VERMONT SUPERIOR COURT
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ENVIRONMENTAL DIVISION
Docket No. 22-ENV-00124

Dousevicz, Inc. CU & Site Plan Approval	**MERITS DECISION**

In this matter, Dousevicz, Inc. (Applicant) appeals a decision of the Town of Castleton (Town) Development Review Board (DRB) granting, with conditions, its application for conditional use and site plan approval for the construction of a new 23,500-square-foot, 99-unit senior living facility, separated into independent living, assisted living, and memory care apartments, with associated infrastructure and landscaping, to be located on Sand Hill Road, Castleton, Vermont (the Project). Neighbors Kathleen Culpo, Lara Beth Desjardins, Meredith Fabian, John Gillen, Mary Lee Harris, Wayne E. Pickett, Emilio Rosario, and John G. teRiele, Jr. (together, Neighbors) have appeared before the Court as interested parties.

This matter was first heard by Hon. Thomas S. Durkin (Ret.) on April 11, 2024. At that merits hearing, Judge Durkin issued his ruling from the bench and issued a written judgment order the following day. In so ruling, Judge Durkin concluded that the facility constituted a "multifamily dwelling unit" and not a "nursing home" as those terms are defined by the Town of Castleton Zoning Ordinance (the Ordinance) by relying upon certain Vermont statutes defining various licensed senior living facilities and determining whether the Project fit within the state's definition of "nursing home." The Court also concluded that the Project satisfied the Ordinance's "multifamily dwelling unit" definition because most units would have full kitchens and/or kitchenettes. Thus, the Court granted Applicant's request for a conditional use permit, subject to the DRB's unappealed conditions, and struck the condition prohibiting the memory care unit and the condition requiring each apartment to be equipped with a kitchen. Neighbors appealed that decision to the Vermont Supreme Court.

On appeal, the Vermont Supreme Court concluded that the Court did not err in striking the kitchen condition from the application with respect to the assisted living and independent living units. In re Dousevicz, Inc. CU & Site Plan Approval, 2025 VT 22, ¶ 27. The Vermont Supreme Court further concluded that the Court did not properly apply the Ordinance to the application when

determining whether the memory care unit falls within the definition of a "nursing home" or a multiple family residential use under the Ordinance and did not make sufficient findings on that issue. Id. at ¶ 20. The decision further directed the Court on remand to determine whether the memory care unit also satisfied the kitchen requirement of the Ordinance. Id. at ¶ 27.

Thus, the matter is before the Court on remand.[1] Following the Court's initial status conference on remand, the parties filed a stipulated scheduling order. See Stipulated Scheduling Order (filed June 13, 2025). This scheduling order bifurcated the matter before the Court, allowing briefing on the issues presented in the Vermont Supreme Court's remand to be completed by August 29, 2025, and depending on the Court's ruling on those issues, potential additional procedure to address Applicant's Fair Housing Act claims. Id. In their response to Applicant's initial brief, Neighbors requested a hearing to reopen the evidence in this matter on remand. This Court held a hearing on this request on September 22, 2025. The Court denied the request on the record at that hearing, at which point the Court took this matter under advisement.

Factual Findings

1. Applicant owns property on Sand Hill Road, Castleton, Vermont (the Property).

2. The Property is located in the RR-2A Zoning District as that term is defined by the Ordinance.

3. Applicant seeks approval as a Planned Unit Development (PUD) to construct a 23,500 square-foot, 4-story building containing 99 senior living apartments, and associated infrastructure (the Project).

4. Applicant has not yet received state licensing for the Project, but will seek licensing from the Department of Aging to operate as an "assisted living residence" as that term is defined by the State.

5. The Project will contain 50 independent living apartments, 31 assisted living apartments (the assisted living unit), and 18 memory care apartments (the memory care unit).

6. The assisted living apartments with have kitchenettes with a microwave oven, but not full ovens and stove tops. Assisted living residents would have access to a shared kitchen.

7. The memory care apartments would not have any cooking appliances in-unit for safety reasons. Memory care residents would have access to a shared kitchen only under supervision again for safety purposes.

[1] Hon. Joseph S. McLean was initially assigned this matter on remand. By a June 4, 2025 Entry Order, issued after the Court's initial post-remand status conference, Judge McLean disqualified himself from presiding over the matter due to a conflict. At this time, Judge Walsh was assigned to this docket.

