

# WADLEIGH, STARR & PETERS, P.L.L.C.

WILLIAM C. TUCKER  
EUGENE M. VAN LOAN III, of Counsel  
JOHN E. FRIBERG, Sr.  
JAMES C. WHEAT  
RONALD J. LAJOIE  
KATHLEEN N. SULLIVAN, of Counsel  
JEFFREY H. KARLIN  
DONALD J. PERRAULT  
MARC R. SCHEER  
GREGORY G. PETERS  
ROBERT E. MURPHY, Jr.  
DEAN B. EGGERT  
MICHAEL R. MORTIMER  
KATHLEEN C. PEHL

Attorneys At Law  
95 Market Street  
Manchester, New Hampshire 03101  
Telephone (603) 669-4140  
Facsimile (603) 669-6018

WWW.WADLEIGHLAW.COM

*Serving New Hampshire since 1899*

Direct Dial: (603) 206-7272  
ksullivan@wadleighlaw.com

RICHARD THORNER  
CHARLES F. CLEARY  
CHRISTINE GORDON  
JENNIFER L. ST. HILAIRE  
TODD J. HATHAWAY  
STEPHEN J. JUDGE  
STEPHEN L. BOYD  
ALISON M. MINUTELLI  
MICHAEL J. TIERNEY  
JAMES D. KEROUAC  
PIERRE A. CHABOT  
JOSEPH G. MATTSON  
EMILY G. BOLTON  
CHRISTOPHER P. MCGOWN

January 15, 2015

Jaye Trottier, Assistant Planner  
Town of Londonderry  
Zoning Board of Adjustment  
268B Mammoth Road  
Londonderry, New Hampshire 03053

Dear Jaye:

Enclosed are three Requests for Reconsideration/Motions for Rehearing on behalf of First Londonderry Associates, LLC, in the matters of Case No. 11/19/2014-4, 11/19/2014-5, and 11/19/2014-6. It seemed to make more sense to do three separate Requests, as the Board issued three separate decisions and considers each request for variance a separate application.

Also, I have enclosed a separate document, which is a Request for Reconsideration and Issuance of Decision, since the Board did not make any specific decisions with respect to our request for relief pursuant to the workforce housing section of N.H. RSA 674. This is referenced in each of the three Requests for Reconsideration, but I thought it would be a little less confusing if we also had one request specifically addressing the workforce housing statute.

Also, please note that we are retaining the right to amend pursuant to N.H. RSA 677:2 within 30 days of the filing of the Minutes of the Dec. 17, 2014 Board meeting, as the Minutes were not filed within five business days after the vote.

Please feel free to contact me if you have any questions regarding this matter.

Very truly yours,



Kathleen N. Sullivan

/sos

enclosures

cc: Michael Ramsdell, Esquire

**TOWN OF LONDONDERRY  
ZONING BOARD OF ADJUSTMENT**

**FIRST LONDONDERRY ASSOCIATES, LLC**

**CASE NOS. 11/19/2014-4, 11/19/2014-5, AND 11/19/2014-6**

**WORKFORCE HOUSING DEVELOPMENT**

**REQUEST FOR RECONSIDERATION AND ISSUANCE OF DECISION**

NOW COMES First Londonderry Associates, LLC (the “Applicant”), by and through its attorneys, Wadleigh, Starr & Peters, P.L.L.C., and, pursuant to N.H. RSA 674, respectfully requests the Zoning Board of Adjustment (the “Board”) issue a decision finding that certain provisions of the Londonderry Zoning Ordinance (the “Ordinance”) do not provide a reasonable and realistic opportunity for the development of workforce housing, including rental multi-family housing, and in support of this Request, respectfully states as follows:

1. The Applicant has submitted three requests for variances to permit construction of workforce housing (the “Project”) on the property located at 30 Stonehenge Road and 113 Hardy Road, Londonderry, New Hampshire (the “Property”). The requested variances would permit 24 unit buildings (where 16 are permitted), reduce the restriction for the workforce housing requirement to 50% of the units (rather than 75%), and phasing of the Project over three years (under the Ordinance, the Project would have to be phased over six years). The specific Ordinance sections from which relief is sought are Sections 2.3.3.7.1.1.4, 2.3.3.7.3.1.2, 1.3.3.3, and 1.4.7.2.

2. The Board has denied all three variances. The Applicant has submitted specific Requests for Reconsideration/Rehearing from the denial of each of the three variances.

3. With its Request for variances, the Applicant also submitted a Memorandum dated Oct. 21, 2014 from William C. Tucker, attorney for the Applicant (the “Tucker Memo”), which

requested relief pursuant to N.H. RSA 674:58 through 61 (the “Workforce Housing Statute”). (See “Workforce Housing Builder’s Remedy” on Page 14 of the Tucker Memo.) The Workforce Housing Statute provides a procedure for assuring that a municipality has provided “reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing.” N.H. RSA 674:59,I. The Workforce Housing Statute states that “reasonable and realistic opportunities” are “opportunities for the development of economically viable workforce housing within the framework of the municipality’s ordinances and regulations.” N.H. RSA 647:58,III.

4. Pursuant to the Workforce Housing Statute, the Applicant provided the Town with written notice of its intent to construct a project that qualified as a workforce housing project. As such, the Project is entitled to a review by the local Land Use Board with respect to the waiver of particular requirements or restrictions that would have a substantial adverse effect on the viability of the proposed workforce housing development. N.H. RSA 674:60. An aggrieved applicant can appeal to the Superior Court for a builder’s remedy (i.e., specific authorization from the court to construct the project without application of the restrictions that render the project not economically viable). N.H. RSA 674:61.

5. The Applicant provided evidence in the Tucker Memo, including reports from Russell Thibeault of Applied Economic Research (the “AER Report”) and from Mark J. Fougere of Fougere Planning and Development, Inc. (the “Fougere Report”).

6. The AER Report set forth a detailed analysis of the impact of the cost differences between constructing a project with 16 unit buildings instead of the proposed 24 unit building. The report also analyzed the impact of requiring six year phasing, rather than three, and the impact of a mandatory 75% set aside for restricted units, rather than 50%. According to the report, the project would have an additional construction cost of approximately \$4,500,000.00 if the variances were

not granted, resulting in a negative rate of return to investors of 1.9%. The net income flowing to investors would be a negative \$222,500.00 per year. Thus, the restrictions set forth in the Ordinance prevent the community from providing a reasonable and realistic opportunity for the development of workforce housing. The restrictions make the Project economically unviable.

