

KIRKPATRICK LAW LLC
120 BLOOMINGDALE ROAD
WHITE PLAINS, NEW YORK 10605
(914) 997- 2747
jkirk@kirklawllc.com

March 11, 2019
Marketstat@aol.com

Bob Galvin
Tarrytown Village Planner
One Depot Plaza
Tarrytown NY 10591

RE: Artis Senior Living SEIS

Bob:

Attached as you requested are additional materials to make the SEIS complete. It is our intention to add them to the existing SEIS binders as addenda, at Appendix W.

Don and I will be at the staff meeting Thursday morning to answer any questions. If anything else is needed, I hope that you will not hesitate to give me a call.

Sincerely,



John Kirkpatrick

Cc: Don Walsh

Introduction

Request has been made by the Planning Board to respond regarding three additional issues for study in the Supplemental Draft Environmental Impact Statement for the Artis Senior Living proposal. These are: the affordability of assisted living and other forms of senior housing; the Con Ed gas moratorium; and alternatives.

Affordability of Assisted Living

As noted in the Planning Board memorandum dated February 18, 2019, assisted living facilities and other forms of senior housing (age restricted, independent living, etc) are being constructed and proposed in various communities in Westchester County. These facilities provide necessary and needed housing and services in response to the rapidly increasing elderly population. Such services can however be expensive.

As applied to the Artis Senior Living proposal, there needs to however be understanding of the differences among facilities commonly referred to as "assisted living" and the memory care facility Artis is proposing on the subject property. As well as the many differences among states addressing such facilities. Those differences include type of housing, levels of care, certificate of need, licensing, services offered, costs, legislative solutions and municipal governance.

Licensed versus unlicensed: "Assisted living" is a type of housing that encompasses several possible housing models, including independent living with no care or services, independent living with services but no care, and semi-independent living with both services and care. The first two are not licensed by the State of New York, or in fact by almost any other state. This is because independent living with no care or services is simply housing like any other form of housing, and most closely resembles an apartment building with individual dwelling units. In the same vein, independent living with services but no care is most similar to a boarding or lodging house: rooms with meals. These, and almost all housing, in almost all states, do not require any licensing by State Health Departments. For instance, single-family housing, boarding houses, multifamily housing, cooperatives, condominiums, two family houses, etc. operate strictly under the NYS Building Code. No license or permission is required by the NYS Health Department.

True assisted living, as popularly understood, describes a type of housing and care providing semi-independent living for those who may only need some meals and some assistance in the activities of daily living, such as feeding themselves, bathing and grooming, dressing, toileting, walking, etc. No medical care is included, but it does require licensing by the New York Department of Health.

The other categories of housing that require licensing by the New York Department of Health include nursing homes, continuing care retirement communities that provide a spectrum of care from independent living to assisted living to nursing care, and specialized care facilities for those needing diabetes care, dementia care, or care with memory loss such as Alzheimer's.

Cost: the cost of housing alone varies widely, and for many people it is simply not affordable. Luckily, there are programs to assist with the cost of housing alone, including section 8 vouchers, affordable housing buildings and municipal requirements to include a percentage of units as affordable units.

These are however all mechanisms that address strictly the costs of housing itself, which is a known and predictable number, even allowing for inflation, for any given building. Once the cost of health care is added, the number is no longer predictable. Costs of health care, person-to-person and infirmity to infirmity, vary widely and can increase at an exponential rate. Luckily, if a resident needs only assistance with activities of daily living, that typically remains affordable to the individual. In many cases, family members provide it.

Making provision however for affordability of health care costs beyond assistance with activities of daily living remains a serious problem.

Addressing the Cost: As was noted in the materials accompanying the Planning Board memorandum, the issue has been addressed at the state-wide level in other states.

As noted by Michael D. Binette, AIA in his article in “McKnight’s Senior Living:”

New Jersey, for example, offers a program called Managed Long Term Services and Supports, which pays the cost of nursing home care for those unable to afford it. Crucially, there are no enrollment caps; if you need help and meet Medicaid requirements, you can get assistance. What’s more, New Jersey also provides partial state funding for some assisted living facilities through the Congregate Housing Services Program, which serves seniors who aren’t eligible for Medicaid.

He also cites a 115-unit senior affordable assisted living community in Indiana which combines 1)housing for seniors eligible for Medicaid and who qualify for some level of assisted living services, and 2)funding from low-income housing tax credits and tax-exempt bonds from the Indiana Housing and Community Development Authority.

In both these examples, note that the key lies in addressing the issue at the statewide level. This means that facilities for the elderly will be built in the communities where they are needed instead of strictly in the communities offered the least restrictive economic conditions. Otherwise, developers will almost certainly gravitate away from the communities where the need is great and favor those communities that ask the least. Statewide regulation solves this problem. In addition, statewide regulation addresses the problem of cost and provides solutions.

Type of Housing: The below definition of Alzheimer’s/Dementia Care Housing should be corrected, because it uses the term “dwelling unit.” A “dwelling unit” as properly defined (see Tarrytown Code §305-5) is a “building or portion thereof providing complete housekeeping and sanitary facilities for one family.” The residential portion of the facilities in Alzheimer’s/Dementia Care Housing are bedrooms with bathrooms, but without “complete housekeeping facilities for a family” (i.e., without a kitchen area and a dining area).

“Alzheimer’s/Dementia Care Housing: A residential facility operated by an entity licensed by the State of New York to operate an assisted living residence which combines dwelling units, communal dining, routine protective oversight, personalized assistance and supportive services, and provides 24-hour care for people suffering from Alzheimer’s disease or Alzheimer’s – like disorders resulting in dementia, but who do not need the skilled medical care provided by a nursing home or convalescent care facility.”

The term as used in the proposed Floating/Overlay Zone should therefore be changed from “dwelling unit” to “bedroom/bathroom unit.”

Municipal Governance: Determining eligibility for admission into lower-cost units in all levels of assisted living is extremely complicated, because almost all applicants come with assets. It would require the creation of a municipal agency to address the following for each applicant:

1. Asset Review - review at a professional level of an applicant’s assets, including examination of the following: several years of tax returns and bank accounts to determine not only balances but also transfers to family members; social security and disability income; retirement accounts; fixed assets such as houses; and investments;
2. Need Review – yearly or more often review of a resident’s medical needs and fair payment for same;
3. Annual Asset Review – a repeat of the initial asset review to determine that there have been no changes such as inheritances.

Conclusion: There are mechanisms that address strictly the costs of housing itself, which is a known and predictable number, even allowing for inflation, for any given building. It is therefore more than sensible to address the cost of housing alone with municipal requirements to include a percentage of units as affordable units. Expanding this to facilities that offer housing plus care is not however feasible for an individual municipality. The solution lies with Statewide regulation.

Con Ed Gas Moratorium

The Artis Senior Living project of Tarrytown was registered with con Ed ahead of the stated deadline for inclusion in the approved projects to which the proposed moratorium would not apply. Furthermore, although con Ed is considering adding a requirement that all duly registered projects be completed in two years or less, this is not yet a firm requirement. Even so, it is unlikely to be a problem.

Nevertheless, Artis is examining other alternatives to natural gas. Unfortunately, neither wind nor solar are practicable at this location due to shading, limited site area and, particularly for wind, aesthetics.

Alternatives

Please see the attached brief memo prepared by Mark Fry that explains the alternatives reviewed. Note particularly with regard to a 60,000 square foot office building alternative that it a building of that size and parking need was only possible before the 2007 approval was surrendered and the lot subsequently re-subdivided.