8. Residents in the assisted living and memory care units would largely have meals provided to them and eat in a shared dining area within the Project.

9. Residents in the memory care unit typically suffer from some form of neurodegenerative disease and the unit has increased security measures for resident safety.

10. Staff at the Project are able to communicate with a resident's medical care team, which exists outside of the Project and Applicant's operations, regarding a resident's condition and coordinating care plans as needed.

11. Applicant does not provide acute nursing care to its residents, either in the memory care units or the assisted living units.

12. The care services provided to the memory care residents includes assistance with daily activities such as dressing, bathing and/or personal hygiene, medication management and transportation to medical appointments.

13. Included in resident's services is 60 minutes of personal care assistance per day. Residents may pay for additional time with staff that is allotted in 30-minute increments during which the same types of services may be provided.

14. Applicant's staff does not provide skilled nursing care such as inserting tubes, providing acute medical care, or administrating intravenous tubes.

15. Residents have their own primary care providers who are not employees of Applicant and do not work at the Project.

16. Applicant will not prohibit residents from having visiting nurses or home health aides come to their respective apartments for services. These third parties are not a part of Applicant's business or operations and are instead paid for privately by a resident should they seek to retain those services.

17. The level of care in the memory care unit is largely the same as that provided in the assisted living unit, with added security measures for safety.

18. The memory care and assisted living units have identical staffing arrangements. In both units, three aides and one nurse will be on site in shifts from 7:00 AM to 11:00 PM daily. From 11:00 PM to 7:00 AM two aides will be on site and one nurse will be off-site, on call.

19. A life enrichment director, health service director, and an executive director will also be in the building during the day.

20. The general purpose of the Project is to provide a place for seniors to "age in place" over time as needs for assistance may change.

21. If a resident at the Project develops a need for a level of care that the Project does not provide, Applicant works with the resident, their family, and resident's care providers to determine alternative care arrangements. These alternative care arrangements may include moving the resident out of the Project and into a hospital or nursing home at which they can receive a higher level of nursing and/or medical care.

22. Applicant will seek licensing from the State Department of Aging and Independent Living as an "assisted living residence" as that term is used in the applicable state regulations.

23. Under those applicable state laws, Applicant could seek a variance to provide a higher level of care than what is allowable at an assisted living residence under the regulations to a specific resident.

24. Applicant does not seek to generally operate at a higher level of care than would be allowable under its license should it ever decide to seek a variance for any specific resident.

25. A variance is limited in scope to a specific resident for the duration of time the resident is under Applicant's care. Should Applicant seek a variance at some point in the future, it would not allow Applicant to provide a higher level of nursing care than it is licensed to perform for other residents or generally throughout the Project.

Discussion

On remand, this Court is tasked with determining first whether the memory care unit constitutes a "nursing home" or a "multifamily dwelling," as those terms are defined in the Ordinance. If the Court concludes that the unit meets the definition of a multifamily dwelling generally, then the Court must determine whether the unit complies with the cooking requirements of that definition.

This analysis requires the Court to interpret the Ordinance. When interpreting a zoning bylaw, the Court's goal is to effectuate the intent of the drafters, first by looking at the plain meaning of the relevant regulation and "the whole of the ordinance." In re Tyler Self-Storage Unit Permits, 2011 VT 66, ¶ 13, 190 Vt. 132 (quotations omitted). Our paramount goal is implementing the intent of the drafters. Morin v. Essex Optical/The Hartford, 2005 VT 15, ¶ 7, 178 Vt. 29. We will therefore "adopt a construction that implements the ordinance's legislative purpose and, in any event, we will apply common sense." In re Laberge MotoCross Track, 2011 VT 1, ¶ 8, 189 Vt. 578; see also In re Bjerke Zoning Permit Denial, 2014 VT 13, ¶ 22 (quoting Lubinsky v. Fair Haven Zoning Bd., 148 Vt. 47, 49, 195 Vt. 586 (1986)) ("Our goal in interpreting [a zoning regulation], like a statute, 'is to give effect to the legislative intent.'"). Moreover, we will not interpret zoning regulations in ways that lead to irrational results. See Stowe Club Highlands, 164 Vt. 272, 280 (1995) (refusing to interpret regulation such that it leads to irrational results). Finally, because zoning regulations limit common law property

rights, we resolve any uncertainty in favor of the property owner. Bjerke Zoning Permit Denial, 2014 VT 13, ¶ 22. With these provisions of interpretation in mind, we turn to the applicable Ordinance provisions.