7. The relief requested by the Applicant of the Board is identical to that requested and granted to a prior project, Wallace Farms. Based on the analyses for both Wallace Farm and this Project, it is apparent that an economically viable workforce housing development is unlikely if there is no relief from the Ordinance restrictions.

8. Notwithstanding the (a) notification that this Project is a workforce housing project, (b) the Tucker Memo, and (c) the Fougere and AER Reports, the Board failed to respond to the requested relief from the Ordinance. As a "Land Use Board" as defined in N.H. RSA 672:7, the Zoning Board of Adjustment is subject to the requirements of the Workforce Housing Statute. As such, the Board is required to review the information presented, to request more information from the Applicant if necessary to make a determination of the waiver request, and to consider the waiver for the Project as a workforce housing development. The Board did not do so.

9. The evidence presented by the Applicant requires that the waivers from the Ordinance requested by the Applicant be granted. Otherwise, the Ordinance provisions have a substantial, adverse effect on the viability of the proposed workforce housing project.

10. The Board's failure to consider any waivers under the Workforce Housing Statute have denied the Applicant its constitutional rights to due process and equal protection under the law.

11. During the public hearing held on Dec. 17, 2014 and the Board's deliberative session which followed, there was a discussion of "housing need" among the members of the

Board. The discussion included comments that the Town already had enough workforce housing. That discussion appeared to have had a significant impact on the decision of the Board to deny the requested variances. See letter of Mark J. Fougere attached as Exhibit A (“Fougere Letter”).

12. The Town of Londonderry Workforce Housing Zoning Ordinance is in place, and it is not within the Board’s jurisdiction to question whether there is a need for workforce housing under the Ordinance. Moreover, under State law, communities are obligated to provide reasonable and realistic opportunities for the development of workforce housing.

13. As set forth in the Fougere Letter, on the night of the Board meeting, the Town was not in possession of any reports or findings concluding that the Town had met its regional need for workforce housing. The Planning Board has not recommended, nor has the Town council adopted, findings concluding that the Town has met its regional need.

14. The Board was required to judge the application based upon the criteria contained in the Ordinances, the provisions of the Workforce Housing Statute, and the evidence presented. To the extent that “housing need” was a consideration by the Board, it was not a proper consideration.


15. For all the reasons set forth above, the Application requests the Board to reconsider its failure to issue a decision on Dec. 17, 2014 with respect to the need for a remedy under the Workforce Housing Statute, and grant the waivers requested pursuant to the Workforce Housing Statute, or, in the alternative, grant a rehearing with regard to the request for waivers under the Workforce Housing Statute.

Respectfully submitted,

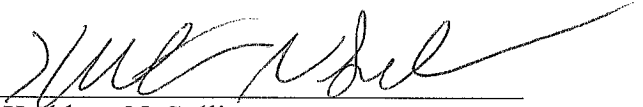
First Londonderry Associates, LLC  
By its Attorneys,

Wadleigh, Starr & Peters, P.L.L.C.

Dated: January 15, 2015

By:   
Kathleen N. Sullivan, Esquire  
95 Market Street  
Manchester, NH 03101  
(603) 669-4140

I certify that a copy of the foregoing has been forwarded to Michael Ramsdell, attorney for the Town of Londonderry Zoning Board of Adjustment.

  
Kathleen N. Sullivan

# *FOUGERE PLANNING & DEVELOPMENT Inc.*

*Mark J. Fougere, AICP*

253 Jennison Road Milford, New Hampshire 03055

phone: 603-315-1288 fax: 603-249-9314

email: Fougereplannng@comcast.net

January 15, 2015

Mr. Jim Smith, Chair  
Londonderry ZBA  
268B Mammoth Road  
Londonderry, NH 03053

Re: Variance Application Appeal  
First Londonderry Associates  
Stonehenge Road

Dear Mr. Chairman:

On December 17, 2014 the Londonderry Zoning Board of Adjustment, based upon unsupportable facts and findings, denied three variance requests for First Londonderry Associates for a proposed workforce housing development on Stonehenge Road. Based upon my review of the case and the ZBA's reasons for denial, I offer the following:

- On the night of the ZBA hearing, December 17, 2014, the Town of Londonderry had an adopted workforce housing zoning ordinance in place, Section 2.3.3 Inclusionary Housing.
- Under existing State Statutes, RSA 674:58 – 61, communities are obligated to provide a “reasonable and realistic opportunities for the development of workforce housing”.
- On the evening of the ZBA hearing, the Town was not in possession of any report or findings that concluded that Londonderry was meeting its regional housing need for Workforce Housing and no such report had been submitted to the Planning Board nor the Town Council.
- On the evening of the ZBA hearing, only one workforce housing development (approved under the Inclusionary Housing Ordinance) was under construction in the Town of Londonderry. None of these units are occupied.
- Based upon the existing Inclusionary Housing Ordinance and the Residential Development Phasing Ordinance, Section 1.3 of the Zoning Ordinance, the Applicant presented an argument

that specific criteria contained in these Ordinances prohibited the Applicant from a reasonable and realistic opportunity to construct workforce housing in the community and therefore required relief from the ZBA in order to move forward with the proposed apartment complex.

- During the ZBA hearing process, none of the submitted expert reports were sent out for peer review and no alternative analysis was submitted to refute the expert reports and testimony that were presented to the ZBA.
- No expert testimony or reports were submitted to the ZBA documenting that Londonderry had met its regional need for workforce housing.
- During the hearing process and during deliberations, a discussion of “housing need” was raised by Mr. Neil Dunn who stated that based upon his computer research that it appeared to him that Londonderry had met its regional need and therefore no addition housing units were needed. Relative to the comment, the ZBA Chair noted that a housing needs analysis was not the job of the ZBA and that the Planning Board and Town Council would have to make that determination. The Chair noted that the ZBA had a variance application in front of them based upon the existing Inclusionary Housing Ordinance and that is what the Board needed to address.
- During the deliberation process, Mr. Dunn continued with his assertion that it was his belief that Londonderry had met its regional need and that based upon that finding, granting a variance was not supportable. This argument resonated with the other ZBA Board members and all three variance requests were denied.
- The ZBA erred in making its decision based upon unsupported facts and documentation that Londonderry had met its regional housing need. The ZBA exceeded its review authority by coming to the conclusion that the regional workforce housing need had been met and therefore the variances should be denied.
- The ZBA failed to take into account that the Town of Londonderry has approved over a million square feet on non-residential development, creating the need for workforce housing in the community.

