969 [3]. Subsidy financing was provided by the Commonwealth, under the "667" elderly housing program.

The Board held a hearing on July 1 and Act 26, 1981, and on September 1, 1981 issued its decision denying the comprehensive peat. From the decision, the Authority appealed to the

[1] Hereinafter variously referred to as "the Authority", the "Petitioner" or "the Appellant"

[2] Hereinafter variously referred to as "the Board", "the respondent", or "the appellee"

[3] Now G.L. c. 40B, 55 20-23, hereinafter referred to as "the Statute".

Page 2

Housing Appeals Committee (Committee).

The Committee held a site visit and conducted a hearing on the appeal. As is required by the Statute, the hearing was conducted as an adjudicatory hearing. Full right to cross-examination was allowed, and a transcript was kept.

II. ISSUES

The issues provided in section 23, that on this appeal, the only issue before the committee is whether or not the Board's

denial was consistent with local needs". That tea is defined in section 20 of the statute, and further in the Hanover case [4].

A denial is "consistent with local needs" when the town has met any one of three mathematical criteria, as follows:

- [1] Subsidized housing already exists in more than 101 of its total housing Units;
- [2] Or upon sites which comprise more than 1 1/2 % of its total land available for housing (with certain statutory exemptions);
- [3] Or the proposed project will result in the construction of subsidized housing on more than 3/10 of 11 of such total land (or 10 acres whichever is larger), in any one calendar year.
- [4] Board of Appeals of Hanover V. Housing Appeals Committee and Board of Appeals of Concord V. Housing Appeals Committee; 363 Mass. 339, 294 N.E. 2nd 393.

These two cases were decided together. The decision is the leading decision of Chapter 774. Referred to hereinafter as the "Hanover Case".

Page 3

The appellant submitted evidence relating to total numbers of units, numbers of subsidized Units, total land area and the area devoted to subsidized housing. We find that fewer than five percent of all housing units in Adams are subsidized; that of the eligible land in Adams, less than .05% is occupied by subsidized housing; and that the proposed building site is less than three-tenths of one percent of the eligible total and considerably less than ten acres, and that this construction will not exceed the statutory limit in a calendar year.

We rule, therefore, that the town has not any one of the three mathematical criteria set out in section 20.

The town may still show that its denial is "consistent with local needs" by proving that health or safety hazards exist, or valid planning objectives, of gravity sufficient to outweigh the regional need for low and moderate income housing considered with the number of low income persons in Adams. It was on this ground that the town based the for defense of its decision to deny the comprehensive permit.

The Board, in its denial, stated that the hazardous material coordinator for the town has submitted a letter stating opposition due to the frequent shipments of this type in the area and the difficulty of evacuation in an already congested area. In the

hearing on the appeal before the Committee no convincing evidence was submitted from which a finding can be made that any particular hazard from dangerous material exists in the daily traffic flow in front of this site.

The Board, however, adduced evidence from which is sought to convince the Committee that traffic conditions in front of this building, and the danger of accidents to the elderly persons who would occupy the site, presented hazards of gravity sufficient to outweigh the statutory and local need.

Page 4

A. NEED

In weighing this alleged hazard and the need must first find whether there exists a "regional need for low and moderate income housing considered with the number of low income persons" in Adams, to satisfy the requirements of the statute.

Regional need for such housing is shown by the Department in its Housing Needs Study which tracks such need on a continuous basis. There statistics document a need in the Berkshire County Regional Planning District, which includes Adams, of 4494 elderly units and 3771 fly Units for a total of 7655 low and moderate income housing units. No evidence was submitted to controvert the presumption of regional need established by these statistics [5].

The petitioner introduced evidence on the subject of local need through the testimony of the Executive Director of the Adams Housing Authority. This evidence showed 58 persons on the list of elderly housing, 123 on the list for fly housing, 171 on the waiting list for rental assistance under the state "707" program, and 134 on the waiting list for Federal "Section 8" rental assistance.

The Board in its decision said of solar evidence presented at its hearing that these "statistics on waiting lists probably contained duplication" (underlining ours). Through crossexamination of the Housing Authority Executive Director, the Board sought to attack this list on the same ground. While there is a possibility that there may be some slight duplication, the evidence clearly establishes the existence of local need for low and moderate income housing in Adams.

We rule that there has been compliance with the Statutory requirement of "regional need for low and moderate income housing considered with the number of low income persons" in Adams.

[5] See 760 CMR 30.02.

Against this need we weigh "the need to protect the health or safety of the occupants of the proposed housing, or of the residents..." of Adams and any valid planning objectives alleged by the respondent. No such planning objectives were raised. The Board, however, asserted that the hazard to the proposed occupants from the traffic at this site, presented unacceptable risks to the health or safety of these occupants, which outweighed the need. It was with this issue of alleged traffic hazard that the hearing was primarily concerned.