The Project is proposed as a PUD. PUDs are a permittable use in the RR-2A District. In a PUD, "[a]llowed uses include . . . multiple-family dwelling units." Ordinance § 417. Multiple family residential use is defined by the Ordinance as

> A building or portion thereof used for occupancy by three (3) or more families living independently of each other, and doing their own cooking in the building, including but not limited to apartments, group houses and row houses. A fraternity and/or sorority house shall be considered a multiple family residence.

Ordinance, Art. IX ("Residential, Multiple Family).

Of that non-exhaustive list of types of housing which would meet the definition of "multiple-family" housing, the only use defined by the Ordinance is "group home." A group home is defined as:

> Any residential facility operating under a license or registration granted or recognized by a state agency, that services more than eight unrelated persons, who have a handicap or disability as defined by 9 V.S.A. §4501, and who live together as a single housekeeping unit. In addition to room, board and supervision, residents of a group home may receive other services at the group home meeting their health, developmental or educational needs. . . .

Ordinance, Art. IX ("Group Home").

A "nursing or rest or convalescent home" (hereinafter referred to as "nursing home") is not listed as an allowable use in a PUD. A "nursing home" is defined by the Ordinance as "[a] place, other than a hospital which maintains and operates facilities, for profit or otherwise, accommodating two or more persons unrelated to the home operator, who are suffering from illness, disease, injury or deformity and require in house nursing care." Ordinance, Art. IX ("Nursing . . . Home").

Applicant asserts that the Project, inclusive of the memory care unit, constitutes a multiple family dwelling such that it may be approved as a PUD because the care provided is akin to that contemplated by the "group home" definition and that the level of care provided is insufficient to meet that contemplated under the "nursing home" definition. Conversely, Neighbors assert that the Project, with the memory care unit, is a "nursing home" and may not be permitted as a PUD, largely because they assert it will provide "in home nursing care." For the reasons set forth herein, the Court

concludes that the Project fits within the definition of "multiple-family" housing and may be permitted as a PUD.

The care services provided in the memory care unit include assistance with daily activities such as bathing, dressing and/or personal hygiene, medication management and transportation to medical appointments.[2] The memory care unit will be staffed by three aides and one nurse, in shifts, from 7:00 AM to 11:00 PM. From 11:00 PM to 7:00 AM, two aides will be on site, with one nurse on call off-site. Included in residents' services are 60 minutes of personal care assistance per day, which includes assistance with hygiene and dressing, along with medication management. Residents may pay for additional time with staff in 30-minute increments. This additional time is typically used for additional personal care services. The staff does not provide skilled nursing care such as administering intravenous tubes, inserting tubes, or providing acute care.[3] Residents at the Project will have their own primary care providers, who do not work at the Project or Applicant.[4]

The Court concludes that this level of care is consistent with that allowable under the Ordinance's definition of multiple family residential use. As set forth above, a group home is identified as a multiple family residence. The Ordinance's definition of "group home" contemplates some level of services within a multiple-family dwelling that meet "health" and "developmental" needs. See Ordinance, Art. IX ("Group Home"). Thus, some level of health care and/or developmental care is, by the Ordinance's plain language, allowable within a multiple family dwelling and, by extension, a PUD.[5] This can be contrasted with the definition of "nursing home," a use not allowable as a PUD and that includes "in home nursing care." Ordinance, Art. IX ("Nursing Home"). Thus, there is ambiguity in the Ordinance as to the level of care allowable within a PUD that must be resolved in Applicant's favor. See Bjerke, 2014 VT 13, ¶ 22. We therefore conclude that the level of care provided, which largely consists of personal care and assistance along with medication management, is consistent with the definition of multiple family residential use.

The Project will seek licensing as an assisted living facility under State regulations related to the licensing of various elder care facilities. The fact that the Project could seek a variance subject to

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[2] This is in addition to other services such as meals and snacks, housekeeping, linen and laundry services, apartment maintenance and general social and life enrichment activities.