Sincerely,

*Mark J. Fougere*

Mark J. Fougere, AICP



**TOWN OF LONDONDERRY  
ZONING BOARD OF ADJUSTMENT**

**FIRST LONDONDERRY ASSOCIATES, LLC**

**CASE NO. 11/19/2014-4**

**WORKFORCE HOUSING DEVELOPMENT**

**REQUEST FOR RECONSIDERATION/MOTION FOR REHEARING**

NOW COMES First Londonderry Associates, LLC (the "Applicant"), by and through its attorneys, Wadleigh, Starr & Peters, P.L.L.C., and, pursuant to RSA 677:2, respectfully submits this Request for Reconsideration/Motion for Rehearing with respect to the above-captioned variance, relating to property located at 30 Stonehenge Road and 113 Hardy Road, Londonderry, New Hampshire (the "Property"), which was denied by the Zoning Board of Adjustment (the "Board") on Dec. 17, 2014, and in support of this Request for Reconsideration/Motion for Rehearing, respectfully states as follows:

1. The Applicant has submitted three requests for variances to permit construction of workforce housing (the "Project") on the Property. The Project will consist of twelve 24 unit buildings containing a total of 288 rental units. In addition, the Applicant submitted this Project to the Board as a development intended for workforce housing pursuant to RSA 674:60. The applicant has requested the Board to find that the Project requires relief from the provisions of the Ordinance that impose a substantial adverse effect on the viability of the Project. The requirement that there be a maximum of 16 units per building imposes such a substantial adverse effect.

2. The variance that is the subject of Case No. 11/19/2014-4 is a request for relief from Section 2.3.3.7.3.1.2 of the Londonderry Zoning Ordinance (the "Ordinance"), so as to

permit 24 dwelling units in each building of a multi-family rental workforce housing development. The applicable section of the Ordinance provides that the maximum number of dwelling units per multi-family building in an inclusionary development shall be 16. This provision is part of the “Density, Design and Dimensional Standards for Development Lot” section of the Inclusionary Housing provisions of the Ordinance.

3. The Board’s decision denying the variance stated that granting the variance would be contrary to the public interest because of a “lack of analysis of data to support the need for this type of housing at 24 dwelling units per building,” and “the spirit of the ordinance would not be observed because of the lack of analysis of data to support the need for this type of housing at 24 dwelling units per building.”

4. The Board’s denial of the variance request as contrary to the public interest and as not observing the spirit of the ordinance because of an alleged lack of analysis of data to support the need for this type of housing at 24 dwelling units per building was unlawful and/or unreasonable because the Board used incorrect standards in its decision.

5. RSA 674:33,I(b)(1), (2) authorize a variance from the terms of a zoning ordinance if, *inter alia*, the variance will not be contrary to the public interest and the spirit of the Ordinance is observed.

6. The N.H. Supreme Court elaborated on the statutory standards with respect to public interest and the spirit of the ordinance in *Harborside Associates v. Parade Residence Hotel*, 162 N.H. 508 (2011). The Court stated that the requirements that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance. *Harborside*, at 514, citing *Farrar v. City of Keene*, 158 N.H. 684, 691 (2009). In *Harborside*, the court stated that the first step in analyzing whether granting the

variance would not be contrary to the public interest and would be consistent with the spirit of the ordinance is to examine the applicable ordinance, noting that as the provisions of the ordinance represent a declaration of public interest, any variance would be in some measure be contrary thereto. Citing *Chester Rod and Gun Club v. Town of Chester*, 152 N.H. 577, 581 (2005). “Accordingly, to judge whether granting a variance is not contrary to the public interest and is consistent with the spirit of an ordinance, we must determine whether to grant the variance would ‘unduly and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.’” *Harborside* at 514, citing *Chester Rod*. The court found that for a variance to be contrary to the public interest and inconsistent with the spirit of the ordinance, the grant of the variance must violate the ordinance’s basic zoning objectives. Mere conflict with the terms of the ordinance is insufficient. *Harborside* at 514.

7. The court has recognized two methods for ascertaining whether granting a variance would violate an ordinance’s “basic zoning objectives.” One way is to examine whether granting the variance would alter the essential character of the neighborhood; another approach is to examine whether granting the variance would threaten the public health, safety, or welfare. *Harborside* at 514.

8. The Board did not base its decision with respect to public interest and consistency with the zoning ordinance on whether the variance would alter the essential character of the neighborhood, or examining whether granting the variance would threaten the public health, safety, or welfare. Instead, the Board found that there was a “lack of analysis of data to support the need for this type of housing at 24 dwelling units per building.” The Board did not examine or address whether the variance would alter the essential character of the neighborhood, or whether granting the variance would threaten the public health, safety, or welfare.

9. The clear language of the Ordinance and the record presented by the Applicant compel the conclusion that granting the variance does not violate the Ordinance's "basic zoning objectives."

10. Section 2.3.3.1 sets forth the purpose of the inclusionary housing section of the Ordinance. It states:

"The purpose of this Section is to encourage and provide for the development of workforce housing within Londonderry. It is intended to insure the continued availability of a diverse supply of home ownership and rental opportunities for persons meeting the definition established in the State of NH's 'Workforce Housing Statutes,' RSA 674:58-61. Additionally, in implementing this Section, Londonderry has considered the region's affordable housing need as defined in the Southern NH Planning Commission Housing Needs Assessment."

11. Given that the express purpose of the Ordinance is to encourage and provide for the development of workforce housing within Londonderry, a variance that would permit construction of workforce housing on the Property is within the basic zoning objective set forth in the Ordinance.

12. The methods established by the Court in *Chester Rod* and *Harborside* for ascertaining whether granting a variance would violate an ordinance's basic zoning objectives also compel the same conclusion, that the variance would not violate those basic zoning objectives.

13. The first method is examining whether granting the variance would alter the essential character of the neighborhood. The Applicant presented evidence that the proposed variance would not alter the neighborhood's essential character. The Applicant presented a letter dated Oct. 10, 2014, from Ralph Valentine, a real estate broker and principal of The Valentine Group. The letter stated: "The proposed use will not be out of character with the neighborhood. The building envelope will be substantially buffered from properties located to the south and

southwest by both natural and manmade (utilities/sewer easements) buffers.” He also stated that the Property was bounded by an approximately 35 unit mobile home cooperative, and an older, multi-family residential building. Additionally, he stated that the Property was bounded across Stonehenge Road by the majority of the buildings making up a 48 unit multi-family residential complex. The granting of the variance, therefore, will not alter the essential character of the neighborhood. The finding by the Board that the proposed Project will not diminish property values supports the same conclusion.