B. THE TRAFFIC ISSUE

On this issue the petitioner submitted the testimony of its traffic expert, summarized in the report of Gordon E. Ainsworth Associates, the traffic experts, which summarizes its opinion that "the transformation of the Berkshire Adams Inn into housing and restaurant facilities will not deter the existing traffic pattern significantly". Further that "the location of the project is ideally situated within the central business district. The locality of the site enables residents to circulate through the downtown area with ease without the use of motor vehicles".

Under the statute, the Board, in arriving at this decision, must seek input for other concerned municipal agencies. Among others, the Board describes his input as follows:

"The Chief of Police was also asked for input. His feeling was that if parking was not reduced, no problem would be created, however, the Housing Authority has stated an intent to reduce parking".

Testimony from Fred Carivan, the professional civil engineer on the staff of Gordon Ainsworth Associates, stated that there would

be slight impact on the traffic pattern in the creation of housing and a restaurant on the site. He testified further that on a scale of A & F, the intersection near which the site is located would rate a A.

Against this the Board, through Captain Ballardini of the Police Department, introduced statistics concerning traffic accidents near the intersection in all directions from the proposed site for the period from January 4, 1980 to October 30, 1981.

There were no pedestrian accidents at the intersection itself.

One pedestrian accident occurred when a driver opened the door of a vehicle parked north of the intersection. Another occurred a tenth of a Mile away, at the Liberty Street intersection, which is nearer to another housing site previously approved by the Board.

Sixteen of the remaining 48 accidents occurred in the parking lots of McDonalds, the Adams Supermarket, and the South Adams Savings Bank. Eight of the remaining thirty-two occurred at the Liberty Street intersection, a tenth of a mile away. As indicated, est of these accidents were "fender-benders" involving slight property damage and no personal injuries. The Ainsworth report showed a traffic count peak high between 7:00 - 9:00 am. and 3:00 -5:00 pm., a period which corresponds to a low for pedestrian traffic. Twelve of the "fender-benders" occurred during this period, and five accidents occurred after midnight.

We cannot conclude from an examination of this evidence that a pattern of traffic hazard exists of gravity sufficient to outweigh the demonstrated housing need. Particularly, the schedule of traffic accidents, which is complete to the point of reporting every scratched fender, does not report a single accident at this admittedly busy intersection, of severity sufficient to give us pause. Instead, bearing in mind that this is the main street in Adams, we see a routine traffic pattern under excellent local control.

Page 7

The Gordon Ainsworth report suggested a number of safety arrangements that could be installed to deal with any unacceptable hazard for this project. Since we do not find that this project

will entail any such hazard, we make no further provision with respect thereto. Should such a hazard develop in the future, it will be the duty of the municipality to provide for it, just as it must provide for the schooling of an added population. Certainly the Board's position, as stated in its decision, that "neither the Adams Housing Authority nor the Zoning Board of Appeals are in a position to guarantee rectification of [traffic] problems" cannot be a basis for denial of a comprehensive permit under the statute. Nor can the recommendation of the Selectmen "to keep the Adams Berkshire Inn as a commercial space and not subsidize[d] housing".

We rule that existing traffic conditions do not constitute a health or safety hazard of gravity sufficient to outweigh the regional need for low and moderate income housing considered with the number of low income persons in Adams.

III. FINDINGS, RULES AND ORDER

In view of our subsidized findings and ruling, and upon a

review of the whole record, under the provision of G.L., c. 40B s. 20-23, the Housing Appeals Committee finds that the decision of the Board of Appeals of the Town of Adams was Unreasonable and not consistent with local needs.

The decision of the Board of Appeals of the Town of Adams is hereby vacated and the Board is directed to issue a Comprehensive Permit to the appellant in accordance with the appellant's application.

Said Comprehensive Permit shall provide for the construction or rehabilitation of a housing development on the locus which is the subject of this appeal in the approximate number of Units and design as presented before the Housing Appeals Committee, subject to the

Page 8

following conditions:

- (1) Construction shall in all particulars be in accordance with all present applicable zoning and buildings by-laws for the construction of multi-family buildings, except those which are not consistent with this decision. The subsidizing agency or agencies may impose requirements for compliance with any other recognized building codes or portions of such codes and, in the event of conflict, the requirements of the subsidizing agency or agency shall govern.
- (2) No construction shall commence until detailed construction plans and specifications, shall have been approved by the subsidizing agency or agencies and such agency or agencies have granted a construction mortgage loan and subsidy financing for the project has been committed.
- (3) The design of the development is to be subject to such changes in site and building design, type and location of units, and amenities, as are recommended or required by the subsidizing agency or agencies.
- (4) Prior to final financial commitment, the subsidizing agency shall, as part of its project review, comply with the applicable requirements of the Massachusetts Environmental Policy Act, G.L. c. 20, s 61-62, insofar as such compliance is required.
- (5) If anything in the decision of the Housing Appeals Committee would seem to permit the building or operation of such housing in accordance with standards less safe

than

Page 9

the applicable building and site plan requirements of the subsidizing agency or agencies, the standards of such agency shall control.

HOUSING APPEALS COMMITTEE

Maurice Corman, Chairman

End Of Decision