[3] Neighbors argue that the Project will not prohibit traveling nurses or home health care nurses from visiting a resident at their request. That they will not prohibit third parties from performing various services does not convert the Project and Applicant's use of the Project to a nursing home.

[4] This description of care and staffing level is the same as that provided in the assisted living units.

[5] It is for this reason that, to the extent that Neighbors assert that any level of health care is impermissible, that assertion must fail as being contrary to the Ordinance's plain language.

those regulations in the future that may allow it to provide a higher level of care does not alter the Court's conclusion. First, this assertion is speculative. It asks the Court to conclude that this Project as presently applied for does not comply with the Ordinance because it may be possible for Applicant to apply for and receive the ability to provide the level of care allowable at a nursing home, as defined by the State regulations, at some unknown time in the future. Applicant does not seek a zoning permit to provide that level of care and there is no way of knowing whether it would need to seek a variance under the applicable state regulations at any point in time. Further, any such variance is limited in scope to the specific resident and the time period that resident is under Applicant's care. The application before the Court does not seek to provide the level of care that would be allowable under a variance obtained from the state under separate regulations and, therefore, the Court will not alter its conclusions with respect to the application before it based a hypothetical situation in which Applicant may seek a variance for a specific resident in the future.

Having reached the conclusion that the level of care at the Project is consistent with the Ordinance, we now turn to the cooking component of the definition of "multiple family" residential use. As set forth above, multiple family residential use requires that the occupants "do[] their own cooking in the building." Ordinance, Art. IX ("Residential, Multiple Family"). The Vermont Supreme Court has upheld this Court's previous decision striking the requirement that the assisted living and independent living units have in-unit kitchens. See Dousevicz, 2025 VT 22, ¶ 27.

The memory care units do not have kitchens, kitchenettes or microwave in-unit. Instead, meals would be provided in a shared dining area. But for the lack of a microwave in-unit, this is the same provision of meals as within the assisted living units. Generally, however, memory care residents will not be allowed in kitchen areas unsupervised. Neighbors argue that the memory care residents would not be allowed to do their own cooking because meals are generally provided to them and they lack access to cooking facilities in-unit. The Court declines to read the Ordinance so narrowly.

There is kitchen capacity within the Project for the memory care residents. But for Applicant's policies of disallowing those residents from accessing that area unsupervised or not allowing in-unit cooking appliances, there can be no dispute that the capacity for each residents' cooking is within the building. The Court interprets the Ordinance's definition of multiple family residences as addressing the capacity of a building to allow for occupants to do their own cooking, not whether, for any reason including policy of the building's operator, the resident may or will actually do such cooking.

For example, group homes are specifically identified as being multiple family residences serving those with handicaps or disabilities as set forth in 9 V.S.A. § 4501 living as a single

housekeeping unit. See Ordinance, Art. IX ("Group Home"). Section 4501 sets forth a broad definition of such handicaps or disabilities, some of which may significantly limit or prohibit the ability of a person to do their own cooking or have unsupervised access to a kitchen facility, despite such facilities being on-site. The Court can reasonably conceive that some group homes may limit or prohibit unsupervised kitchen access and/or cooking to properly serve the needs of those residing in the group home. That they will not, largely, be the individuals doing the cooking does not negate that their cooking, meaning the meals that they will be eating, could be done within the building. Despite this potential limitation as to kitchen access based on the needs of those served, the Ordinance identifies group homes as multiple family residences.

This is analogous to the facts presented in this case. There is kitchen capacity in the building for residents to do their own cooking. That Applicant, as the operator of the Project, and likely for the safety of the residents, prohibits unsupervised kitchen access and does not provide in-unit cooking appliances does not change that fact. Thus, we conclude that the memory care unit complies with the cooking requirement of the Ordinance's definition of multiple family residential use.

Conclusion

For the foregoing reasons, the Court concludes that the Project, inclusive of the memory care unit, constitutes a multiple-family residential use that is permissible as a PUD. This is because the level of care provided is consistent with the Ordinance's definition of multiple-family residential use and the Project provides adequate facilities for cooking on-site. The Court therefore strikes the DRB's conditions prohibiting the memory care units and requiring in-unit kitchens in all units.

This concludes the matter before the Court. A Judgment Order accompanies this Decision. Electronically signed this October 16, 2025 pursuant to V.R.E.F. 9(D).

Thomas G. Walsh, Judge
Superior Court, Environmental Division