14. The second method established by the Court is whether the variance would threaten the public health, safety, or welfare. The report by Mark J. Fougere dated Oct. 15, 2014, stated that “the Town of Londonderry’s infrastructure is not at risk and there are no significant improvements that will be required by this proposal.” Page 8.

15. Further, the Housing Task Force for Londonderry, NH identified the Property as a site appropriate for high density multi-family development. See Report of Londonderry, NH Housing Task Force, April 2008, Page 21. Adequate public water and sewer utilities are currently available on Stonehenge Road several hundred feet west of the Property. The Property has ample frontage on Stonehenge Road for access.

16. Buildings with 24 units, rather than 16 units, do not raise health, safety, or welfare issues. The overall density permitted by the Ordinance is 10 units per acre. This proposal is for 46% of the density permitted by the Ordinance. Thus, the Town has already determined that a project with more than twice the number of proposed units does not threaten the health, safety, and welfare of the community.

17. The Applicant also provided ample evidence that there is a need for workforce housing with 24 dwellings per unit in order to have a financially viable project. The report

prepared by Russell Thibeault of Applied Economic Research dated Sep. 15, 2014, provided evidence that it was not feasible to construct the Project with 16 unit buildings. Costs would be \$4,500,000 higher due to the need to construct more buildings and to perform additional site work. The chart set forth on Page 14 of the report shows the difference in unit construction and site work, based on 16 unit versus 24 unit buildings. The report provides the exact type of data sought by the Board to reach the conclusion that the variance is necessary in order to construct workforce housing on the Property.

18. As found by the Board, the request for the variance fulfills the remaining criteria set forth in RSA 664. Granting the variance will do substantial justice; the values of surrounding properties will not be diminished; and, the Property cannot be reasonably used in strict conformance with the Ordinance due to the economic impact to the Project.

19. The Board also erred in failing to consider the provisions of the workforce housing statute, RSA 674:58-61, after concluding there were not sufficient grounds to grant the requested variance.

20. In addition to filing the variance application, the Applicant also filed a statement of intent to construct a project that qualifies as workforce housing. The Applicant requested waivers from the Ordinance, stating that the requirements would have a substantial adverse impact on the viability of the proposed workforce housing development.

21. The Board did not make any findings or decisions regarding the request for waiver of restrictions imposed by the Ordinance.

22. RSA 672:7 defines Land Use Boards to include, *inter alia*, Zoning Boards of Adjustment.

23. The Applicant has provided substantial, uncontroverted data and financial information which compel the conclusion that the requirements of a maximum of 16 dwelling units per multi-family building has a substantial adverse effect on the viability of the proposed workforce housing.

24. RSA 674:59 requires a municipality that exercises the power to adapt land use ordinances and regulations to provide “reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing. In order to provide such opportunities, lot size and overall density requirements for workforce housing shall be reasonable.” As evidenced by the reports presented by the Applicant, the Londonderry Ordinance does not provide a reasonable and realistic opportunity for the development of workforce housing, including rental multi-family housing, because the maximum unit number makes construction of rental multi-family housing economically unfeasible. For example, the Thibeault report shows that if the Project were built in conformity with the Ordinance requirements, it would generate a 1.9% negative rate of return. It is difficult to envision a project built using property market costs and typical infrastructure construction that would be economically viable. In fact, another workforce housing development was approved in Londonderry with the same relief as requested by the Applicant because it was otherwise not feasible.

25. The workforce housing law obligates the Board to review the information presented, to request more information from the Applicant if necessary to make a determination of the waiver request, and to consider the waiver for the Project as a workforce housing development as required under RSA 674:60. The Board did not do so.

26. The evidence presented by the Applicant requires that the waiver from the 16 unit maximum requirement be granted because this Ordinance provision has a substantial, adverse effect on the viability of the proposed workforce housing Project.

27. The Board's failure to consider any waivers under the workforce housing statute denied the Applicant its constitutional rights to due process and equal protection under the law.

28. For all the reasons set forth above, the Board has acted in an unlawful and/or unreasonable manner.

29. Pursuant to RSA 677: 2, the Applicant reserves its right to submit an amendment to this Request and Motion within 30 days of the filing of minutes of the Dec. 17, 2014 Board meeting, as the minutes were not filed within five business days after the vote.

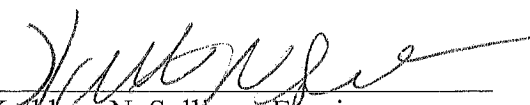
WHEREFORE, First Londonderry Associates, LLC respectfully requests that the Londonderry Zoning Board of Adjustment reconsider its decision of Dec. 17, 2014, and grant the variance requested, or, in the alternative, grant the waivers requested pursuant to the workforce housing statute, or in the alternative, grant a rehearing with regard to the variance requested and with regard to the request for waiver under the workforce housing statute.

Respectfully submitted,

First Londonderry Associates, LLC  
By its Attorneys,

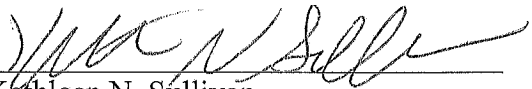
Wadleigh, Starr & Peters, P.L.L.C.

Dated: January 15, 2015

By:   
Kathleen N. Sullivan, Esquire  
95 Market Street  
Manchester, NH 03101  
(603) 669-4140



I certify that a copy of the foregoing has been forwarded to Michael Ramsdell, attorney for the Town of Londonderry Zoning Board of Adjustment.

  
Kathleen N. Sullivan

**TOWN OF LONDONDERRY  
ZONING BOARD OF ADJUSTMENT**

**FIRST LONDONDERRY ASSOCIATES, LLC**

**CASE NO. 11/19/2014-5**

**WORKFORCE HOUSING DEVELOPMENT**

**REQUEST FOR RECONSIDERATION/MOTION FOR REHEARING**

NOW COMES First Londonderry Associates, LLC (the “Applicant”), by and through its attorneys, Wadleigh, Starr & Peters, P.L.L.C., and, pursuant to RSA 677:2, respectfully submits this Request for Reconsideration/Motion for Rehearing with respect to the above-captioned variance, relating to property located at 30 Stonehenge Road and 113 Hardy Road, Londonderry, New Hampshire (the “Property”), which was denied by the Zoning Board of Adjustment (the “Board”) on Dec. 17, 2014, and in support of this Request for Reconsideration/Motion for Rehearing, respectfully states as follows:

1. The Applicant has submitted three requests for variances to permit construction of workforce housing (the “Project”) on the Property. The Project will consist of twelve 24 unit buildings containing a total of 288 rental units. In addition, the Applicant submitted this Project to the Board as a development intended for workforce housing pursuant to RSA 674:60. The applicant has requested the Board to find that the Project requires relief from the provisions of the Ordinance that impose a substantial adverse effect on the viability of the Project. The requirement that there be a 75% workforce housing restriction imposes such a substantial adverse effect.

2. The variance that is the subject of Case No. 11/19/2014-5 is a request for relief from Section 2.3.3.7.1.1.4 of the Londonderry Zoning Ordinance (the “Ordinance”), so as to

reduce the required workforce housing restrictions from applying to 75% of the units to 50% of the units.

3. The Board's decision denying the variance stated that granting the variance would be contrary to the public interest because of a "lack of analysis of data to support the need for this type of housing at 50%," and "the spirit of the ordinance would not be observed due to the lack of analysis of data to support the need for this type of housing at 50%."

4. The Board's denial of the variance request as contrary to the public interest and as not observing the spirit of the ordinance because of an alleged lack of analysis of data to support the need for this type of housing at 50% was unlawful and/or unreasonable because the Board used incorrect standards in its decision.

5. RSA 674:33,I(b)(1), (2) authorize a variance from the terms of a zoning ordinance if, *inter alia*, the variance will not be contrary to the public interest and the spirit of the Ordinance is observed.

6. The N.H. Supreme Court elaborated on the statutory standards with respect to public interest and the spirit of the ordinance in *Harborside Associates v. Parade Residence Hotel*, 162 N.H. 508 (2011). The Court stated that the requirements that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance. *Harborside*, at 514, citing *Farrar v. City of Keene*, 158 N.H. 684, 691 (2009). In *Harborside*, the court stated that the first step in analyzing whether granting the variance would not be contrary to the public interest and would be consistent with the spirit of the ordinance is to examine the applicable ordinance, noting that as the provisions of the ordinance represent a declaration of public interest, any variance would be in some measure be contrary thereto. Citing *Chester Rod and Gun Club v. Town of Chester*, 152 N.H. 577, 581

(2005). “Accordingly, to judge whether granting a variance is not contrary to the public interest and is consistent with the spirit of an ordinance, we must determine whether to grant the variance would ‘unduly and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.’” *Harborside* at 514, citing *Chester Rod*. The court found that for a variance to be contrary to the public interest and inconsistent with the spirit of the ordinance, the grant of the variance must violate the ordinance’s basic zoning objectives. Mere conflict with the terms of the ordinance is insufficient. *Harborside* at 514.

7. The court has recognized two methods for ascertaining whether granting a variance would violate an ordinance’s “basic zoning objectives.” One way is to examine whether granting the variance would alter the essential character of the neighborhood; another approach is to examine whether granting the variance would threaten the public health, safety, or welfare. *Harborside* at 514.

8. The Board did not base its decision with respect to public interest and consistency with the zoning ordinance on whether the variance would alter the essential character of the neighborhood, or examining whether granting the variance would threaten the public health, safety, or welfare. Instead, the Board found that there was a “lack of analysis of data to support the need for this type of housing at 50%.” The Board did not examine or address whether the variance would alter the essential character of the neighborhood, or whether granting the variance would threaten the public health, safety, or welfare.

9. The clear language of the Ordinance and the record presented by the Applicant compel the conclusion that granting the variance does not violate the Ordinance’s “basic zoning objectives.”

10. Section 2.3.3.1 sets forth the purpose of the inclusionary housing section of the Ordinance. It states:

“The purpose of this Section is to encourage and provide for the development of workforce housing within Londonderry. It is intended to insure the continued availability of a diverse supply of home ownership and rental opportunities for persons meeting the definition established in the State of NH’s ‘Workforce Housing Statutes,’ RSA 674:58-61. Additionally, in implementing this Section, Londonderry has considered the region’s affordable housing need as defined in the Southern NH Planning Commission Housing Needs Assessment.”

11. Given that the express purpose of the Ordinance is to encourage and provide for the development of workforce housing within Londonderry, a variance that would permit construction of workforce housing on the Property is within the basic zoning objective set forth in the Ordinance. Moreover, the Ordinance intends to insure a diverse supply of rental opportunities. A restriction at 50% promotes both workforce housing and a diverse supply of rental opportunities.

12. The methods established by the Court in *Chester Rod* and *Harborside* for ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives also compel the same conclusion, that the variance would not violate those basic zoning objectives.

13. The first method is examining whether granting the variance would alter the essential character of the neighborhood. The Applicant presented evidence that the proposed variance would not alter the neighborhood’s essential character. The Applicant presented a letter dated Oct. 10, 2014, from Ralph Valentine, a real estate broker and principal of The Valentine Group. The letter stated: “The proposed use will not be out of character with the neighborhood. The building envelope will be substantially buffered from properties located to the south and southwest by both natural and manmade (utilities/sewer easements) buffers.” He also stated that

the Property was bounded by an approximately 35 unit mobile home cooperative, and an older, multi-family residential building. Additionally, he stated that the Property was bounded across Stonehenge Road by the majority of the buildings making up a 48 unit multi-family residential complex. The granting of the variance, therefore, will not alter the essential character of the neighborhood. The finding by the Board that the proposed Project will not diminish property values supports the same conclusion.

14. The second method established by the Court is whether the variance would threaten the public health, safety, or welfare. The report by Mark J. Fougere dated Oct. 15, 2014, stated that “the Town of Londonderry’s infrastructure is not at risk and there are no significant improvements that will be required by this proposal.” Page 8.

15. Further, the Housing Task Force for Londonderry, NH identified the Property as a site appropriate for high density multi-family development. See Report of Londonderry, NH Housing Task Force, April 2008, Page 21. Adequate public water and sewer utilities are currently available on Stonehenge Road several hundred feet west of the Property. The Property has ample frontage on Stonehenge Road for access.

16. Reducing the workforce housing restriction from 75% to 50% does not raise health, safety, or welfare issues. This restriction pertains only to the economic mix of tenants, which does not have an impact on infrastructure or health or safety.

17. The Applicant also provided ample evidence that there is a need to reduce the restriction from 75% to 50% in order to have a financially viable project. The report prepared by Russell Thibeault of Applied Economic Research dated Sep. 15, 2014, provided evidence that it was not feasible to construct the Project with a 75% restriction. The chart set forth on Page 14 of the report shows the impact of a 75% restriction on the Project. The operating income would be

insufficient to make mortgage payments; the net income would be a negative \$222,500.00. The report provides the exact type of data sought by the Board to reach the conclusion that the variance is necessary in order to construct workforce housing on the Property. In addition, the Fougere report provides evidence that a 75% set aside for workforce units is “extremely unusual.” Page 6. The report cites the Commonwealth of Massachusetts, which has a 25% set aside. The Fougere report also cites a number of New Hampshire communities that have a minimum set aside of 50% or less.

18. As found by the Board, the request for the variance fulfills the variance criteria set forth in RSA 664 with respect to substantial justice and the values of surrounding properties

19. The Board’s decision with respect to unnecessary hardship is somewhat ambiguous, as it states that there is not a fair and substantial relationship between the general public purpose of the ordinance and its application to the property, but also that “the ordinance is written to support 75% in a workforce housing project.” To the extent that the Board found the 75% set aside in the Ordinance is evidence that there is no unnecessary hardship, such a finding is unlawful and/or unreasonable, as variances by their nature are waivers of the strict letter of the zoning ordinance without sacrificing its spirit and purpose. 15 N.H. Practice, §24.02.

20. There is no fair and substantial relationship between the general public purpose of the Ordinance’s 75% provision and the specific application of the provision to the Property. The purpose of the inclusionary housing is to encourage workforce housing. The specific application of the 75% set aside to the Property will prevent construction of workforce housing. Therefore, there is no fair and substantial relationship between the encouragement of workforce housing and the imposition of the 75% restriction.

21. The Board also erred in failing to consider the provisions of the workforce housing statute, RSA 674:58-61, after concluding there were not sufficient grounds to grant the requested variance.

22. In addition to filing the variance application, the Applicant also filed a statement of intent to construct a project that qualifies as workforce housing. The Applicant requested waivers from the Ordinance, stating that the requirements would have a substantial adverse impact on the viability of the proposed workforce housing development.

23. The Board did not make any findings or decisions regarding the request for waiver of restrictions imposed by the Ordinance.

24. RSA 672:7 defines Land Use Boards to include, *inter alia*, Zoning Boards of Adjustment.

25. The Applicant has provided substantial, uncontroverted data and financial information which compel the conclusion that the requirement of a 75% set aside restriction has a substantial adverse effect on the viability of the proposed workforce housing.

26. RSA 674:59 requires a municipality that exercises the power to adapt land use ordinances and regulations to provide “reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing. In order to provide such opportunities, lot size and overall density requirements for workforce housing shall be reasonable.” As evidenced by the reports presented by the Applicant, the Londonderry Ordinance does not provide a reasonable and realistic opportunity for the development of workforce housing, including rental multi-family housing, because the 75% set aside restriction makes construction of rental multi-family housing economically unfeasible. As stated above, the Thibeault report shows that if the Project were built in conformity with the Ordinance



requirements, it would generate a net operating loss. It is difficult to envision a project built using property market costs, typical infrastructure construction, and the income generated with a 75% set aside, that would be economically viable. The Wallace Farm project, for example, also received relief from the 75% requirement.

27. The workforce housing law obligates the Board to review the information presented, to request more information from the Applicant if necessary to make a determination of the waiver request, and to consider the waiver for the Project as a workforce housing development as required under RSA 674:60. The Board did not do so.

28. The evidence presented by the Applicant requires that the waiver from the 75% set aside be granted because this Ordinance provision has a substantial, adverse effect on the viability of the proposed workforce housing Project.

29. The Board's failure to consider any waivers under the workforce housing statute denied the Applicant its constitutional rights to due process and equal protection under the law.

30. For all the reasons set forth above, the Board has acted in an unlawful and/or unreasonable manner.

31. Pursuant to RSA 677: 2, the Applicant reserves its right to submit an amendment to this Request and Motion within 30 days of the filing of minutes of the Dec. 17, 2014 Board meeting, as the minutes were not filed within five business days after the vote.

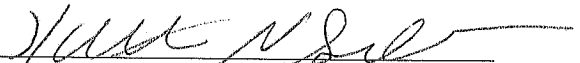
WHEREFORE, First Londonderry Associates, LLC respectfully requests that the Londonderry Zoning Board of Adjustment reconsider its decision of Dec. 17, 2014, and grant the variance requested, or, in the alternative, grant the waivers requested pursuant to the workforce housing statute, or in the alternative, grant a rehearing with regard to the variance requested and with regard to the request for waiver under the workforce housing statute.

Respectfully submitted,

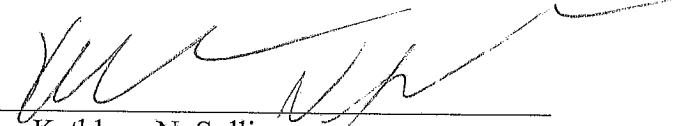
First Londonderry Associates, LLC  
By its Attorneys,

Wadleigh, Starr & Peters, P.L.L.C.

Dated: January 15, 2015

By:   
Kathleen N. Sullivan, Esquire  
95 Market Street  
Manchester, NH 03101  
(603) 669-4140

I certify that a copy of the foregoing has been forwarded to Michael Ramsdell, attorney for the Town of Londonderry Zoning Board of Adjustment.

  
Kathleen N. Sullivan

**TOWN OF LONDONDERRY  
ZONING BOARD OF ADJUSTMENT**

**FIRST LONDONDERRY ASSOCIATES, LLC**

**CASE NO. 11/19/2014-6**

**WORKFORCE HOUSING DEVELOPMENT**

**REQUEST FOR RECONSIDERATION/MOTION FOR REHEARING**

NOW COMES First Londonderry Associates, LLC (the “Applicant”), by and through its attorneys, Wadleigh, Starr & Peters, P.L.L.C., and, pursuant to RSA 677:2, respectfully submits this Request for Reconsideration/Motion for Rehearing with respect to the above-captioned variance, relating to property located at 30 Stonehenge Road and 113 Hardy Road, Londonderry, New Hampshire (the “Property”), which was denied by the Zoning Board of Adjustment (the “Board”) on Dec. 17, 2014, and in support of this Request for Reconsideration/Motion for Rehearing, respectfully states as follows:

1. The Applicant has submitted three requests for variances to permit construction of workforce housing (the “Project”) on the Property. The Project will consist of twelve 24 unit buildings containing a total of 288 rental units. In addition, the Applicant submitted this Project to the Board as a development intended for workforce housing pursuant to RSA 674:60. The applicant has requested the Board to find that the Project requires relief from the provisions of the Ordinance that impose a substantial adverse effect on the viability of the Project. The requirements that the project be limited to 3 buildings and 48 units per year impose such a substantial adverse effect.

2. The variance that is the subject of Case No. 11/19/2014-6 is a request for relief from Sections 1.3.3.3 and 1.4.7.2 of the Londonderry Zoning Ordinance (the “Ordinance”), so as

to permit the Project to be phased over three years and, in the event that growth controls are implemented, to exempt the Project from future growth control restrictions.

3. The Board's decision denying the variance stated that (a) granting the variance would be contrary to the public interest because of the "impact to planned, orderly, and sensible expansion of services," (b) the spirit of the ordinance would not be observed because of "the impact to planned, orderly, and sensible expansion of services," and (c) granting the variance would not do substantial justice due to "the loss of the general public in regards to expansion control." It appears that the Board also may have intended to deny the variance under the hardship standard because of a fair and substantial relationship between the general public purpose of the Ordinance provision and the specific application of that provision to the Property. However, the Board's written decision states there is "not a fair and substantial relationship." The Board's decision to deny the variance was unlawful and/or unreasonable for all the reasons set forth herewith.

4. The Board's denial of the variance request as contrary to the public interest and as not observing the spirit of the ordinance because of a supposed impact to planned, orderly, and sensible expansion of services was unlawful and/or unreasonable because the Board used incorrect standards in its decision.

5. RSA 674:33,I(b)(1), (2) authorize a variance from the terms of a zoning ordinance if, *inter alia*, the variance will not be contrary to the public interest and the spirit of the Ordinance is observed.

6. The N.H. Supreme Court elaborated on the statutory standards with respect to public interest and the spirit of the ordinance in *Harborside Associates v. Parade Residence Hotel*, 162 N.H. 508 (2011). The Court stated that the requirements that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with

the spirit of the ordinance. *Harborside*, at 514, citing *Farrar v. City of Keene*, 158 N.H. 684, 691 (2009). In *Harborside*, the court stated that the first step in analyzing whether granting the variance would not be contrary to the public interest and would be consistent with the spirit of the ordinance is to examine the applicable ordinance, noting that as the provisions of the ordinance represent a declaration of public interest, any variance would be in some measure be contrary thereto. Citing *Chester Rod and Gun Club v. Town of Chester*, 152 N.H. 577, 581 (2005). “Accordingly, to judge whether granting a variance is not contrary to the public interest and is consistent with the spirit of an ordinance, we must determine whether to grant the variance would ‘unduly and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.’” *Harborside* at 514, citing *Chester Rod*. The court found that for a variance to be contrary to the public interest and inconsistent with the spirit of the ordinance, the grant of the variance must violate the ordinance’s basic zoning objectives. Mere conflict with the terms of the ordinance is insufficient. *Harborside* at 514.

7. The court has recognized two methods for ascertaining whether granting a variance would violate an ordinance’s “basic zoning objectives.” One way is to examine whether granting the variance would alter the essential character of the neighborhood; another approach is to examine whether granting the variance would threaten the public health, safety, or welfare. *Harborside* at 514.

8. The Board did not base its decision with respect to public interest and consistency with the zoning ordinance on whether the variance would alter the essential character of the neighborhood, or examining whether granting the variance would threaten the public health, safety, or welfare. Instead, the Board concluded, without supporting data, that there would be an impact on planned, orderly, and sensible expansion of services.

9. Section 2.3.3.1 sets forth the purpose of the inclusionary housing section of the Ordinance. It states:

“The purpose of this Section is to encourage and provide for the development of workforce housing within Londonderry. It is intended to insure the continued availability of a diverse supply of home ownership and rental opportunities for persons meeting the definition established in the State of NH’s ‘Workforce Housing Statutes,’ RSA 674:58-61. Additionally, in implementing this Section, Londonderry has considered the region’s affordable housing need as defined in the Southern NH Planning Commission Housing Needs Assessment.”

10. Given that the express purpose of the Ordinance is to encourage and provide for the development of workforce housing within Londonderry, a variance that would permit construction of workforce housing on the Property is within the basic zoning objective set forth in the Ordinance. Also, the Applicant’s Project still will be phased, over three years. It therefore still will be planned, orderly, and sensible.

11. The methods established by the Court in *Chester Rod* and *Harborside* for ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives also compel the same conclusion, that the variance would not violate those basic zoning objectives.

12. The first method is examining whether granting the variance would alter the essential character of the neighborhood. The Applicant presented evidence that the proposed variance would not alter the neighborhood’s essential character. The Applicant presented a letter dated Oct. 10, 2014, from Ralph Valentine, a real estate broker and principal of The Valentine Group. The letter stated: “The proposed use will not be out of character with the neighborhood. The building envelope will be substantially buffered from properties located to the south and southwest by both natural and manmade (utilities/sewer easements) buffers.” He also stated that the Property was bounded by an approximately 35 unit mobile home cooperative, and an older, multi-family residential building. Additionally, he stated that the Property was bounded across

Stonehenge Road by the majority of the buildings making up a 48 unit multi-family residential complex. The granting of the variance, therefore, will not alter the essential character of the neighborhood. The finding by the Board that the proposed Project will not diminish property values supports the same conclusion.

13. The second method established by the Court is whether the variance would threaten the public health, safety, or welfare. The report by Mark J. Fougere dated Oct. 15, 2014 (the Fougere Report), stated that “the Town of Londonderry’s infrastructure is not at risk and there are no significant improvements that will be required by this proposal.” Page 8. Thus, there will not be an impact on the planned, orderly, and sensible expansion of services, as the services necessary to support the Project are in place. The Fougere Report provides evidence that residential growth rates are “well under projections.” Fougere Report, Page 7. The memo of John Vogl to the Londonderry Planning Board dated Feb. 7, 2014 (the “Vogl Memo”), states that for 2014, “the Town of Londonderry will be in a period of sustainable growth . . .” Moreover, school enrollments have declined, to the point where Londonderry High School accepts tuition students. Fougere Report, Page 7. Public water and sewer is available to service the Project. Based on all the foregoing, the Project meets the variance standard for not threatening public health, safety, or welfare.

14. Further, the Housing Task Force for Londonderry, NH identified the Property as a site appropriate for high density multi-family development. See Report of Londonderry, NH Housing Task Force, April 2008, Page 21. One of the reasons cited is the proximity of public water and sewer utilities. This is further evidence that services are available and will not be strained by the Project.

15. The Applicant also provided ample evidence that there is a need for a variance permitting three year phasing in order to have a financially viable project. The report prepared by

Russell Thibeault of Applied Economic Research (the "AER Report") dated Sep. 15, 2014, provided evidence that it was not feasible to construct the Project with phasing of more than three years. Based on the typical annual rise in construction costs of 2.5%, six year phasing would add \$3,000,000.00 to the cost of the Project. AER Report, Page 16. This will have a significant impact on the Project's viability. AER Report, Page 17.

16. The Board also denied the variance on the basis that the variance "would not do substantial justice due to the loss to the general public in regards to expansion control." This reasoning is not the proper standard when determining the question of substantial justice.

17. In determining substantial justice, the New Hampshire Supreme Court has stated that perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. *Malachy Glen Assocs. v. Town of Chichester*, 155 N.H. 102, 101 (2007). Also, the Court looks at whether the proposed development is "consistent with the area's present use."

18. The Board did not examine how three year phasing would cause a loss to the general public other than to state it would be a loss of "expansion control." However, as stated above, and as evidenced by the Fougere Report, there is no basis for concluding that the Project will have an adverse impact on services. Utilities are available and the schools have capacity. The Town is in a period of sustainable growth. In contrast, the Applicant faces a significant loss: loss of the Project. Also, the Project will provide a benefit to the public: workforce housing.

19. With respect to the question of whether the proposed development is consistent with the area's present use, the answer is, yes. As stated above, the Applicant has produced a letter from a real estate professional confirming that the Project will not alter the essential character of the neighborhood.



20. Since there is no general public gain outweighing the loss to the Applicant, and the Project is consistent with the area's present use, the Board should have granted the variance as doing substantial justice.

21. The Board also appears to have denied the variance request due to lack of hardship on the grounds that there is a fair and substantial relationship between the general public purpose of the Ordinance provision and the specific application to the property because "the rapid expansion would not be planned, orderly, and sensible as explained in 1.3.2.1."<sup>1</sup>

22. The evidence presented by the Applicant compels the conclusion that there is no fair and substantial relationship between the general public purpose of the Ordinance provision (phasing over six years) and its specific application to the Property. The Fougere Report states, "there are no up to date findings that support restricting the construction timing . . . nor justification to limit building permits. The Town of Londonderry's infrastructure is not at risk and there are no significant improvements that will be required by this proposal." Page 8.

23. Without any significant impact on infrastructure or requirement for public improvements, there is no relationship between the purpose of the Ordinance provision (orderly growth) and the application to this Property. The Project's construction over three years, as opposed to six, will meet the Town's capacity for growth (see Vogl Memo, stating that in 2014, the Town would be in a period of sustainable growth).

24. The lack of a fair and substantial relationship also is supported by the finding of the Housing Task Force for Londonderry, New Hampshire, which identified the Property as a site appropriate for high density multi-family development.

---

<sup>1</sup> The language contained in the decision is not clear as it says "there is not a fair and substantial relationship," but in context it appears as if the Board may have intended to deny the variance. In order to preserve this issue for a possible appeal, the Applicant is presenting evidence that the Board erred in denying the variance on these grounds. However, the Applicant also reserves its right to claim that the Board's written decision governs, and that the Board did find unnecessary hardship.

25. The Board also erred in failing to consider the provisions of the workforce housing statute, RSA 674:58-61, after concluding there were not sufficient grounds to grant the requested variance.

26. In addition to filing the variance application, the Applicant also filed a statement of intent to construct a project that qualifies as workforce housing. The Applicant requested waivers from the Ordinance, stating that the requirements would have a substantial adverse impact on the viability of the proposed workforce housing development.

27. The Board did not make any findings or decisions regarding the request for waiver of restrictions imposed by the Ordinance.

28. RSA 672:7 defines Land Use Boards to include, *inter alia*, Zoning Boards of Adjustment.

29. The Applicant has provided substantial, uncontroverted data and financial information which compel the conclusion that the Ordinance requirements for phasing have a substantial adverse effect on the viability of the proposed workforce housing.

30. RSA 674:59 requires a municipality that exercises the power to adapt land use ordinances and regulations to provide “reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing. In order to provide such opportunities, lot size and overall density requirements for workforce housing shall be reasonable.” As evidenced by the reports presented by the Applicant, the Londonderry Ordinance does not provide a reasonable and realistic opportunity for the development of workforce housing, including rental multi-family housing, as the maximum unit number makes construction of rental multi-family housing economically unfeasible. For example, the AER Report shows that if the Project were built in conformity with the Ordinance requirements, it would generate a 1.9% negative rate of return. It is difficult to envision a project built using property market costs

and typical infrastructure construction that would be economically viable. Phasing over six years would add a significant cost to the Project. The AER Report estimates this cost to be an additional \$3,000,000.00. Page 16. Another workforce housing development was approved in Londonderry with the same relief as requested by the Applicant because it was otherwise not feasible.

31. The workforce housing law obligates the Board to review the information presented, to request more information from the Applicant if necessary to make a determination of the waiver request, and to consider the waiver for the Project as a workforce housing development as required under RSA 674:60. The Board did not do so.

32. The evidence presented by the Applicant requires that the waiver from the phasing requirement be granted because this Ordinance provision has a substantial, adverse effect on the viability of the proposed workforce housing Project.

33. The Board's failure to consider any waivers under the workforce housing statute denied the Applicant its constitutional rights to due process and equal protection under the law.

34. For all the reasons set forth above, the Board has acted in an unlawful and/or unreasonable manner.

35. Pursuant to RSA 677: 2, the Applicant reserves its right to submit an amendment to this Request and Motion within 30 days of the filing of minutes of the Dec. 17, 2014 Board meeting, as the minutes were not filed within five business days after the vote.

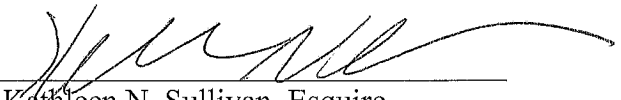
WHEREFORE, First Londonderry Associates, LLC respectfully requests that the Londonderry Zoning Board of Adjustment reconsider its decision of Dec. 17, 2014, and grant the variance requested, or, in the alternative, grant the waivers requested pursuant to the workforce housing statute, or in the alternative, grant a rehearing with regard to the variance requested and with regard to the request for waiver under the workforce housing statute.

Respectfully submitted,

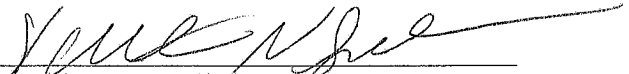
First Londonderry Associates, LLC  
By its Attorneys,

Wadleigh, Starr & Peters, P.L.L.C.

Dated: January 15, 2015

By:   
Kathleen N. Sullivan, Esquire  
95 Market Street  
Manchester, NH 03101  
(603) 669-4140

I certify that a copy of the foregoing has been forwarded to Michael Ramsdell, attorney for the Town of Londonderry Zoning Board of Adjustment.

  
Kathleen N. Sullivan